



FSCO A11-004431

BETWEEN:

ASHLEY ALVARO

Applicant

and

INTACT INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Anne Sone

Heard: August 19, 2013, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Eti Hankin appearing for Mr. Alvaro
Marni Miller for Intact Insurance Company

Issues:

The Applicant, Ashley Alvaro, was injured in a motor vehicle accident on July 8, 2010. He applied for statutory accident benefits for income replacement, medical, attendant care, housekeeping and home maintenance, and the cost of examinations from Intact Insurance Company (“Intact”), payable under the *Schedule*.¹ The parties were unable to resolve their disputes through mediation, and Mr. Alvaro applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹ *The Statutory Accident Benefits Schedule - Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.*

The issues in this hearing are:

1. Should Alexander Mazin be permitted to withdraw as the representative for Ashley Alvaro?
2. Should this arbitration proceeding be dismissed?
3. Is either party entitled to its expenses of this proceeding?

Result:

1. Alexander Mazin is permitted to withdraw as the representative for Ashley Alvaro.
2. This arbitration proceeding is dismissed.
3. Intact is entitled to its expenses in the amount of \$2,293.48 for fees and disbursements.

Motion Seeking Permission to Withdraw

At the beginning of the hearing in this matter, Ms. Hankin brought a Motion to allow Mr. Alexander Mazin to withdraw as the representative for Mr. Alvaro. Mr. Mazin's firm had served a Motion Record on Mr. Alvaro on July 25, 2013. This Motion Record indicated that in order to prepare for the upcoming hearing, the law firm had attempted to reach Mr. Alvaro several times by telephone and mail. Mr. Alvaro did not respond. Paragraph 9 of the Affidavit of Ms. Inna Ryzhkova, sworn July 22, 2013, states the following:

Based on our unreturned letters to the Applicant, which advised of the Arbitration Hearing date, I verily believe that the Applicant knows of the upcoming Arbitration but has deliberately chosen not to contact us.

Law regarding Motion to Withdraw Representation:

The *Dispute Resolution Practice Code (Fourth Edition – Updated August 2011)* (the "Code") sets out at Rules 9.7 and 9.8 what a representative who seeks to withdraw from a proceeding must do. The representative must provide the following:

- (a) a written request for withdrawal, with reasons, to the Dispute Resolution Group (“DRG”) and all parties to the proceeding;
- (b) the last known address, telephone number and electronic transmission address (if any) of the represented party.

If the represented party does not provide written consent to the representative’s request for withdrawal, an adjudicator may permit the representative to withdraw, subject to such terms as the adjudicator considers just.

Conclusion:

Mr. Mazin has provided a written request for withdrawal of his representation of Mr. Alvaro through his Motion Record. The Motion Record sets out Mr. Alvaro’s last known address and telephone number.

Due to the inability to reach Mr. Alvaro, and his failure to respond to notices, telephone calls and mail regarding his arbitration hearing, and this motion, I conclude that there has been a complete breakdown in the solicitor-client relationship. In addition, Mr. Mazin is unable to obtain Mr. Alvaro’s consent to his withdrawal as Mr. Alvaro’s representative.

Under section 9.1(c) of the *Code*, parties must provide the DRG with written notice of any change to their address or telephone number. The DRG is entitled to rely on their last known address and telephone number. Under all these circumstances, I find that Mr. Mazin has complied with the provisions of the *Code* and that it is appropriate to permit him to withdraw as Mr. Alvaro’s representative in this proceeding.

Disposition of the Arbitration Proceeding:

Mr. Alvaro filed his Application for Arbitration with the Commission on December 8, 2011. He attended a pre-hearing before Arbitrator Lee on August 7, 2012, where the date was set for the hearing of his case. A copy of the pre-hearing letter was sent to Mr. Alvaro, in addition to a separate Notice of Hearing.

As indicated earlier, pursuant to section 9.1(c) of the *Code*, parties must provide the DRG with written notice of any change of their address. The DRG is entitled to rely upon the last known address contained in its records. Mr. Alvaro did not provide the DRG with any notice of a change in his address.

On August 19, 2013, Ms. Marnie Miller, counsel for Intact, appeared before me, as did Ms. Darlene Bloom, on behalf of Intact. Despite waiting until 10:30 a.m., the Applicant did not attend. Intact requested that his Application for Arbitration be dismissed.

The Applicant has received numerous notices of this hearing. He has the onus to prove his case. Since it appears that he has abandoned this matter, I dismiss it.

Expenses:

At the hearing of this matter, Intact claimed its expenses of this proceeding.

Liability:

Under Section F of the *Expense Regulation*,² I shall consider certain criteria for the purpose of awarding all or part of the expenses incurred in respect of an arbitration proceeding. The relevant ones in this case are the following:

- *Each party's degree of success in the outcome of the proceeding.*

Intact was completely successful in this proceeding.

- *The conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings or orders.*

The Applicant did not co-operate with his representative in providing instructions.

² Schedule to R.R.O. 1990, Reg. 664, made under the *Insurance Act*, as amended.

- *Whether any aspect of the proceeding was improper, vexatious or unnecessary.*

The Applicant did not advise that he did not plan to attend the hearing.

Based on the foregoing criteria, I award Intact its expenses of this proceeding.

Amount:

Intact claimed \$3,134.55 for its legal fees. The hearing itself was short. However, it was forced to prepare witnesses and experts for a four-day hearing, because it did not know whether Mr. Alvaro would attend. I order \$1,500 for legal fees.

Intact claimed \$3,793.48 for its disbursements. This included a claim for \$3,000 for a refund of the arbitration filing fee. Under subsection 282(11) of the *Insurance Act*, an arbitrator may award all or part of the expenses incurred in respect of an arbitration proceeding. This award is according to the criteria prescribed in the Regulations, to the maximum set out in the Regulations.

Effective January 1, 1994, subsection 282(11.2) of the *Insurance Act*³ was amended so that an arbitrator's discretion to award expenses for arbitration was expanded from simply being able to award expenses to an applicant, (whether he or she was successful or not), to being able to award an insurer expenses in an amount that did not exceed its assessment fee, if the proceeding that the applicant commenced was frivolous, vexatious or an abuse of process.

Subsection 282(11.2) was revoked effective October 1, 2003, and replaced by a provision that does not authorize an arbitrator to consider such an award.⁴

Paragraph 4 of the current *Expense Regulation*⁵ sets out the disbursements that I may award. There is no provision in it regarding a refund of the arbitration filing fee. Accordingly, I find that I do not have jurisdiction to order it.

³ As enacted by the *Statutes of Ontario*, 1993, chapter 10, section 33.

⁴ For a detailed discussion of the transitional effects of the revocation and replacement of subsection 282(11.2) of the *Insurance Act*, as amended, see *Gimondo and Royal*, (FSCO A02-000654, April 16, 2004).

Otherwise, I find Intact's claim for disbursements to be reasonable. I order the remainder of the disbursements, which total \$793.48.

Accordingly, I order Mr. Alvaro to pay a total of \$2,293.48 for fees and disbursements to Intact.

February 13, 2014

Anne Sone
Arbitrator

Date

⁵ Schedule to R.R.O. 1990, Reg. 664, made under the *Insurance Act*, as amended.



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BETWEEN:

ASHLEY ALVARO

Applicant

and

INTACT INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Alexander Mazin is permitted to withdraw as the representative for Ashley Alvaro.
2. This arbitration proceeding is dismissed.
3. Mr. Alvaro to pay a total of \$2,293.48 for fees and disbursements to Intact

Anne Sone
Arbitrator

February 13, 2014

Date