

Decided on June 24, 2008

Supreme Court, Queens County

**Travelers Property Casualty Company of America,
Petitioner,**

against

Winston Swen, Respondent.

8806/07

Jaime A. Rios, J.

It is ordered that the motion and cross motion are determined as follows:

On October 27, 2005, Swen, a pedestrian, was struck by an unidentified vehicle.

As a result of the occurrence, Swen sought arbitration of his claim for uninsured motorist (UM) benefits with Travelers.

Upon completion of the arbitration of this matter, the arbitrator concluded that the accident was solely attributable to the negligence of the hit and run vehicle. He found that the scar on Swen's scalp qualified as "a significant disfigurement" pursuant to Insurance Law §5102[d] and awarded him \$15,000.00.

Swen seeks vacatur of the award, based upon the partiality, bias and prejudice of the arbitrator, contending that the arbitrator and the Traveler's attorney had worked together at the Robert Plan Insurance Company for many years. He alleges that "these critical facts" were never presented to him prior to attending the hearing and that had he been aware of the close relationship between the arbitrator and Traveler's attorney, he would not have consented to the arbitrator's appointment. Additionally, he argues that the arbitrator has an unfavorable view of scarring injuries, relying on one other decision rendered by the arbitrator in a matter involving a

scar.

Travelers opposes Swen's application and cross moves seeking to confirm the arbitration award pursuant to CPLR 7510. In support, Travelers's submits an affirmation from Vincent Pirro (Pirro), the attorney who was present at the arbitration, wherein, Pirro states that he and the arbitrator were employed by the same company for just over one year, a decade ago, and that at no time has he ever maintained a social relationship with the arbitrator. Moreover, Travelers [*2] contends that although the arbitrator disclosed his employment history prior to the start of the arbitration, both sides agreed to go forward.

A transcript or record of the arbitration was not provided.

CPLR 7511(b) provides that an application to vacate an arbitration award by a party who has participated in the arbitration may only be granted upon the grounds that the rights of that party were prejudiced by corruption, fraud, or misconduct in procuring the award, partiality of the arbitrator, the arbitrator exceeded his powers or failed to make a final and definite award, or a procedural failure that was not waived (*see Silverman v Cooper*, 61 NY2d 299 [1984]; *State Farm Mut. Auto. Ins. Co. v Arabov*, 2 AD3d 531 [2003]; *GEICO Gen. Ins. Co. v Sherman*, 307 AD2d 967 [2003]).

Consistent with public policy in favor of arbitration, the grounds specified in CPLR 7511 for vacating an arbitration award are few in number and narrowly applied, with the list of potential objections being exclusive (*see Domotor v State Farm Mut. Ins. Co.*, 9 AD3d 367 [2004]).

A party who proceeds with an arbitration with actual knowledge of a relationship between his adversary and the arbitrator, waives his objection to the arbitration (*see Squire v Henschel*, 2 AD3d 737 [2003]; *Arner v Liberty Mut. Ins. Co.*, 233 AD2d 321 [1996]; *Lincoln Graphic Arts, Inc. v Rohta/New Century Communications, Inc.*, 160 AD2d 871 [1990]). Furthermore, a party that has facts that would reasonably prompt further inquiry has a responsibility to ascertain the potentially disqualifying facts (*see Rothman v RE/MAX of New York, Inc.*, 274 AD2d 520 [2000];

Namdar v Mirzoeff, 161 AD2d 348 [1990]; *Lincoln Graphic Arts, Inc. v Rohta/New Century Communications, Inc.*, 160 AD2d 871, *supra*).

Swen waives any claim related to the bias or partiality of the arbitrator since he proceeded with the arbitration after learning of the prior relationship (*see Arner v Liberty Mut. Ins. Co.*, 233 AD2d 321, *supra*). His claim that he was not aware of the alleged relationship prior to attending the hearing is of no consequence, since it is undisputed that the arbitrator disclosed the prior employment relationship prior to the commencement of the arbitration and, although, he was given the opportunity to object, he chose to go forward.

Since a claim by an insured against an insurance carrier under the uninsured motorists' endorsement is subject to compulsory arbitration, the scope of judicial review of an arbitrator's award includes whether the award is supported by evidence or has other basis in reason (*see*

Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214 [1996]; *Furstenberg v Aetna Cas. & Sur. Co.*, 49 NY2d 757 [1980]; *Mount St. Mary's Hosp. v Catherwood*, 26 NY2d 493 [1970]; *Kemper Ins. Co. v Westport Ins. Co.*, 9 AD3d 431 [2004]; *State Farm Mut. Auto. Ins. Co. v Arabov*, 2 AD3d 531 [2003]; *Scher v State Farm Ins. Co.*, 240 AD2d 415 [1997]; *American Motors Sales Corp. v Brown*, 152 AD2d 343 [1989]; *Rose v Travelers Ins. Co.*, 96 AD2d 551 [1983]). [*3]

An arbitrator is not required to justify his award, it must merely be evident that there exists a rational basis for it upon a reading of the record (*see Block v St. Paul Fire & Marine Ins. Co.*, 137 AD2d 475 [1988]; *Dahn v Luchs*, 92 AD2d 537 [1983]).

Here, the arbitrator's decision was based upon Swen's testimony, medical reports and records, his review of the scars and photographs taken. The arbitrator found that the scar on Swen's scalp, which he described as "clearly visible, as an extensive whitish discoloration" qualified as "a significant disfigurement". He concluded that "while the scarring on the knee and shoulder are also visible, they are on parts of the body that are generally concealed by clothing", and that Swen's other injuries were not based upon "competent medical proof".

Swen's allegation that he was prejudiced by the arbitrator's unfavorable view of "scarring injuries" is unsubstantiated.

Judicial review of an arbitrator's award is very limited (*see Pearlman v Pearlman*, 169 AD2d 825 [1990]) and the fact findings of the arbitrator may not be second guessed by a reviewing court (*see Liberty Mut. Ins. Co. v Sedgewick of New York*, 2007 NY Slip Op 6882). Based upon the present record, the arbitrator's award was supported by the proof submitted and is thus, rationally based.

Accordingly, Swen's motion to vacate the arbitration award is denied and Travelers' cross motion to confirm the arbitration award is granted. The arbitration award of February 12, 2008 is confirmed and Travelers is granted leave to enter judgment accordingly.

Dated: June 24, 2008 _____

J.S.C.