



Neutral Citation: 2007 ONFSCDRS 89

FSCO A06-000038

BETWEEN:

GIANFRANCO MARAZITA

Applicant

and

RBC GENERAL INSURANCE COMPANY

Insurer

DECISION ON EXPENSES

Before: Joyce Miller

Heard: Written submissions received by December 6, 2006.

Appearances: Neil Colville-Reeves for RBC General Insurance Company
There was no appearance on behalf of Mr. Gianfranco Marazita

Issues:

The Applicant, Gianfranco Marazita, was injured in a motor vehicle accident on November 4, 2003. In a decision dated November 15, 2006, I dealt with his claims for

statutory accident benefits under the *Schedule*.¹ I made the following orders, while reserving on the issue of expenses:

1. The arbitration is dismissed.
2. If needed, RBC may make submissions on the issue of expenses in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

The issue in this further hearing is:

1. Is RBC entitled to its expenses incurred in respect of this arbitration hearing pursuant to subsection 282(11) of the *Insurance Act*, and if so, what is the correct amount?

Result:

1. RBC is entitled to its expenses incurred in respect of this arbitration in the amount of \$1,782.83, inclusive of GST, pursuant to subsection 282(11) of the *Insurance Act*.

BACKGROUND:

Mr. Marazita did not appear at a scheduled pre-hearing on August 28, 2006 where his counsel was permitted to get off the record on the basis of Mr. Marazita's failure to provide necessary instructions.

At the pre-hearing, RBC made an application to determine whether Mr. Marazita's application for arbitration should be dismissed on the grounds that the application was "frivolous, vexatious or commenced in bad faith." A hearing was set for October 31, 2006 to hear the dismissal application and the further issue of whether either party should pay the arbitration expenses of the other party.

Mr. Marazita did not attend the scheduled hearing, nor did a representative appear on his behalf. Accordingly, pursuant to section 7 of the *Statutory Powers Procedure Act*, as

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

articulated in the Notice of Hearing,² I proceeded to dispose of the case in Mr. Marazita's absence.

After hearing submissions from RBC, I dismissed Mr. Marazita's application for arbitration for the following reasons:

I find that Mr. Marazita had clear notice from Arbitrator Renahan's letter of August 28, 2006 and the Notice of Hearing of the same date that the dismissal of his application for arbitration was being considered on October 31, 2006. I find that when he was personally served with RBC's Motion Record on October 20, 2006, he had more than adequate notice of the application for dismissal. I find that despite ample notice of the hearing to dismiss his arbitration Mr. Marazita chose not to appear. I agree with RBC's submissions that Mr. Marazita's application for arbitration is frivolous and vexatious. I find that Mr. Marazita completely failed in his obligations to support his arbitration claim. Accordingly, I find that Mr. Marazita's application for arbitration is dismissed on the basis of it being frivolous and vexatious.

RBC claims its expenses in this arbitration, pursuant to subsection 282(11) of the *Insurance Act*. In awarding expenses, an arbitrator is only to consider the criteria enumerated in section 12(2) of Ontario Reg. 664/90, as amended, which are:

1. Each party's degree of success in the outcome of the proceeding.
2. Any written offers to settle made in accordance with subsection (3).
3. Whether novel issues are raised in the proceeding.
4. 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 and orders.
5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

The first criterion, the degree of success in the outcome of the proceeding, is the only relevant criterion to my decision on expenses.

² The Notice of Hearing includes the following statement: You may attend this hearing of a preliminary issue in person and/or be represented. If you or your representative do not attend, **the Arbitrator may dispose of the case in your absence and you will not be entitled to any further notice of arbitration proceedings.** [emphasis added]

RBC was completely successful in its application for dismissal. Accordingly, I find RBC is entitled to its reasonable expenses in this arbitration.

RBC requests its expenses in the amount of \$1,782.83 for legal fees and disbursements and \$3,000 for its filing fee.

I have reviewed the Bill of Costs and Disbursements and find that the amount of \$1,782.83 to be reasonable and appropriate in this case. The filing fee is not part of the ordinary expenses of arbitration. I disallow this expense for the following reasons.

Prior to October 2003 subsection 282 (11.2) of the Insurance Act³ allowed an arbitrator the discretion to order an insured person to pay an amount no higher than the amount of the insurer's \$3,000 assessment fee (arbitration filing fee) if the arbitrator finds that the Applicant "commenced an arbitration that was frivolous, vexatious or an abuse of process." However, subsection 282(11.2) was revoked, effective October 1, 2003, and replaced by regulations that do not authorize an arbitrator to consider such an award. Accordingly, I do not have the jurisdiction to award RBC a repayment of its filing fee.

Accordingly, I find that pursuant to subsection 282(11) of the *Insurance Act*, Mr. Marazita shall pay RBC the amount of \$1,782.83, inclusive of GST, for RBC's expenses in this arbitration.

Joyce Miller
Arbitrator

May 7, 2007
Date

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



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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. Mr. Marazita shall pay RBC the amount of \$1,782.83, inclusive of GST, for RBC's expenses in this arbitration, pursuant to subsection 282(11) of the *Insurance Act*.

Joyce Miller
Arbitrator

May 7, 2007
Date