NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3108-11T1

USA CHIROPRACTIC a/s/o
JULIE MENDEZ,

Plaintiff-Appellant,

v.

NJ RE-INSURANCE COMPANY and
NAF/FORTHRIGHT SOLUTIONS,

Defendants-Respondents.

Submitted November 26, 2012 - Decided December 14, 2012

Before Judges Fasciale and Maven.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-9461-11.

Fano & Krug, P.C., attorneys for appellant (Charles H. Lynch, on the brief).

Dyer & Peterson, P.C., attorneys for respondent NJ Re-Insurance Company (Gregory E. Peterson, on the brief).

Shiriak & Timins, attorneys for respondent NAF/Forthright Solutions (Arthur J. Timins, on the brief).

PER CURIAM

Plaintiff USA Chiropractic appeals from two orders dated January 27, 2012 denying its motion to vacate a Personal Injury Protection (PIP) arbitration award and dismissing its complaint

against defendant NAF/Forthright Solutions (NAF).[1] Plaintiff primarily contends that it had insufficient notice of the internal appeals process of the PIP carrier, defendant NJ Re-Insurance (NJ-Re).[2] We affirm.

In July 2008, Julie Mendez sustained injuries in a motor vehicle accident and obtained medical treatment for approximately six months from plaintiff. After NJ-Re failed to pay for the treatment, plaintiff obtained an assignment of rights and filed a demand for PIP arbitration for the unpaid health care services that it rendered.[3] Before plaintiff demanded arbitration, NJ-Re provided plaintiff with its decision point review plan (DPRP), which states in part that

> [a]ny treating provider who has accepted an assignment of benefits must submit a written request for Reconsideration and Appeals specifying the issues in dispute accompanied by supporting documentation at least 21 days prior to initiating arbitration or litigation.
>
> . . . .
>
> If you wish to be paid directly by us for covered services, you must obtain an

[1] NAF is the arbitration tribunal where plaintiff filed its PIP arbitration.

[2] NJ-Re is now known as New Jersey Manufacturer's Insurance Company.

[3] It is not clear from the record when plaintiff filed for arbitration.

> executed assignment of benefits. . . . As a condition of assignment, you must follow the requirements of the [DPRP] . . . . Failure to comply with (1) our [DPRP] or (2) the requirement to follow the Reconsideration and Appeals Process prior to initiating arbitration or litigation will render any prior assignment of benefits under the policy null and void.
>
> [(Emphasis added).]

Prior to filing its demand for PIP arbitration, plaintiff also possessed NJ-Re's explanation of benefits (EOBs), which included a notice that was printed on its own page with the heading in bold letters and the entire notice enclosed within a bordered box. The EOB stated that

> IMPORTANT! PLEASE READ!
>
> Unless emergent relief is sought, the health care provider must utilize the reconsideration and appeals process prior to filing arbitration and litigation. Information on this process and other requirements are included in [NJ-Re's] Decision Point Review Requirements, which may me obtained at http://www.njm.com/pdf/AC-PIP18.pdf or by contacting the Claims Representative.
>
> [(Emphasis added).]

The DPRP and the EOBs provided plaintiff with information on NJ-Re's internal appeals process and how to use it.

In October 2011, the arbitrator entered a written decision in NJ-Re's favor. The arbitrator noted that the PIP arbitration "is about the failure [of plaintiff] to appeal [NJ-Re's] non-

payment [of PIP benefits]." It is undisputed that plaintiff failed to follow the internal appeals process. As a result, the arbitrator concluded that plaintiff lacked standing to proceed and rendered an award dismissing the PIP arbitration.

In November 2011, plaintiff filed its complaint and order to show cause naming NJ-Re and NAF as parties. Plaintiff sought to vacate the dismissal and contended that the arbitrator misapplied the law. NAF moved to dismiss the complaint and argued that it was not an interested party.

