At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 24th day of April 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

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AMERICAN TRANSIT INSURANCE COMPANY,
Plaintiff(s)

-against-

COMMUNITY MEDICAL CARE OF NY, PC A/A/O SENORA SPRINKLE
Defendant(s)

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Index No: 535303/2022

ORDER

The following e-filed papers read herein: NYSCEF Nos.:
Notice of Motion/Petition/Affidavits Annexed
Exhibits Annexed..... 1-12

In this matter, American Transit Insurance Company ("Petitioner") moves (Motion Seq. 1) pursuant to Article 75 of the CPLR for an order and judgment vacating the arbitration award issued by Arbitrator Ioannis Gloumis, Esq. ("Gloumis") and/or Master Arbitrator Toby Susan DeSimone, Esq. in the amount of $4,202.34 in favor of Community Medical Care of NY, PC A/A/O Senora Sprinkle ("Respondent") for medical services rendered on May 7, 2021, through May 21, 2021. At oral argument held November 8, 2023, counsel for the Petitioner appeared, and Respondent failed to appear. However, the narrow grounds for vacating an arbitration award pursuant to CPLR 7511(b)(1)(i)-(iv) do not permit a court to vacate on the grounds of default.

In support of its motion, Petitioner argues that the arbitration award should be vacated because Arbitrator Gloumis' decision was arbitrary and capricious and failed to follow well settled law. Petitioner states that it is undisputed that Respondent replied to Petitioner's pre EUO requests dated July 7, 202, August 3, 2021, and August 24, 2021. Petitioner states it is further undisputed that Respondent did not provide some of the requested information because certain documents were not in their possession and that Petitioner was advised to contact claimant's primary treating physician. Further, Petitioner states that it is undisputed that claimant appeared for an EUO and that following the EUO, Petitioner timely requested additional documentation which Respondents have failed to respond to. Petitioner claims that no-fault benefits are not due until all verification requests are received and that the 30-day requirement to pay or deny claims is tolled until all relevant requested information is received.

11 NYCRR 65-4.10 (h) (1) (i) provides that a decision of a master arbitrator is final and binding except for court review pursuant to an article 75 proceeding. The role of the master arbitrator is to review the determination of the arbitrator to assure that the arbitrator reached his decision in a rational manner and that the decision was not arbitrary and capricious (*Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 212 [1981]). Article 75 of the CPLR allows a court to vacate an arbitrator's award and by judicial construction a master arbitrator's award on the application of either party (*Petrofsky*, 54 NY2d at 210). Upon application to vacate or modify an award by a party the award shall be vacated if the court finds that the rights of the party was prejudiced by (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection (CPLR 7511 [b] [1] [i]-[iv]). When reviewing an arbitrator's award in a compulsory arbitration the master arbitrator like the courts is limited to reviewing whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without plausible basis (see *Petrofsky*, 54 NY2d at 211 [1981]; *Caso v Coffey*, 41 NY2d 153, 159 [1976]).

Pursuant to Insurance Law 5106, an insurer must pay or deny claims within 30 days after receipt of the proof of claim (see also 11 NYCRR 65-3.8[c]). Upon receipt of one or more of the prescribed verification forms used to establish proof of claim, an insurer has 15 business days to request any additional verification required to establish proof of claim (see 11 NYCRR 65-3.5[b]). If the insurer seeks additional verification, the 30-day window is tolled until it receives the relevant information requested and the insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested (see 11 NYCRR 65-3.8[a][1]; see also 11 NYCRR 65-3.5[c]; *Viviane Etienne Med. Care, P.C.*, 25 NY3d 498 [2015]). Thus, a claim need not be paid or denied until all demanded verification is provided (*Progressive Cas. Ins. Co.*, 5 AD3d 568 [2d Dept. 2004]). Under 11 NYCRR 65-3.6(b), at a minimum, if any requested verifications have not been supplied to the insurer 30 calendar days after the original request, the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the

file, or by mail. This statute is to be strictly construed and while a minor delay in following up may be considered a technical defect, in general, the failure to follow up on verification requests constitutes a failure to act diligently in processing the claim (see 11 NYCRR 65-3.5[p]; *Presbyterian Hosp. in City of New York v Aetna Cas. & Sur. Co.*, 233 AD2d 431 [2d Dept. 1996]; see also *Kemper Independence Ins. Co. v Cornerstone Chiropractic P.C.*, 185 AD3d 468 [1st Dept. 2020]).

