



FSCO A14-006172, A14-006173, A14-006174 and A14-006175

**BETWEEN:**

**KIRAN SHAHBAZ, SHAHBAZ KHAN, TASNIM SHABAZ and AMANPREET SINGH**

**Applicant**

**and**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

**Insurer**

## **DECISION ON A MOTION**

**Before:** Arbitrator Thérèse Reilly

**Heard:** By telephone conference call on October 20, 2015

**Appearances:** Ms. Kiran Shahbaz, Mr. Shahbaz Khan, Ms. Tasnim Shabaz and Mr. Amanpreet Singh did not participate  
Mr. Sirius Biniiaz participated for State Farm Mutual Automobile Insurance Company

**Issues:**

The Applicants, Ms. Kiran Shahbaz, Mr. Shahbaz Khan, Ms. Tasnim Shabaz and Mr. Amanpreet Singh, were injured in a motor vehicle accident on July 4, 2012 and sought accident benefits from State Farm Mutual Automobile Insurance Company (“State Farm”), payable under the *Schedule*.<sup>1</sup> The parties were unable to resolve their disputes through mediation, and through their representative, applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

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<sup>1</sup> *The Statutory Accident Benefits Schedule - Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

The issue in this Motion is:

1. Should Ms. Kiran Shahbaz's, Mr. Shahbaz Khan's, Ms. Tasnim Shabaz's and Mr. Amanpreet Singh's Applications for Arbitration be dismissed with or without costs?

**Result:**

1. Ms. Kiran Shahbaz's, Mr. Shahbaz Khan's, Ms. Tasnim Shabaz's and Mr. Amanpreet Singh's Applications for Arbitration are dismissed without costs.

**EVIDENCE AND ANALYSIS:**

Pre-Hearing discussions were rescheduled on two separate occasions. The first Pre-Hearing was scheduled to proceed on April 10, 2015 but was adjourned on consent of all parties to June 15, 2015 due to illness of one of the Applicants. None of the Applicants attended the April 10, 2015 Pre-Hearing. The Pre-Hearing was rescheduled to June 15, 2015. On June 19, 2015, a booking notice was sent to all parties rescheduling the June 15, 2015 Pre-Hearing discussions to September 15, 2015.

On June 22, 2015, the Applicants' representative served and filed a Motion Record on all parties outlining their efforts to reach the Applicants for the Pre-Hearing proceedings and seeking an Order to be removed from the record as their representative.

A Pre-Hearing discussion was held on September 15, 2015 at 2:00 p.m. at the offices of ADR Chambers. The Applicants' failed to attend the Pre-Hearing discussion on that day. The Applicants' representative brought a Motion seeking an Order to be removed from the record on the basis that he had been unable to contact the Applicants despite his diligent efforts and sought the Order on the basis that there had been a material breakdown in the solicitor-client relationship.

State Farm consented to the Motion to be removed from the record.

### **Request to be Removed from the Record**

Based on the evidence presented at the Pre-Hearing on September 15, 2015, I was satisfied that notice had been provided under Rule 9.7 of the *Dispute Resolution Practice Code* (“the *DRPC*”) of the request to be removed from the record. I granted an Order that the representative be removed as the counsel of record for each of the Applicants. As a result of the Order, the Applicants became self-represented.

### **Motion for a Dismissal of the Arbitration Hearing**

As the Applicants have not participated at any of the scheduled Pre-Hearing proceedings and based on the lack of interest and participation by the Applicants at the Pre-Hearing proceedings, the Insurer at the September 15, 2015 Pre-Hearing discussion advised it was seeking a dismissal of the Applicants’ Applications for Arbitration with costs.

By letter, dated September 17, 2015, sent by registered to each Applicant at their address on record with the Commission, I advised the Applicants that as they have not participated at the Pre-Hearings and based on the fact that attempts to contact them by their representative have failed, the Insurer was seeking a dismissal of their Applications for Arbitration with costs. Each Applicant was advised in the letter that at the September 15, 2015 Pre-Hearing, I granted an Order removing their representative as the counsel of record and they were now self-represented.

Further, they were advised that to address the request for a dismissal of the Applications for Arbitration, a Motion was scheduled to be held by telephone on October 20, 2015 at 10:00 a.m. My letter was to serve as sufficient notice of the Motion.

I requested of each Applicant that they contact ADR Chambers to advise how they wished to proceed in this matter and with respect to their Applications for Arbitration. If I did not receive a

response from them by October 20, 2015 at 10:00 a.m., I would assume that they did not have interest in proceeding with their Applications for Arbitration.

I further advised that where Notice of a Hearing has been sent to a party and a party does not attend, the Arbitrator may proceed with the Hearing in the party's absence or without the party's participation, as the case may be, and the party is not entitled to any further notice in the proceeding.

I advised that their attendance at the Motion on October 20, 2015 at 10:00 a.m. by telephone was mandatory (with or without representation), and their Applications for Arbitration could be dismissed if they did not attend the Motion on the above mentioned date. They or their legal representative could attend by telephone. They were asked to contact our office to indicate the telephone number where they or their new representative could be contacted for the Motion.

I outlined that Rule 68 of the *DRPC* permits an Arbitrator to dismiss a proceeding without a Hearing where the proceeding is frivolous, vexatious or is commenced in bad faith providing written notice has been given to the parties of the intention to dismiss the proceedings.

### **Order for Dismissal**

The Motion proceeded by telephone on October 20, 2015 at 10:00 a.m. with the representative for the Insurer participating. The Applicants did not attend the Motion. No response was received from the Applicants. The Insurer brought its Motion for a dismissal of the Applications for Arbitration under Rule 68 of the *DRPC*. I am satisfied that all correspondence, including the Notices of Hearing, was sent to the address of the Applicants as shown in the Commission Records. I am satisfied that notice of the Motion and the proceedings were sent to the addresses on record and that all the notices provided complied with the requirements set out in Rule 9.1(c) and 9.7 of the *DRPC* and Section 7(1) of the *Statutory Powers Procedures Act*. I am satisfied the Applicants had ample opportunity to obtain representation and chose not to do so.

Based on the oral submissions of the Insurer and on the notices provided and failure of the Applicants to participate in and communicate regarding their Applications for Arbitration, and in reliance on Rules 68.1 and 68.2 of the *DRPC*, Ms. Kiran Shahbaz's, Mr. Shahbaz Khan's, Ms. Tasnim Shabaz's and Mr. Amanpreet Singh's Applications for Arbitration are dismissed.

**Result:**

Ms. Kiran Shahbaz's, Mr. Shahbaz Khan's, Ms. Tasnim Shabaz's and Mr. Amanpreet Singh's Applications for Arbitration are dismissed.

**EXPENSES:**

The Insurer confirmed at the Motion held on October 20, 2015 that it was not pursuing costs. Accordingly, there is no award for costs. The Applications for Arbitration are dismissed without costs.

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Thérèse Reilly  
Arbitrator

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November 23, 2015  
Date



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## **ARBITRATION ORDER**

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

1. Ms. Kiran Shahbaz's, Mr. Shahbaz Khan's, Ms. Tasnim Shabaz's and Mr. Amanpreet Singh's Applications for Arbitration are dismissed without costs.

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Thérèse Reilly  
Arbitrator

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November 23, 2015  
Date