SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0026-16T4

MHA, LLC, d/b/a MEADOWLANDS HOSPITAL MEDICAL CENTER,

Plaintiff-Appellant,

v.

UNITED HEALTH GROUP, INCORPORATED, UNITED HEALTHCARE INC., UNITED HEALTHCARE SERVICES, INC., AMERICHOICE OF NEW JERSEY, INC., d/b/a UNITED HEATLTHCARE COMMUNITY PLAN IN NEW JERSEY, OXFORD HEALTH PLANS, INC., OXFORD HEALTH PLANS LLC, OXFORD HEALTH PLANS (NJ), INC., a/k/a OXFORD HEALTH PLANS OF NEW JERSEY, INC., HEALTH NET OF THE NORTHEAST, INC., and HEALTH NET OF NEW JERSEY INC.

Defendants-Respondents.

Argued November 29, 2017 – Decided January 26, 2018

Before Judges Fuentes, Koblitz and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6738-13.

Anthony Argiropoulos argued the cause for appellant (Epstein Becker & Green, PC, attorneys; Anthony Argiropoulos, of counsel

and on the brief; William Gibson, on the briefs).

Francis X. Manning argued the cause for respondents (Stradley Ronon Stevens & Young, LLP, attorneys; Francis X. Manning, of counsel and on the brief; Marissa Parker, on the brief).

PER CURIAM

MHA, LLC (MHA) appeals from an order of the Law Division confirming an arbitration award in favor of United Health Group, Inc. (United). We affirm.

We recite the following facts and procedural history. MHA purchased Meadowlands Hospital Medical Center (hospital) from Liberty Health Systems (Liberty), a non-profit entity, by way of an asset purchase agreement on December 7, 2010. Under Liberty's ownership, the hospital participated in United's insurance provider networks.

In order to acquire the hospital, MHA was required to obtain a Certificate of Need (Certificate) through the Department of Health[1] (Department) and receive approval for the transaction from the New Jersey Superior Court. These prerequisites were in accordance with the Community Health Care Assets Protection Act.

[1] The Department was then known as the Department of Health and Senior Services.

During public hearings, community members expressed concern whether MHA would adhere to its stated intention to continue the hospital's status as an in-network provider with United and other health insurance carriers. At the time of the acquisition, there was a growing healthcare trend in New Jersey that for-profit hospitals would exit insurance networks and charge increased, out-of-network rates.

On November 1, 2010, the Department approved MHA's Certificate application subject to conditions. In order to address concerns regarding continued network participation, the Department imposed "Condition 16," which states:

> 16. MHA LLC must make a reasonable attempt to continue the current commercial insurance contracts of the [hospital] that are in effect for at least [one] year after licensure and report annually on payor mix. If MHA LLC provides notice to terminate such contracts at any time, MHA LLC shall meet with the Department [of Health] to discuss public notice and access.
>
> a. MHA LLC shall endeavor to maintain existing HMO insurance coverage at the [hospital] for the first year following acquisition, including, but not limited to good faith negotiations. If MHA LLC provides notice to terminate any HMO contracts at any time, MHA LLC shall in advance meet with representatives from the Departments of Banking and Insurance and Health and Senior Services to discuss the intent to terminate such contract and documenting how it will provide notice to patients and providers.

On December 1, 2010, the Law Division issued an order approving the sale. The court's order also imposed conditions, including one identical to Condition 16.

MHA signed two new Facility Participation Agreements (FPA) with United on September 22, 2011, which became effective on November 1, 2011.[2] The FPAs imposed future health cost rates but did not address the rates for claims in the first eleven months of MHA's ownership of the hospital, specifically between December 7, 2010 and October 31, 2011.

On January 27, 2012, MHA sent a written notice to United contending that during the eleven-month time period the hospital was not a participating provider in United's networks. According to MHA, United's treatment of the hospital as an in-network facility during that period resulted in underpayments to MHA of more than $28 million. United responded by stating:

> The contention that MHA did not assume any of the Agreements upon its acquisition of Liberty Riverside Healthcare, Inc. and thus is not bound by them is erroneous. Both State regulators and the Superior Court of New Jersey imposed several conditions on the acquisition, including that MHA was to maintain and continue all of [the hospital]'s in-force commercial and HMO insurance contracts for at least one year after the

[2] One of the Agreements governed services provided to patients who had health benefits through Medicaid and the other governed services provided to patients through commercial insurance or individual health benefit plans.