Just as an insurer must have "good cause" to demand verification, so much a provider have a "reasonable justification" for refusal to provide a response (11 NYCRR 65-3.8[b][3][o]). Presently, there is no provision of the No-Fault regulations or case law that allows an insurance company to remain silent in the face of a legitimate, albeit insufficient, verification response. Though, some courts have held that a partial response to an additional verification request is deemed insufficient (see *American Transit Insurance Co. v PDA NY Chiropractic, P.C.*, 80 Misc. 3d 1208[A] [Sup. Ct, Kings County 2023]; *D& R Med. Supply, Inc. v Clarendon Nat. Ins. Co.*, 22 Misc. 3d 1127[A], 2009 NY Slip Op 50306[U] [Civ Ct, Kings County 2009]). Thus, an insurer is not required to pay or deny a claim upon a partial response to a verification request (*Chapa Products Corp. v MVIAC*, 66 Misc. 3d 16 [App Term, 2d 11th & 13th, Dists. 2019]). Similarly, it has been held that a response by a health service provide to additional verification requests that it "does not possess all the medical records" and that the insurer should "request any additional information directly from the treating provider," is insufficient and the 30-day period to pay or deny the claim has not yet begun to run (*Excel Surgery Ctr., LLC v Fiduciary Ins. Co. of Am.*, 55 Misc. 3d 131[A], 2017 NY Slip Op. 50408[U] [App. Term, 2d, 11th & 13th Dists. 2017]). An insurer may deny a claim where additional verification has not been provided within 120 days (11 NYCRR 65-3.5[o]; 11 NYCRR 65.3.8[b][3]).

Upon review of the foregoing papers, the court finds that Master Arbitrator's DeSimone's decision dated September 18, 2022, affirming Arbitrator Gloumis' decision dated June 11, 2022, was not arbitrary and capricious or failed to follow well settled law. In his decision, Arbitrator Gloumis in reviewing the evidence submitted found that following the Examination Under Oath, that claimant "substantially complied" with Petitioner's pre EUO verification requests. The court notes that while the determination that Respondents "substantially complied" with the requests, there is no concept of substantial compliance within no-fault insurance law, and as provided for under the statute, an insurer is entitled to receive all necessary items to verify the claim, and a

claim need not be paid or denied until all demanded verification is provided. Thus, Arbitrator Gloumis' decision would be arbitrary and capricious if not for the fact that Petitioner failed to strictly comply with the follow up procedures set forth in 11 NYCRR 65-3.6(b). Arbitrator Gloumis found that Petitioner failed to proffer evidence that it followed up with its continued demands, but instead attempted to request new additional verification, which is improper and constitutes a failure to act diligently in processing the claim. Additionally, contrary to Petitioner's argument that the action was not ripe for arbitration because the verification was still pending, Petitioner failed to demonstrate that a denial claim was issued within 120 days after Respondents failed to respond to the additional verification request, thus tolling the 30-day period to pay no fault benefits. Consequently, the claims were not tolled and became overdue.

On appeal, Master Arbitrator DeSimone Master Arbitrator DeSimone found the lower arbitration award to be clearly articulated with a rational and plausible basis based upon the parties' submissions, and that Arbitrator Gloumis did not exceed his powers. Thus, Master Arbitrator DeSimone could not reverse the award. Since the Arbitrators award is rational and based upon the evidence presented by both parties, there are no grounds to vacate or modify it.

Accordingly, it is hereby.

ORDERED, that Petitioner's petition to vacate the arbitration award is denied. The award is confirmed, and it is further,

ORDERED, that Community Medical Care of NY, PC A/A/O Senora Sprinkle is entitled to and the Clerk of Kings County is directed to enter a judgment for no-fault compensation in favor of Community Medical Care of NY, PC A/A/O Senora Sprinkle against American Transit Insurance Company in the principal sum of $4,202.34 plus statutory interest from November 5, 2021 at a rate of 2% per month, simple rate, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c), statutory attorney's fees in accordance with 11 NYCRR 4.6(d) – 20% of the total amount of first-party benefits and any additional first-party benefits, plus interest thereon for each applicant per arbitration or court proceeding, subject to a maximum fee of $1,360, and an arbitration fee of $40 pursuant to 11 NYCRR 65-4.5(s)(1).

This constitutes the decision and order of the Court.

Hon. Ingrid Joseph J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice