



FSCO A14-000918

BETWEEN:

GEDEON MARCELLUS

Applicant

and

AVIVA CANADA INC.

Insurer

REASONS FOR DECISION

Before: Arbitrator Richard Feldman

Heard: January 21, 2015 at the offices of the Financial Services Commission of Ontario in Toronto and by way of written submissions, in accordance with Rule 68 of the *Dispute Resolution Practice Code*.

Appearances: No one participating on behalf of Mr. Marcellus
Anne Fyfe for Aviva Canada Inc.

Issues:

The issue to be decided at this time is:

1. Should this application be dismissed?

Result:

1. This application is dismissed.

EVIDENCE AND ANALYSIS:

The Applicant, Mr. Gedeon Marcellus, claims to have been injured in a motor vehicle accident on February 11, 2012. He applied for statutory accident benefits under the *Schedule*¹ from Aviva Canada Inc. (“Aviva”). Disputes arose over the Applicant’s entitlement to certain accident benefits. The parties were unable to resolve their disputes through mediation and, in January 2014, Mr. Marcellus applied for arbitration at the Financial Services Commission of Ontario (“FSCO”) under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended. At the time this application was filed, the Applicant was represented by Tzaferis Personal Injury Lawyers. A Response was received from the Insurer in March 2014.

A pre-hearing discussion in this case was scheduled to be held on January 21, 2015, at 11:30 a.m., at the offices of the Financial Services Commission of Ontario. At that time, Ms. Christine Mansbridge participated on behalf of Aviva, together with Ms. Fyfe, legal counsel for Aviva. The Applicant did not attend before me on January 21, 2015. Also on January 21, 2015, Tzaferis Personal Injury Lawyers brought a motion seeking permission to withdraw from the proceeding as the Applicant’s legal representatives since they had been unable, despite numerous attempts, to communicate with the Applicant since late 2013. That motion was not opposed by the Applicant (who had been given proper notice thereof) and was consented to by the Insurer. Consequently, that motion was granted and Tzaferis Personal Injury Lawyers were permitted to withdraw from the proceeding as the Applicant’s legal representatives.

The Insurer then requested that this application be dismissed pursuant to Rule 68 of the *Dispute Resolution Practice Code*. Pursuant to Rule 68, an arbitrator may dismiss a proceeding without a hearing where the proceeding is frivolous, vexatious or is commenced in bad faith.

On January 21, 2015, I wrote to the Applicant at his last known residential address and advised him that it was my intention to grant the Insurer’s request to dismiss this application unless he could provide reasonable grounds for doing otherwise. In accordance with Rule 68.3, I advised him that if he wished to dispute such a dismissal, he would be granted until February 20, 2015 to

¹The Statutory Accident Benefits Schedule — Effective September 1, 2010, Ontario Regulation 34/10, as amended.

serve upon Aviva and file with me any written submissions he wished me to consider, setting out the grounds upon which he objected to the dismissal of the proceeding or setting out any other issues or concerns.

To date, the Applicant has delivered no written (or other) submissions explaining why this application should not be dismissed. On February 18, 2015, however, Ms. Fyfe wrote to me to advise that the Applicant (who is now self-represented) contacted the Insurer and that the parties have agreed to a dismissal of this application on a “without costs” basis. On the basis of this consent, I shall grant the order that has been requested by the parties.

Richard Feldman
Arbitrator

March 11, 2015

Date



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ARBITRATION ORDER

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

1. This application is dismissed.

Richard Feldman
Arbitrator

March 11, 2015

Date