



Neutral Citation: 2017 ONFSCDRS 175

FSCO A16-002468

**BETWEEN:**

**(JAN) WAKEEL AHMED**

**Applicant**

**and**

**ALLSTATE INSURANCE COMPANY OF CANADA**

**Insurer**

## **REASONS FOR DECISION**

**Before:** Arbitrator Paulina Gueller

**Heard:** In person at ADR Chambers on May 30, 2017

**Appearances:** No one appeared for Mr. (Jan) Wakeel Ahmed  
Ms. Lori Trinh participated on behalf of Allstate Insurance Company of Canada  
Mr. Ryan Kirshenblatt represented Allstate Insurance Company of Canada

**Issues:**

The Applicant, Mr. (Jan) Wakeel Ahmed, was injured in a motor vehicle accident on February 27, 2013, and sought accident benefits from Allstate Insurance Company of Canada. (“Allstate”), payable under the *Schedule*.<sup>1</sup> The parties were unable to resolve their disputes through mediation, and Mr. Ahmed, through his representative, applied for arbitration at the Financial Services Commission of Ontario (“FSCO”) 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 issues in this Hearing are:

1. Should Mr. Ahmed's Application for Arbitration be dismissed?
2. Is Allstate entitled to its expenses of this proceeding?

**Result:**

1. Mr. Ahmed's Application for Arbitration is dismissed.
2. Allstate is entitled to its expenses of this Arbitration proceeding in the amount of \$1,964.35, inclusive of all fees, disbursements, and HST.

**EVIDENCE AND ANALYSIS:**

**Dismissal**

The Applicant submitted an Application for Arbitration on March 24, 2016.

Two Pre-Hearing discussions in this case were held on November 15, 2016 and March 9, 2017.

The Applicant did not attend.

The Insurer raised a Motion to dismiss this Application for Arbitration. The Insurer submitted that the Applicant has showed disregard for the process as he failed to attend the Pre-Hearings; instruct his counsel; and attend today's Hearing.

Rule 37.9 of the *Dispute Resolution Practice Code* ("DRPC") states:

Where notice of hearing has been sent to a party and a party does not attend at an oral or electronic hearing, or participate in a written hearing, 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 am satisfied that the notices sent to the Applicant complied with the requirements of Rule 9.1(c) of the *DRPC* and Section 6 of the *Statutory Power and Procedures Act*. Notwithstanding, the Applicant did not attend the two Pre-Hearings or the Hearing.

Pursuant to Rule 37.9 of the *DRPC*, the Arbitration Hearing proceeded in the Applicant's absence.

The Applicant bears the onus of proving entitlement to the claimed benefits. Since he did not appear at the Hearing and no evidence was presented to support his claims, this Application for Arbitration is dismissed.

**EXPENSES:**

The Insurer requested the costs of the Arbitration process, but did not provide a Bill of Costs. The Insurer stated that the claim for fees and disbursements would be in the amount of \$7,999.19 (to include counsel and the law clerk's legal work, plus \$464.35 for disbursements).

However, the Insurer would claim the amount of \$3,394.99 for costs and disbursements, calculated at the Legal Aid rate, as per the following detail:

- a) \$2,930.64 for 19.6 hours of counsel's legal work, including HST;
- b) \$464.35 for disbursements related to Medical Records, attendance fees, copies, fax, etc.

The relevant criteria for the Arbitrator when awarding expenses to a party, if the Arbitrator is satisfied that the award of expenses is justified, is set out in Rule 75.1 and 75.2 of the *DRPC* as follows:

The adjudicator will consider only the criteria referred to in the Expense Regulation found in Section F of the Code. These criteria are:

- (a) each party's degree of success in the outcome of the proceeding;
- ...
- (d) 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;
- (e) whether any aspect of the proceeding was improper, vexatious or unnecessary.
- ...

In awarding expenses, I am taking into consideration the relevant criteria, which includes the party's success in the proceedings and the conduct of the party that prolonged the proceeding unnecessarily. The Applicant failed to pursue his claim, instruct his counsel, and failed to attend the proceedings.

The Insurer is the successful party and is entitled to its expenses. I consider the time that Insurer's counsel spent preparing responses to the Application for Arbitration, consulting with its client, and preparing and attending at two in person Pre-Hearings and the Hearing.

Therefore, I find it is reasonable to grant some legal expenses. Accordingly, I exercise my discretion pursuant to subsection 282(11) of the *Insurance Act*, and order the Applicant pay the Insurer's expenses in the amount of \$1,964.35 (\$1,500.00 for legal work plus \$464.35 for disbursements), inclusive of HST.

This amount is payable forthwith.

\_\_\_\_\_  
Paulina Gueller  
Arbitrator

June 19, 2017  
\_\_\_\_\_  
Date

Financial Services  
Commission  
of Ontario

Commission des  
services financiers  
de l'Ontario



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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. Mr. Ahmed's Application for Arbitration is dismissed.
2. Allstate is entitled to its expenses of this Arbitration proceeding in the amount of \$1,964.35, inclusive of all fees, disbursements, and HST.

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Paulina Gueller  
Arbitrator

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June 19, 2017  
Date