

# American Arbitration Association

## NO-FAULT ARBITRATION TRIBUNAL

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In the Matter of the Arbitration between

Sunnyvale Physical Therapy PLLC

*Applicant*

–and–

American Transit Insurance Company

*Respondent*

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AAA ASSESSMENT NO.: 99-24-1334-6856    INSURER'S FILE NUMBER: 110971601

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AAA CASE NUMBER:

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### MASTER ARBITRATION AWARD

I, \_\_\_\_\_, the undersigned MASTER ARBITRATOR, appointed by the Superintendent of Insurance and designated by the American Arbitration Association pursuant to regulations promulgated by the Superintendent of Insurance at 11 NYCRR 65-4.10, having been duly sworn, and having heard the proofs and allegations of the parties on \_\_\_\_\_, make the following AWARD.

#### Part I.            Summary of Issues in Dispute

The issues before the lower arbitrator were whether the Respondent properly denied the claim for physical therapy services based upon (1) the failure to attend two scheduled EUOs; and (2) a 45-day rule defense. The lower arbitrator allowed the claim. Respondent seeks to overturn the award of the lower arbitrator.

The issue before me is whether Arbitrator Viverito's decision to allow the claim was arbitrary, capricious or incorrect as a matter of law.

#### Part II.           Findings, Conclusions, and Basis Therefor

As required by 11 NYCRR Section 65-4.10(c)(3), I determine that the facts alleged in the submitted documents set forth a proper ground for review pursuant to Subdivision (a) of Section 65-4.10 and that the request for master arbitration was properly made in accordance with Subdivision (d)(1) and (2) of that Section.

The review of this award is limited to the standards set forth in CPLR Article 75 and which was defined by the Court of Appeals in Matter of Petrofsky v. Allstate Insurance Company, 54 N.Y. 2d 207 as follows:

"In cases of compulsory arbitration, this Court has held that Article 75 of the CPLR 'includes review... of whether the award is supported by evidence or other basis in reason.' ( Mount St. Mary's v. Catherwood, 26 N.Y. 2d 493). This standard has been interpreted to import into Article 75 review of compulsory arbitrations the arbitrary and capricious standard of Article 78 review. (Caso v. Coffey, 41 N.Y.2d 153, 158, Siegel, New York Practice, Section 603, pp. 865-866). In addition, Article 75 review questions whether the decision was rational or had plausible basis. (Caso v. Coffey, 41 N.Y.2d 153, *supra*)."

The grounds for review also include that the decision was incorrect as a matter of law (11 NYCRR 65-4.10(a)(4). However, "(The) master arbitrator 'exceeds his statutory power by making his own factual determination, by reviewing factual and procedural errors committed during the course of the arbitration, by weighing the evidence, or by resolving the issues such as the credibility of the witnesses.'" Matter of Richardson v. Prudential Property & Casualty Co., 230 A.D. 2d 861; Mott v. State Farm Insurance Company, 55 N.Y. 2d 224.

Arbitrator Viverito conducted a hearing and reviewed all the evidence. Arbitrator Viverito considered the EUO no-show defense and the 45-day rule defense. Arbitrator Viverito first considered the EUO no-show defense. Respondent contends that the EIP failed to attend two EUOs on November 10, 2022, and December 7, 2022. The EUO scheduling letters were properly mailed. Arbitrator Viverito determined that the Respondent had failed to demonstrate that the EIP failed to appear for the EUOs. And as such allowed the claim.

Arbitrator Viverito next considered the 45-day rule defense. Arbitrator Viverito reviewed the affidavits of Shaquille Grizzle and Remonda Abdel-Shahid, DPT. Based upon his review of the evidence Arbitrator Viverito determined that the Respondent had failed to sustain its 45-day rule defense.

Arbitrator Viverito's conclusions and findings were in his discretion and interpretation of the evidence. It cannot be regarded as a reversible error within this Master Arbitrator's purview. This Master Arbitrator cannot conduct a de novo review and substitute my interpretation and view of the evidence for that of Arbitrator Viverito. In particular, as here, Arbitrator Viverito's determination is rational and supported by the record.

I must find that Arbitrator Viverito's award should not be disturbed in accordance within the standards set forth above.

I cannot conclude based on the record before me that Arbitrator Viverito's decision was incorrect as a matter of law or arbitrary and capricious. Therefore, I must affirm the award.

**Accordingly,**

1. ☐ the request for review is hereby denied pursuant to 11 NYCRR 65-4.10 (c) (4)



C1. ☐ The respondent shall also pay the applicant \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for attorney's fees computed in accordance with 11 NYCRR 65-4.6(d). ***The computation is shown below*** (attach additional sheets if necessary).

***-or-***

C2. ☐ The respondent shall also pay the applicant an attorney's fee in accordance with 11 NYCRR 65-4.6(e). However, for all arbitration requests filed on or after April 5, 2002, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b).

C3. ☐ Since the charges by the applicant for benefits are for billings on or after April 5, 2002, and exceed the limitations contained in the schedules established pursuant to section 5108 of the Insurance Law, no attorney's fee shall be payable by the insurer. See 11 NYCRR 65-4.6(i).

D. ☐ The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization for the arbitration below, unless the fee was previously returned pursuant to an earlier award

PART III. (Complete if applicable.) The applicant in the arbitration reviewed, having prevailed in this review,

A. the respondent shall pay the applicant

ONE HUNDRED NINETY-FIVE AND 00XX dollars (\$195.00) for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j). The computation is shown below (attach additional sheets if necessary)

3 hours @ \$65 per hour

B. If the applicant requested review, the respondent shall also pay the applicant SEVENTY-FIVE DOLLARS (\$75) to reimburse the applicant for the Master Arbitration filing fee.

This award determines all of the no-fault policy issues submitted to this master arbitrator pursuant to 11 NYCRR 65- 4.10

State of New York

County of Putnam.

☐ SS:

I, , do hereby affirm upon my oath as master arbitrator that I am the individual described in and who executed this instrument, which is my award.

3/31/2025

\_\_\_\_\_  
Date

\_\_\_\_\_  
Master Arbitrator's Signature

**IMPORTANT NOTICE**

*This award is payable within 21 calendar days of the date of mailing. A copy of this award has been sent to the Superintendent of Insurance.*

*This master arbitration award is final and binding except for CPLR Article 75 review or where the award, exclusive of interest and attorney's fees, exceeds \$5,000, in which case there may be court review de novo (11 NYCRR 65- 4.10(h)). A denial of review pursuant to 11 NYCRR 65- 4.10 (c) (4) (Part II (1) above) shall not form the basis of an action de novo within the meaning of section 5106(c) of the Insurance Law. A party who intends to commence an Article 75 proceeding or an action to adjudicate a dispute de novo shall follow the applicable procedures as set forth in CPLR Article 75. If the party initiating such action is an insurer, payment of all amounts set forth in the master arbitration award which will not be subject of judicial action or review shall be made prior of the commencement of such action.*

Date of mailing:\_\_\_\_\_