

WATER FRONT INSTITUTE SPINE AND REHABILITATION (SALAZAR), Plaintiff-Respondent,
v.
MERCURY INSURANCE GROUP, Defendant-Appellant.

Docket No. A-2553-08T1.

Superior Court of New Jersey, Appellate Division.

Submitted: October 1, 2009.

Decided: April 30, 2010.

Methfessel & Werbel, attorneys for appellant (Gina M. Stanziale, on the brief).

Law Offices of Nicholas J. Fano, attorneys for respondent (Jamie S. Aretsky, on the brief).

Before Judges Stern and Graves.

PER CURIAM.

After plaintiff-provider received an award in a PIP arbitration with the National Arbitration Forum (NAF), the defendant carrier sought a clarification and reduction of the contested unpaid balance. The Dispute Resolution Professional (DRP) modified the award to \$3642, but the DRP noted that defendant carrier had not provided her with the explanation of benefit forms (EOBs), which had made it "difficult" for her to determine the award. The plaintiff sought vacation of the award in the Law Division on the grounds that in making the modification "the Arbitrator exceeded her power and so imperfectly executed that power that a final and definitive award was not made." See N.J.S.A. 2A:23A-13(c)(3). On December 15, 2008, the Law Division remanded for a rehearing before the DRP in the absence of the presentation of EOBs necessary for the original hearing.

Defendant sought reconsideration but the court denied its request for oral argument. In an order dated January 9, 2009, the court "confirmed" its judgment of December 15, 2008, which had "vacate[d]" the PIP award and remanded to the NAF "for [a] full hearing with presentation of EOB[s]." The January order stated that defendant failed "to set forth a legal basis" for the court to reverse its findings and that plaintiff had "already requested a hearing by [the] NAF."

Defendant contends its motion for reconsideration in the Law Division should have been granted and it was, in any event, entitled to argument on the matter. See R. 1:6-2(d). It further contends on the merits that the trial court did not limit its review to the grounds embodied in N.J.S.A. 2A:23A-13(c)(3). The motion for reconsideration was premised on that basis. It asserted that a "final and definite award was made," the arbitrator "ruled based on the record before her," payment was rendered and plaintiff "had full opportunity to either request or submit EOBs."

Plaintiff contends the matter is not "final" until the rehearing before the DRP is completed and that in any event the appeal to us cannot be pursued under the Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to -19.

We agree with plaintiff that N.J.S.A. 2A:23-18(b) generally precludes review of the Law Division's decision. Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 147-53 (1998); Fort Lee Sur. Ctr., Inc. v. Proformance Ins., 412 N.J. Super. 99, 102-104 (App. Div. 2010); Riverside Chiropractic Group v. Mercury Ins. Co., 404 N.J. Super. 228, 235-40 (App. Div. 2008).^[1] The statute precludes an appeal from a judgment "confirming, modifying or correcting an award." N.J.S.A. 2A:23A-18(b). Plaintiff adds that in the absence of EOBs, "the DRP could not properly calculate the total amount due, and, therefore, there was no definite award made." Hence, it asserts there was a statutory ground for the remand and because the matter is on-going, there can be no appeal.

There should have been argument on the record on the original challenge and argument on the motion for reconsideration. The statute provides that when a party has right to appeal to the Superior Court under APDRA, those proceedings shall be in accordance with New Jersey Court Rules, but they are also to "be summary in nature and expedited." N.J.S.A. 2A:23A-19. We shall assume the statute cannot, and does not, trump the Supreme Court's rule-making power as to how the challenge, cognizable under the statute, should be heard in the Law Division or preclude an appeal if the Rules were violated. However, the Law Division had jurisdiction despite the lack of oral argument. It heard unrecorded argument, had papers on the motion for

reconsideration, and defendant has had an opportunity to argue before us on the merits. We therefore know the contentions defendant presented, or could have presented, to the motion judge.^[2]

Here, the DRP "so imperfectly executed" her power, N.J.S.A. 2A:23A-13(c)(3), that "a trial court's intervention" was authorized. Fort Lee Sur. Ctr., *supra*, 412 N.J. Super. at 104. The Law Division judge articulated reasons and "provide[d] a rational explanation" for the decision he made. *Ibid.* Moreover, we simply find no public policy argument presented by defendant which would require us to reverse or review the matter, particularly in this procedural posture. See Riverside Chiropractic, *supra*, 404 N.J. Super. at 239-40.

The appeal is dismissed.

[1] We are not presented with the arbitration-waiver language of the automobile policy, but that subject is not contested.

[2] We also have a written opinion from him, under R. 2:5-1(b), dated January 27, 2009, stating his reasons for the findings. He said:

The court acknowledges that no oral argument was provided. Apparently, because the court's law secretary was absent to jury duty, the motions were handled by the undersigned and my secretary.

The basis for the court's determination, however, related to the DRP's comment that the claimant failed to document services. Although the [EOB's] could have been requested, that was not done.

After the arbitration, the parties could not agree on the amount actually awarded by the DRP. The provider, Water Front, calculated the award was \$11,937.00, while the insurer calculated the amount to be \$1,957.00. After the clarification, in which the DRP stated that the respondent (Mercury) failed to provide any EOBs, the award became \$3,642.62.

The court will note that the respondent, Mercury, failed to file a brief either in opposition to the order to show cause or the request for reconsideration. A letter was submitted, apparently in lieu of a brief, which was devoid of any legal authority to support defendant's position.

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