> acquisition. This condition supersedes MHA's attempt to now reject the Agreements outright, even if based upon the language of its asset purchase agreement.
>
> Further, both the Certificate of Need approval letter and [c]ourt [o]rder require MHA to involve State regulators if it attempted to terminate any of the Agreements. We are unaware of any notice of termination under any of the Agreements or of any effort by MHA to meet or communicate with the State about such intended or expected action.

Thereafter, in August 2013, MHA filed a complaint in the Law Division seeking to recover those amounts it alleged were due for medical billing claims that United either failed to pay or underpaid.

The matter was removed to federal court, and was thereafter remanded to the Law Division. United then moved to compel MHA to arbitrate its claims pursuant to the parties' arbitration agreements and to stop MHA from balance billing its network's members. The Law Division, by separate orders, compelled MHA to arbitrate its claims and enjoined it from balance billing.

MHA filed a demand for arbitration with the American Arbitration Association (AAA). The parties agreed to bifurcate the arbitration proceedings. The first phase would focus on two discrete threshold issues: (1) whether MHA was "in-network" with United between December 7, 2010 and November 1, 2011; and (2) whether the FPA barred MHA from seeking payment from United for

services the hospital performed between December 7, 2010 and November 1, 2011.

On October 30, 2015, MHA instituted another action against United in federal court, seeking damages on "pre-contract, out-of-network claims" based on a theory of patient assignments. MHA then moved to stay the arbitration proceedings on the threshold issues, which United opposed. The arbitration panel (panel) denied MHA's request. The panel noted that it "should proceed with deciding the threshold issues because that is what MHA necessarily contemplated when it agreed in October 2014 that the arbitration should be bifurcated."

After several continuances, the panel held evidentiary hearings on May 3 and 4, 2016. The arbitration proceedings were plenary in nature. Prior to the hearing, the parties exchanged thousands of documents, took seven depositions, and filed pre-hearing briefs. At the hearing, the parties gave opening arguments, presented testimony of 6 witnesses, including an expert, introduced into evidence 185 joint exhibits, presented closing arguments and submitted post-hearing briefs.

As part of its argument, MHA relied upon a 2012 letter from the Department discussing the hospital's network status, which was in response to a letter from MHA relating to a similar dispute between MHA and Aetna. The Department's letter stated:

> Condition 16 required MHA to make a "reasonable attempt" to reach an agreement with all insurers with which [the hospital] had contracts with at the time of the [Certificate] approval. At the time of the [Certificate] approval, it was expected that MHA and all insurers could reasonably negotiate a mutually satisfactory longer term settlement. The Condition was not meant to impose any agreement on either [the hospital] or any insurer but rather evidence a goal for continuity for patients.

On June 22, 2016, the panel found in United's favor on both threshold issues. As to the first issue, the panel concluded that "the effect of Condition 16 was to maintain the existing relationship of [the hospital] as an in-network provider of United until MHA either terminated the existing agreements consistent with the notice requirements of Condition 16, or reached superseding agreements with United."

The panel afforded the 2012 letter "little weight because it is out of context, involves another insurer and comes nearly two years after the [Certificate] was issued to MHA." The panel reasoned that its interpretation of Condition 16 did not contradict the Department's interpretation in the 2012 letter.

Regarding services performed during the eleven-month period, the panel held that "[b]ased on the clear language of Article VII [of the FPAs, the hospital] is time-barred from pursuing claims

arising during the period from December 1, 2010 to November 1, 2011."

United filed a motion to confirm the award in the Law Division and, over MHA's opposition, the Law Division confirmed the award without oral argument by order dated August 22, 2016. On August 30, 2016, MHA filed a notice of appeal.

While the appeal was pending, MHA obtained another letter from the Department, dated October 20, 2016, concerning Condition 16. Utilizing this letter as the predicate, MHA contended Condition 16 constituted a basis for altering both the dispute and the award. In furtherance of their contention, MHA filed three motions. The first motion, filed in the Law Division, sought to vacate the order confirming the award. The second motion, filed in this court, sought to supplement the record. The third motion, filed in the AAA, sought reconsideration of the award. MHA withdrew its Law Division motion. We denied MHA's motion to supplement the record by order dated December 1, 2016. The panel denied MHA's motion for reconsideration by order dated December 9, 2016.

