



FSCO A15-003550

BETWEEN:

DANIEL POORAN

Applicant

and

AVIVA CANADA INC.

Insurer

REASONS FOR DECISION

Before: Deborah Pressman

Heard: By telephone conference call on January 30, 2017

Appearances: Mr. Pooran not participating
Alim Ramji for Mr. Pooran (on the motion to withdraw)
Jessica Green for Aviva Canada Inc.

Issues:

The Applicant, Daniel Pooran, was injured in a motor vehicle accident on November 6, 2013. Disputes arose between Mr. Pooran and his insurer, Aviva Canada Inc. (“Aviva”), concerning his entitlement to accident benefits payable under the *Schedule*¹ and Mr. Pooran applied for arbitration at the Financial Services Commission of Ontario (“FSCO”) under the *Insurance Act*.² Despite notices, Mr. Pooran did not participate in the arbitration process and failed to prove his claims for accident benefits.

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

²R.S.O. 1990, c.I.8, as amended.

The issues in this hearing are:

1. Should the law office of D'Angela Fox Vanounou be permitted to withdraw as Mr. Pooran's representative?
2. Should Mr. Pooran's Application for Arbitration be dismissed?
3. Is Mr. Pooran liable to pay Aviva's expenses in respect of the arbitrations under subsection 282(11) of the *Insurance Act*?

Result:

1. The law office of D'Angela Fox Vanounou is permitted to withdraw as Mr. Pooran's representative.
2. Mr. Pooran's Application for Arbitration is dismissed.
3. Mr. Pooran is liable to pay Aviva's expenses, fixed at \$1,000.00, inclusive of HST, in respect of the arbitration.

EVIDENCE AND ANALYSIS:

For the reasons that follow, Mr. Pooran's claims are dismissed and the law office of D'Angela Fox Vanounou is permitted to withdraw as his representative.

Motion by solicitors to withdraw as representatives

Although Mr. Pooran participated in the pre hearing discussion on January 25, 2016, his representative has been unable to reach him since July 2016.³

³Letters from D'Angela Fox Vanounou to FSCO dated December 12, 2016, December 22, 2016, and December 23, 2016.

At the request of his then-solicitors, I conducted a resumed pre-hearing discussion on January 11, 2017. Mr. Pooran did not participate and could not be reached. The resumed pre-hearing discussion proceeded in his absence. D'Angela Fox Vanounou requested to withdraw as Mr. Poonam's representative due to a breakdown in the solicitor-client relationship. Aviva requested that this matter be dismissed. I scheduled a date for the motion to withdraw and for Mr. Pooran's arbitration hearing for January 30, 2017.⁴ My letter, dated January 13, 2017, notified all parties that the motion to withdraw and Mr. Pooran's arbitration hearing will proceed on that date.

The *Statutory Powers Procedure Act* ("SPPA") states that parties to a proceeding shall be given reasonable notice of the hearing by the tribunal.⁵ All correspondence, including the Notice of Hearing and Notice of Motion, was sent to Mr. Pooran at the address he provided to us. Rule 9.1(c) of the *Dispute Resolution Practice Code* (the "Code") provides that FSCO is entitled to rely upon the last known address, telephone number and electronic transmission (if any) contained in its records."

I am satisfied that the Notice of Hearing and Notice of Motion complied with the requirements of Rule 9.1(c) of the *Code* and section 6 of the *SPPA*. In addition, both notices warned Mr. Pooran that non-attendance at the motion/hearing may result in the dismissal of his case. My letter of January 13, 2017 also stated that:

In the event that Mr. Pooran does not attend, then, as noted above, the hearing may proceed in his absence. **Mr. Pooran's Application for Arbitration may be dismissed and Aviva's expenses of the arbitration proceeding may be awarded against him.** [emphasis in original]

Notwithstanding the notices and my letter, Mr. Pooran did not participate in the motion or hearing on January 30, 2017. Our office attempted, without success, to contact Mr. Pooran by phone at the number on file.

⁴A Notice of Hearing and Notice of Motion, dated January 19, 2017 was sent to the parties by FSCO. D'Angela Fox Vanounou also sent a letter to Mr. Pooran's last known address advising of their motion to withdraw on January 11, 2017.

⁵R.S.O. 1990, c. S.22, s. 6 (1).

Where notice of hearing has been sent to a party and a party does not attend, the tribunal may proceed in the party's absence. Pursuant to Subsection 7(1) of the *SPPA* and Rule 37.7 of the *Code*, the hearing and motion proceeded in Mr. Pooran's absence.

Mr. Ramji submitted that his firm has been unable to contact Mr. Pooran despite multiple attempts and requested that they be permitted to withdraw.⁶ Aviva did not oppose D'Angela Fox Vanounou's motion to withdraw as Mr. Pooran's representative and I am satisfied that there has been a breakdown in the solicitor-client relationship and order that the law office of D'Angela Fox Vanounou should be permitted to withdraw as Mr. Pooran's representative.

Application for Arbitration dismissed

In order to establish entitlement to benefits, Mr. Pooran must provide evidence supporting his claims and prove his claims on a balance of probabilities. As Mr. Pooran did not participate in the arbitration process and did not attend to present any evidence, he failed to establish his entitlement to the benefits. As a result, I dismiss Mr. Pooran's claims for accident benefits noted in his Application for Arbitration.

EXPENSES:

Aviva requested \$1,000 (inclusive of HST) for its legal expenses of the arbitration proceedings, which I find to be reasonable for the reasons that follow.

When assessing expenses, arbitrators at FSCO determine entitlement and quantum by applying criteria dictated by the legislation.⁷ I find that the first criterion, "each party's degree of success in the outcome of the proceeding," is relevant in this case. Mr. Pooran did not succeed in

⁶Letter from D'Angela Fox Vanounou dated January 11, 2017.

⁷Under subsection 282(11) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, an arbitrator may award expenses to either party according to criteria prescribed in subsection 12(2) of the *Expense Regulation*, R.R.O. 1990, Regulation 664.

asserting his claims for benefits and is not entitled to his expenses. Aviva, as the “successful party”, is entitled to its reasonable expenses.

Bearing in mind the overriding principle of reasonableness,⁸ I fix Aviva’s expenses at \$1,000.00 (inclusive of HST). This amount takes into consideration the time counsel spent preparing a Response to the Applications for Arbitration, consulting with her client, preparing for and attending at the pre-hearing discussions on January 25, 2016 and January 11, 2017 and attending at the motion and hearing on January 30, 2017.

I order Mr. Pooran to pay Aviva’s expenses at \$1,000.00, inclusive of HST, pursuant to subsection 282(11) of the *Insurance Act*.

Deborah Pressman
Arbitrator

March 9, 2017
Date

⁸For reasonableness, see *Henri and Allstate Insurance Company of Canada* (OIC A-007954, August 8, 1997) and *Ragulan and Security National Insurance Co./Monnex Insurance Management Inc.* (FSCO A05-002940, July 16, 2008)



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Insurer

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 Regulation 664, as amended, it is ordered that:

1. The law office of D'Angela Fox Vanounou is permitted to withdraw as Mr. Pooran's legal representative.
2. Mr. Pooran's Application for Arbitration is dismissed.
3. Mr. Pooran shall pay Aviva expenses, fixed at \$1,000.00, inclusive of HST.

Deborah Pressman
Arbitrator

March 9, 2017
Date