

Matter of Hanover Ins. Co. v Vasquez
2016 NY Slip Op 06970
Decided on October 25, 2016
Appellate Division, First Department
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Decided on October 25, 2016.

Tom, J.P., Mazzairelli, Richter, Manzanet-Daniels, Webber, JJ.

2027N 650542/15

[*1] In re Hanover Insurance Company, Petitioner-Appellant,

v

Demetrio Vasquez, Respondent-Respondent.

Crisci Weiser & McCarthy, New York (Eleanor R. Goldman of counsel), for appellant.

Guerrero & Rosengarten, New York (Howard Rosengarten of counsel), for respondent.

Order and judgment (one paper), Supreme Court, New York County (Joan M. Kenney, J.), entered May 11, 2016, granting the petition to vacate an arbitration award, dated February 17, 2016, and directing the parties to proceed to a new arbitration, unanimously reversed, on the law, without costs, the petition denied, and the award confirmed. The Clerk is directed to enter judgment accordingly.

The parties dispute whether the arbitration was voluntary or compulsory. We need not resolve the question, because the award denying respondent supplementary uninsured motorist benefits should not have been vacated even under the less stringent standard of review associated with compulsory arbitration; the award is rationally supported by the record (*see Matter of Curley [State Farm Ins. Co.]*, 269 AD2d 240 [1st Dept 2000]). The hearing evidence includes expert opinions that respondent's claimed neck, back and shoulder injuries resolved with physical therapy and arthroscopic surgery and that no disability arose from the motor vehicle accident, as well as medical evidence of preexisting, chronic degenerative conditions in respondent's neck, back and shoulders. The arbitrator's credibility findings are supported by the record, as is her resolution of the conflicts presented by the competing expert opinions.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 25, 2016

CLERK

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