On January 27, 2012, Judge Charles E. Powers, Jr., conducted oral argument, denied plaintiff's request to vacate the arbitrator's dismissal of the PIP arbitration, and granted NAF's motion to dismiss plaintiff's complaint. In two separate written decisions, Judge Powers concluded that plaintiff lacked standing for failure to use NJ-Re's internal appeals process and NAF was immune from suit. This appeal followed.

On appeal, plaintiff argues that the judge erred by finding that (1) NJ-Re's EOB was sufficient notice of its internal appeals process; and (2) NAF was not a dispensable party.

We begin by considering the scope of our jurisdiction to review the order denying plaintiff's request to vacate the arbitrator's dismissal of the PIP arbitration. PIP arbitration disputes are to be resolved pursuant to the New Jersey

Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to -30. By using the APDRA, the parties waive their right to appeal to this court. Mt. Hope Dev. Assocs., EAJ, Inc. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 149 (1998). The APDRA provides a streamlined and limited process for a party seeking to challenge an arbitration award. The proceedings are "summary in nature and expedited. . . . This act shall be liberally construed to effectuate [the APDRA's] remedial purpose of allowing parties by agreement to have resolution of factual and legal issues in accordance with informal proceedings and limited judicial review in an expedited manner." N.J.S.A. 2A:23A-19 (emphasis added). Our Supreme Court explained that

> After the award is delivered by the umpire, the parties have forty-five days (thirty days if the award is modified) to commence a summary action in the [Chancery or Law Division] to vacate, correct, or modify the award. N.J.S.A. 2A:23A-13(a). The APDRA further provides that once a court grants an order confirming, modifying, or correcting an award, "a judgment or decree shall be entered by the court in conformity therewith and be enforced as any other judgment or decree. There shall be no further review of the judgment or decree." N.J.S.A. 2A:23A-18(b).
>
> [Mt. Hope Dev. Assocs., supra, 154 N.J. at 146.]

The fundamental policy of the APDRA is "'finality and limited judicial involvement.'" Id. at 149 (quoting Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 361 (1994)).

The authority of appellate courts is limited to "those 'rare circumstances' grounded in public policy that might compel . . . limited appellate review." Id. at 152 (quoting Tretina Printing, supra, 135 N.J. at 364-65); see Ft. Lee Surgery Ctr., Inc. v. Proformance Ins. Co., 412 N.J. Super. 99, 104 (App. Div. 2010) (indicating that "when a trial judge is able to provide a rational explanation for how the arbitrator committed prejudicial error, N.J.S.A. 2A:23A-18(b) requires a dismissal of an appeal of that determination regardless of whether we may think the trial judge exercised that jurisdiction imperfectly"); N.J. Citizens Underwriting Reciprocal Exch. v. Kieran Collins, D.C., LLC, 399 N.J. Super. 40, 48 (App. Div.) (stating that "when the trial judge adheres to the statutory grounds in reversing, modifying[,] or correcting an arbitration award, we have no jurisdiction to tamper with the judge's decision or do anything other than recognize that the judge has acted within his jurisdiction"), certif. denied, 196 N.J. 344 (2008).

Such "rare circumstances" exist, for instance, where the trial court acted with bias, Mt. Hope Dev. Assocs., supra, 154 N.J. at 152; imposed an unauthorized remedy, Open MRI & Imaging

of Rochelle Park v. Mercury Ins. Grp., 421 N.J. Super. 160, 166 (App. Div. 2011); applied a standard of review that is contrary to the statute, Morel v. State Farm Ins. Co., 396 N.J. Super. 472, 475-76 (App. Div. 2007); or acted contrary to "public policy [such that it] require[d] appellate court review," Selective Ins. Co. of Am. v. Rothman, 414 N.J. Super. 331, 341-42 (App. Div. 2010) (quoting Mt. Hope Dev. Assocs., supra, 154 N.J. at 152), aff'd, 208 N.J. 580 (2012). Here, no such "rare circumstances" exist.

