



Neutral Citation: 2010 ONFSCDRS 94

FSCO A07-002033

BETWEEN:

**LILIA KADOSH
(the estate of)**

Applicant

and

ECONOMICAL MUTUAL INSURANCE COMPANY

Insurer

MOTION DECISION

Before: Anne Sone

Heard: June 2, 2010, by teleconference call arranged by the Financial Services Commission of Ontario. A written submission was received on June 2, 2010.

Appearances: Nancy Ng for Mazin Rooz Mazin
Neil Colville-Reeves for Economical Mutual Insurance Company
Jerry Balitsky for the Estate of Lilia Kadosh

Issues:

The original Applicant, Lilia Kadosh, was injured in a motor vehicle accident on July 28, 2005. She applied for statutory accident benefits for caregiving, medical treatment and housekeeping and home maintenance services from Economical Mutual Insurance Company (“Economical”), payable under the *Schedule*.¹ Economical denied Ms. Kadosh’s claim for these benefits. The parties were unable to resolve their disputes through mediation, and Ms. Kadosh applied for

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

arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

On June 2, 2010, the law firm of Mazin Rooz Mazin, brought a motion seeking that it be removed as solicitors of record for the Applicant, Ms. Lilia Kadosh.

The issue in dispute in the motion is:

1. Should the law firm of Mazin Rooz Mazin be permitted to withdraw as solicitors of record for Ms. Lilia Kadosh in this proceeding?

Result:

1. Mazin Rooz Mazin is permitted to withdraw as solicitors of record for Ms. Lilia Kadosh.

EVIDENCE AND ANALYSIS:

Background:

A pre-hearing was held in this matter on January 22, 2008. Unfortunately, Ms. Kadosh died in August 2008. In a letter dated September 11, 2008 to Ms. Michaela Lempp, Case Administrator at the Commission, (which was copied to Mr. Colville-Reeves, the legal counsel who represented Economical), Ms. Shanna Mittleman of Mazin Rooz Mazin stated the following:

Further to our telephone conversation today, I am writing to advise that my client suddenly passed away a couple [sic] weeks ago.

Please also be advised that we intend to proceed with her matter and are trying to determine who the administrator of her estate is.

Once this is determined, we may request a resumption of the pre-hearing to try to resolve the matter before the date for the arbitration hearing.

On October 6, 2008, Mr. Owen Elliot of Mazin Rooz Mazin sent a letter by facsimile transmission² to Mr. Colville-Reeves and the Commission regarding this matter. In it, he stated:

Please be advised that I have been in contact with the Applicant's son Bernard Kadosh. He has advised me that he is [sic] the process of being appointed as a representative of the Estate of Lilia Kadosh.

However, it is very unlikely that Mr. Kadosh will be appointed prior to the Arbitration hearing scheduled to commence on November 17, 2008. Further, until the Estate has an approved representative we will not have instructions on how to proceed with the file.

I therefore request that the Arbitration hearing be adjourned and that a resumption of pre-hearing be scheduled to discuss how and when this matter should proceed.

At a resumption of pre-hearing I conducted on October 23, 2008, Mr. Elliot, although not yet formally appointed, represented the estate of Ms. Kadosh, for these purposes. Mr. Colville-Reeves represented Economical. Mr. Elliot advised that Ms. Kadosh's son, Mr. Bernard Kadosh, was in the course of being appointed as administrator of Ms. Kadosh's intestate estate. He estimated that this process would take six to eight weeks.

Under these circumstances, both sides agreed to cancel the hearing dates starting November 17, 2008 at the Commission. Instead, a further resumption of pre-hearing was arranged for February 6, 2009, in order to determine next steps.

On February 5, 2009, Mr. Elliot wrote to the Commission and to Mr. Colville-Reeves indicating that at that time he did not have instructions from a representative of the estate. He proposed that another tentative date be set for a resumption or that the scheduling be deferred until he was contacted by the estate. By letter dated February 6, 2009, sent by fax to the Commission and

²This letter is dated June 17, 2008; however the facsimile transmission report states that it was sent on October 6, 2008.