In reaching its decision on the reconsideration motion, the panel stated, "even if [the Department]'s letter carried the weight and had the effect that MHA claims, the [p]anel's decision on threshold issue one would be the same," and that "through their

course of conduct and representations, the parties agreed to extend the Liberty contracts until they reached new FPAs." Specifically, the panel held:

> Contrary to MHA's assertion, this finding was not "inextricable from the [p]anel's earlier conclusion that Condition 16 of the [Certificate] extended the Liberty contracts." It was an independent basis that relied on the parties' course of conduct, their representations to each other, their understandings, and MHA's contrasting dealings with other health insurers and their insureds.

On appeal, MHA raises the following arguments:

> POINT I
>
> THE PANEL EXCEEDED ITS POWERS AND VIOLATED NEW JERSEY PUBLIC POLICY WHEN IT COMPELLED MHA TO ACCEPT AN ASSIGNMENT OF THE UNITED AGREEMENT BASED ON AN INTERPRETATION OF THE [CERTIFICATE] THAT CONTRAVENED THE POSITION OF [THE DEPARTMENT], THE EXPERT STATE AGENCY CHARGED WITH SUCH INTERPRETATION AND ENFORCEMENT. (Raised But Not Addressed In Any Judgment, Order or Ruling Below).
>
> > A. The "Interim" Order is Ultra Vires because even the State itself does not have the power to assign a contract to MHA pursuant to the [Certificate].
> >
> > B. The "Interim" Order is Ultra Vires because it infringes upon the Department's administrative powers to regulate healthcare.

POINT II

THE TRIAL COURT ERRED BECAUSE THE SELF-DESCRIBED AND ADMITTEDLY "INTERIM' ORDER DOES NOT MEET THE LEGAL CRITERIA FOR CONFIRMATION (Raised But Not Addressed In Any Judgment, Order or Ruling Below).

A. Confirmation of the Self-Described And Admittedly "Interim" Order is an Extraordinary Remedy.

B. The "Interim" Order Did Not Meet Any of the Extraordinary Criteria for Confirmation.

"[T]he scope of review of an arbitration award is narrow[,]" lest "the purpose of the arbitration contract, which is to provide an effective, expedient, and fair resolution of disputes [] be severely undermined." Fawzy v. Fawzy, 199 N.J. 456, 470 (2009). "Because arbitration is so highly favored by the law, the presumed validity of the arbitration award is entitled to every indulgence, and the party opposing confirmation has the burden of establishing statutory grounds for vacation." Pressler & Verniero, Current N.J. Court Rules, comment 3.3.3 on R. 4:5-4 (2018); see also Twp. of Wyckoff v. PBA Local 261, 409 N.J. Super. 344, 354-55 (App. Div. 2009). Further, the Court in Tretina v. Fitzpatrick & Assocs., 135 N.J. 349 (1994),

> imposed a strict standard of review of private contract arbitration, limited by a narrow construction of the statutory grounds stated by . . . [N.J.S.A. 2A:23B-23] for judicial intervention. Trentina overruled Perini Corp.

v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479 (1992), which had permitted judicial intervention for gross errors of law by the arbitrators.

[Pressler & Verniero, comment 3.3.3 on R. 4:5-4.]

Consequently, arbitration awards may be vacated only if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

[N.J.S.A. 2A:23B-23(a).]

We have considered the arguments raised by MHA in light of the record and our narrow standard of review of arbitral decisions. We conclude that the arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

It is uncontroverted that: (1) the parties agreed by the express terms of the contract to the arbitration of matters in dispute; (2) the parties agreed to bifurcate and to have specifically delineated threshold issues determined by the panel; (3) the panel held an evidentiary hearing on the threshold issues as agreed upon by the parties; and (4) the panel's award resolved the threshold issues relating to MHA's network status and the amounts payable to MHA for its services for the relevant time period as contemplated by the parties.

In sum, MHA failed to satisfy its burden that there existed a statutory ground for vacation of the award pursuant to N.J.S.A. 2A:23B-23(a). As such, the confirmation of the award by the Law Division was not erroneous.

Affirmed.