We acknowledge that N.J.A.C. 11:3-5.6(f), included in a set of regulations adopted to effectuate APDRA, provides in pertinent part:

> The final determination of the dispute resolution professional shall be binding upon the parties, but subject to vacation, modification or correction by the Superior Court in an action filed pursuant to N.J.S.A. 2A:23A-13 for review of the award.

Here, plaintiff sought review of the arbitrator's decision under the prejudicial error standard set by N.J.S.A. 2A:23A-13c(5), which provides that

> The award shall be vacated on the application of a party who either participated in the alternative resolution proceeding or was served with a notice of intention to have alternative resolution if the court finds that the rights of that party were prejudiced by:
>
> . . . .

> (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.

However, pursuant to N.J.S.A. 2A:23A-13b, a de novo review over applications may be brought only pursuant to N.J.S.A. 2A:23A-13c(1) to (4).

Finally, appellate review is permitted where the nondelegable supervisory function of the courts is implicated. See Faherty v. Faherty, 97 N.J. 99, 109 (1984) (indicating that "the courts have a nondelegable, special supervisory function in the area of child support that may be exercised upon review of an arbitrator's award"); Allstate Ins. Co. v. Sabato, 380 N.J. Super. 463, 474-75 (App. Div. 2005) (permitting review of decision to reduce an attorney's fees award). Appellate review is not available where a party argues mistaken findings or conclusions of either the arbitrator or the trial court, even if the trial court may have exercised its review function "imperfectly." Ft. Lee Surgery Ctr., supra, 412 N.J. Super. at 104. "Any broader view of appellate jurisdiction would conflict with the Legislature's expressed desire in enacting APDRA to eliminate appellate review in these matters." Ibid. Here, we conclude that this court's supervisory function is not implicated.

Nevertheless, "[w]e adhere to th[e] sensible view of the scope of N.J.S.A. 2A:23A-18(b), and likewise agree that we are not precluded by that statute from providing a remedy when a trial judge has failed to limit his or her review to the grounds set forth in N.J.S.A. 2A:23A-13." N.J. Citizens Underwriting Reciprocal Exch., supra, 399 N.J. Super. at 48. As a result, "we review the decision of the trial judge here for the limited purpose of determining whether he exceeded the authority granted to him by APDRA." Ibid.

We reject plaintiff's argument that it had insufficient notice of the internal appeals process. To support its contention that NJ-Re is required to transmit to plaintiff its DPRP, plaintiff relies on N.J.A.C. 11:3-4.7(d)8, entitled "Decision point review plans," which provides that

> (d) The informational materials for policyholders, injured persons and providers shall be on forms approved by the Commissioner and shall include . . . .
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> . . . .
>
> 8. An explanation of the alternatives available to the provider if reimbursement for a proposed treatment, diagnostic test or durable medical equipment is denied or modified, including insurer's internal appeal process and how to use it.
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> [(Emphasis added).]

Subsection (d)8 requires that informational materials include an explanation of the "insurer's internal appeal process and how to

use it." Here, it is undisputed that plaintiff possessed NJ-Re's DPRP, which explained NJ-Re's internal appeals process and how to use it. Moreover, plaintiff possessed NJ-Re's EOBs, all of which provide additional notice to plaintiff about the carrier's internal appeals process and how to use it. Plaintiff relies on prior unrelated arbitrations in contending that NJ-Re's inclusion of the website address on the EOB directing it to the appeals procedure provides insufficient notice. Arbitration rulings, however, are not binding on this court.

Thus, in denying plaintiff's request to set aside the award, we conclude that the judge did not exceed the authority granted to him by APDRA. N.J. Citizens Underwriting Reciprocal Exch., supra, 399 N.J. Super. at 48. As a result, we need not reach plaintiff's remaining argument that the judge erred by finding that NAF was not a dispensable party.

Affirmed.