

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CIVIL PART 2**

DN-0328EU

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RANDALL EHRLICH, MD PC a/s/o

INDEX NO. CV-015225-18

Petitioner(s)

Present:

against

HON. ROBERT E. PIPIA

STATE FARM FIRE AND CASUALTY COMPANY,

Respondent(s)

-----X
**The following named papers numbered 1 to 2
submitted on this motion on November 28, 2018**

	papers numbered
Notice of Petition	1
Notice of Cross-Petition	2
Affirmation in Reply	

The petitioner seeks an order pursuant to CPLR 7511(b)(1)(iii), vacating the Master Arbitration Award of Robert Trestman, Esq., dated June 30, 2018, and mailed on July 3, 2018. The Master Arbitration Award affirmed the initial Arbitration Award of Toby Susan DeSimone, Esq., dated April 9, 2018, which found the treatment rendered medically unnecessary. The respondent cross-moves for an order pursuant to CPLR 7510, confirming the Master Arbitration Award, and denying petitioner's request to vacate same. The motion and cross-motion are decided as provided herein.

"Under the New York Comprehensive Motor Vehicle Insurance Reparations Act, popularly known as the 'No-Fault Automobile Insurance Law,' every insurer must provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first-party benefits or additional first-party benefits, the amount of such benefits, or any other matter which may arise with regard to the payment of such benefits, to a binding arbitration, pursuant to simplified procedures promulgated or approved by the New York Superintendent of Financial Services" (23A Carmody-Wait 2d § 141:359). "The Legislature delegated to the Superintendent of Insurance the power to promulgate regulations establishing the procedure for appeals to master arbitrators in 'no fault' cases (Insurance Law §5106 [c])" (*Matter of Custen v Gen. Acc. Fire and Life Ins. Co.*, 126 AD2d 256, 258 [2d Dept 1987]).

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New York Insurance Law §5106(c) provides:

"An award by an arbitrator shall be binding except where vacated or modified by a master arbitrator in accordance with simplified procedures to be promulgated or approved by the superintendent. The grounds for vacating or modifying an arbitrator's award by a master arbitrator shall not be limited to those grounds for review set forth in article seventy-five of the civil practice law and rules. The award of a master arbitrator shall be binding except for the grounds for review set forth in article seventy-five of the civil practice law and rules, and provided further that where the amount of such master arbitrator's award is five thousand dollars or greater, exclusive of interest and attorney's fees, the insurer or the claimant may institute a court action to adjudicate the dispute de novo."

Thus, as indicated under New York Insurance Law §5106(c), the grounds for review of a master arbitration award are set forth in Article 75 of the Civil Practice Law and Rules ("CPLR"). Given the public policy in favor of arbitration, the grounds specified in CPLR 7511 for vacating or modifying a no-fault master arbitration award are limited and narrowly applied (*see generally Matter of Singh v Allstate Ins. Co.*, 137 AD3d 1046, 1047 [2d Dept 2016]; *see also* New York Insurance Law §5106(c)).

Pursuant to CPLR 7511(b)(1)(iii), a court may vacate or modify a master arbitration award upon the application of either party, if it finds that the master arbitrator prejudiced the applicant's right by exceeding the scope of his or her authority in making the award. "The master arbitrator's role is to review the arbitrator's determination to assure that it was reached in a rational manner and that the decision was not arbitrary and capricious" (*see Matter of Allstate Ins. Co. v Keegan*, 201 AD2d 724, 725 [2d Dept 1994]).

"While a master arbitrator may not vacate an arbitrator's award on a de novo review of evidence, applying the law to a given set of facts is well within the province of the master arbitrator even if such person's conclusion differs from that of the arbitrator" (23A Carmody-Wait 2d § 141:364; *see also Martinez v. Metropolitan Property and Liability Ins. Co.*, 146 AD2d 610 [2d Dept 1989]). However, a master arbitrator is not permitted to "review[] factual and procedural errors committed during the course of the arbitration by weighing the evidence"; if he does so, he is deemed to have exceeded "his statutory power by making his

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own factual determination" (*Matter of Allstate Ins. Co. v Keegan*, 201 AD2d 724, 725; see also *Matter of Smith (Firemen's Ins. Co.)*, 55 NY2d 224 [1982]; *Matter of Jasser v Allstate Ins. Co.*, 77 AD3d 751 [2d Dept 2010]). On the other hand, if the master arbitrator's decision is based upon the fact that the lower arbitrator made an error of law, which is within the scope of the master arbitrator's review, "the courts are limited in their further review of the master arbitrator's resolution of that error of law, since we generally will not vacate an arbitrator's award where the error claimed is the incorrect application of a rule of substantive law, unless it is so irrational as to require vacatur" (*Matter of Smith (Firemen's Ins. Co.)*, 55 NY2d 224, 232 [citations and internal quotations omitted]).

Upon a review of the papers at bar, this court finds that vacatur of the Master Arbitrator's award is not warranted, as the latter did not exceed his authority in affirming the lower arbitration award. The court further determines that the Master Arbitrator's award is not irrational. Accordingly, petitioner's motion is denied.

The respondent's cross-motion to confirm the Master Arbitrator's award is granted (CPLR 7510).

The forgoing constitutes the decision and order of this court.

So Ordered:



DISTRICT COURT JUDGE

Dated: February 5, 2019

CC: The Law Office of Thomas Tona, P.C.
Nicolini, Paradise, Ferretti & Sabella

REP:blm