



FSCO A14-009422

**BETWEEN:**

**PONNIAH NAVARATNAM**

**Applicant**

**and**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

**Insurer**

## **REASONS FOR DECISION**

**Before:** Arbitrator Jeff Musson

**Heard:** In person at ADR Chambers on July 12, 2016

**Appearances:** Mr. Roman Baber for Mr. Ponniah Navaratnam  
Mr. Sirius Biniiaz for State Farm Mutual Automobile Insurance Company

**Issues:**

The Applicant, Mr. Ponniah Navaratnam, was injured in an accident on June 3, 2013 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 Mr. Navaratnam, through his 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 - Accidents on or after September 1, 2010*, Ontario Regulation 34/10, as amended.

The issues in this Hearing are:

1. Should the Applicant's Application for Arbitration be dismissed?
2. Should the Insurer be granted costs or expenses in respect of the Application for Arbitration?

**Result:**

1. The Applicant's Application for Arbitration is dismissed.
2. The Insurer is granted \$1,432.36 in expenses in respect of the Application for Arbitration.

**EVIDENCE AND ANALYSIS:**

**BACKGROUND**

The Arbitration Hearing in this matter was scheduled for July 12, 2016 at the offices of ADR Chambers located at 180 Duncan Mill Road in Toronto. Mr. Sirius Biniiaz, counsel for State Farm, attended, as did Mr. Kevin Roberts, an adjuster for State Farm. Mr. Roman Baber attended on behalf of the Applicant. The Applicant failed to attend.

Mr. Baber stated that he had lost contact with his client despite diligent efforts to contact him by telephone, in writing and in person. The Applicant's representative requested an adjournment of the Hearing to a later date. State Farm opposed this request and in turn requested that the Application for Arbitration be dismissed. Further, State Farm requested that this Application for Arbitration be dismissed on a with cost basis in the amount of \$1,432.36.

**DECISION**

**Dismissal**

At the Hearing, Applicant's counsel stated that they had trouble reaching the Applicant leading

up to the Hearing; however, Mr. Baber stated that the Applicant was notified about the Hearing. To the best of the Applicant's representative's knowledge, the Applicant was no longer residing in Canada and had returned to his home country. There was no estimated date of return nor was it known if the Applicant would return to Canada at all. Based on the evidence provided, I am satisfied that the Applicant was notified of the Hearing and all proceedings to date since the Pre-Hearing. I'm also satisfied that the Applicant knew that he must attend, but he chose otherwise. He also knew that failing to attend the Hearing could result in State Farm bringing a Motion to dismiss the Application for Arbitration on a with cost basis.

The onus of proof is on the Applicant to establish his entitlement to his benefits in dispute listed in his Application for Arbitration. Accordingly, his failure to attend means that he has failed to meet this onus.

Therefore, I am dismissing this Application for Arbitration with costs awarded against the Applicant. The awarded costs against the Applicant must be paid to the Insurer within 60 days of this Decision. Further, the Applicant cannot file or commence any future claims against the Insurer until the outstanding amounts have been paid.

### **Removal as Counsel of Record**

After I dismissed this Application for Arbitration, the Applicant's representative made a Motion to remove himself as counsel of record for the Applicant. The Insurer consented and I agreed; however, this was an exercise in futility since I had already dismissed the Application for Arbitration.

### **EXPENSES:**

Mr. Biniiaz has requested expenses in this matter as a result of the dismissal of the Applicant's Application for Arbitration. I am prepared to grant the Insurer its expenses in the amount of \$1,432.36 as per the Legal Aid Tariff Rate which is in accordance with the provisions of the *Dispute Resolution Practice Code* and section 282(11) of the *Insurance Act*.

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Jeff Musson  
Arbitrator

August 2, 2016

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Date



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## **ARBITRATION ORDER**

Under section 282 of the *Insurance Act*, R.S.O. 1990, c. I.8, as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014, and Ontario *Regulation 664*, as amended, it is ordered that:

1. The Applicant's Application for Arbitration is dismissed.
2. The Insurer is granted \$1,432.36 in expenses in respect of the Application for Arbitration.

August 2, 2016

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Jeff Musson  
Arbitrator

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Date