

SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA.

JUSTICE

PART 4

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In the Matter of the Application of
W. JOSEPH GORUM, M.D., P.C. a/a/o
CARLOS TAVERAS,

INDEX NO.: 607953/16

XXX

MOTION DATE: 12/21/16

SEQUENCE NO. 001, 002

Petitioners,

-against-

LANCER INSURANCE COMPANY,

Respondents.
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Notice of Petition, Petition, Exhs.....	1
Notice of Cross-Motion, Affs. & Exhs.....	2
Verified Answer & Counter-Claim.....	3
Affirmation in Reply to Cross-Motion.....	4

Upon the foregoing papers, petitioner’s application for an order, pursuant to CPLR §7511, vacating and setting aside the master arbitrator’s award rendered in favor of respondent, dated July 15, 2016, is denied and respondent’s cross-motion to confirm the master arbitrator’s award is granted.

The instant petition arises from a dispute for benefits under the New York No-Fault Law and seeks to vacate a master arbitration award dated July 15, 2016 that was rendered in favor of respondent. On or about December 18, 2014 the petitioner provided medical services to assignor Carlos Taveras. The petitioner submitted two claims for payment dated February 2, 2015 which were received by the respondent on February 4, 2015. Respondent denied the petitioner’s claims on March 4, 2015. The respondent denied the claims based on, *inter alia*, that the claims were untimely as they were submitted beyond 45 days of the services being rendered. The petitioner, following the denial, initiated the underlying arbitration proceeding.

On April 4, 2016, a hearing on this matter was held before Arbitrator Susan Haskel of the American Arbitration Association. By decision dated April 13, 2016 (hereinafter the “underlying award”), Arbitrator Haskel issued an award finding that “*respondent demonstrated at the hearing that the Applicant’s bill was sent more than 45 days after the services were*

provided. Specifically, it is undisputed that the services were provided on December 18, 2014 and Applicant mailed its bill on February 2, 2015. Moreover, the submissions do not establish reasonable justification for failure to give timely notice. See 11 NYCRR 65-2.4. As such, I find that Respondent has established its defense to payment herein” (emphasis added).

Following the issuance of the underlying arbitration award, petitioner appealed the decision to a master arbitrator. On July 15, 2016, Master Arbitrator Marilyn Felenstein, issued an award (hereinafter the “master arbitrator’s award”) affirming the underlying arbitration award issued by Arbitrator Haskel.

Petitioner moves this court for an order vacating and setting aside the master arbitrator’s award, pursuant to CPLR 7511, as “irrational, arbitrary and capricious” and that it “failed to apply New York State’s General Construction Law” and “violated public policy”.

It is a well settled principle of arbitration law in the State of New York that judicial review of an arbitration award is extremely limited. (*Matter of Reddy v. Schaffer*, 123 A.D.3d 935, 1 N.Y.S.3d 123 [2nd Dept. 2014]).

“Consistent with the public policy in favor of arbitration, the grounds specified in CPLR 7511 for vacating or modifying an arbitration award are few in number and are narrowly applied. The list of potential objections in CPLR 7511 (b) is exclusive...” (*Matter of Domotor v. State Farm Mutual Insurance Co.*, 9 A.D.3d 367, 778 N.Y.S. 2d 919 [2nd Dept. 2004]). Even if the arbitrator or master arbitrator misapplied a substantive law or made an error of fact, unless it can be shown that one of the three narrow grounds set forth in CPLR§ 7511 applies, an award will not be vacated. (*Matter of Falzone v. NY Central Mutual Fire Ins. Co.*, 15 NY3d 530, 914 N.Y.S.2d 67 [2010]; *Matter of Erin Constr. & Dev. Co., Inc. v. Meltzer*, 58 A.D.3d 729, 873 N.Y.S.2d 315 [2nd Dept. 2009]). It is not for this court to decide whether the arbitrator or the master arbitrator incorrectly applied the applicable law or misinterpreted the facts. (*Matter of Allstate Insurance Co., v. Westchester Medical Group, M.D.*, 2015 N.Y. App. Div. LEXIS 884, 2015 NY Slip Op 00876 [2nd Dept. 2015]).

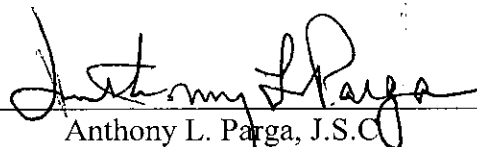
Master Arbitrator Felenstein affirmed the lower arbitrator’s award noting that “the applicant [petitioner] has raised an issue on appeal that apparently was never raised at the time of the hearing. The lower arbitrator reviewed the evidence and heard the arguments of the parties. Arbitrator Haskel, based on the evidence and arguments, rendered a decision that was rational.”

Contrary to petitioner’s contentions, the underlying award and the master arbitrator’s award were supported by evidence in the record and were rationally based and were not arbitrary or capricious (*Matter of Saul J. Klein v. GEICO*, 109 A.D.3d 824, 971 N.Y.S.2d 58 [2nd Dept. 2013]).

Accordingly, a vacatur of the master arbitrator's award is not warranted and the petition is hereby dismissed. Respondent's cross-motion is granted to the extent that the master arbitrator's award is confirmed.

This constitutes the Decision and Order of this Court. Any request for relief not expressly granted herein is denied.

Dated: February 17, 2017


Anthony L. Parga, J.S.C.

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ENTERED

FEB 23 2017

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**