Mr. Elliot, Mr. Colville-Reeves consented to the adjournment of the resumption of pre-hearing set for the same date.

On September 18, 2009, Mr. Colville-Reeves sent a letter to the Commission, copied to Mr. Elliot indicating that, to date, no estate trustee had been appointed, and there was no indication of when that might occur. As a result, he requested that the pre-hearing be reconvened to discuss a schedule to move this matter forward.

Subsequently, at a resumption of pre-hearing on November 25, 2009, the hearing of the arbitration in this matter was set down for June 7, 8, 9 and 10, 2010 at the Commission.

On May 7, 2010, Ms. Nancy Ng of Mazin Rooz Mazin sent a letter to the Commission, copied to Mr. Colville-Reeves, requesting a date for a motion to remove the firm as solicitors of record.

The motion was heard on June 2, 2010. Ms. Ng advised that Mazin Rooz Mazin had not been able to obtain instructions from a representative of the Estate of Lilia Kadosh. To Mazin Rooz Mazin's knowledge, no one had been legally appointed as a representative. Ms. Ng advised that several attempts had been made to obtain instructions from a representative of the Estate. These attempts were set out in a letter dated May 7, 2010 to the Commission and to Mr. Colville-Reeves.

On September 21, 2009, Mazin Rooz Mazin sent a letter to Mr. Jerry Balitsky, a lawyer, who was handling the Estate and requested confirmation that a representative had been appointed in order for Mazin Rooz Mazin to obtain instructions to resolve the claim.

On October 27, 2009, Mazin Rooz Mazin sent the same request letter to Mr. Balitsky as no response had been given to its September 21, 2009 letter.

On April 19, 2010, a letter was sent to the Estate of Lilia Kadosh advising that Mazin Rooz Mazin could no longer obtain meaningful instructions from the Estate and it intended to take steps to remove the firm as solicitors of record.

Initially, in a letter dated May 17, 2010, Economical advised that it was not consenting to Mazin Rooz Mazin's motion to remove the firm as solicitors of record. Subsequently, Economical changed its position, and in a letter dated May 20, 2010, it consented to Mazin Rooz Mazin's motion.

At my request, Mr. Jerry Balitsky, a solicitor acting on matters relating to the Estate of Lilia Kadosh was present at the motion. Subsequently, he provided a signed and witnessed Consent Form, which reads as follows:

I, Jerry Balitsky, a solicitor acting on matters relating to the estate of Lilia Kadosh hereby give consent on behalf of the estate to remove Mazin Rooz Mazin as Solicitor of Record in the arbitration claim for accident benefits between Ms. Kadosh and Economical Mutual Insurance Company.

Law:

The *Dispute Resolution Practice Code* (the "Code") sets out at Rules 9.7 and 9.8 what a representative who seeks to withdraw from a proceeding must do. The representative must provide the following:

- (a) a written request for withdrawal, with reasons, to the Dispute Resolution Group and all parties to the proceeding;
- (b) the last known address, telephone number and electronic transmission address (if any) of the represented party.

Pursuant to section 9.8 of the *Code*, if the represented party provides written consent to his or her representative's withdrawal, an arbitrator shall permit the representative's withdrawal.

If the represented party does not provide written consent to the representative's request for withdrawal, an adjudicator may permit the representative to withdraw, subject to such terms as

the adjudicator considers just.

Conclusion:

Mazin Rooz Mazin has provided a written request to withdraw its representation of the Estate of Lilia Kadosh to all parties to the proceeding.

In addition, Mazin Rooz Mazin also provided reasons for its request for withdrawal, namely that it is unable to obtain meaningful instructions from the Estate of Lilia Kadosh.

Pursuant to section 9.8 of the *Code*, if the represented party provides written consent to his or her representative's withdrawal, an arbitrator shall permit the representative's withdrawal.

Otherwise, an arbitrator has discretion as to whether or not the representative will be permitted to withdraw.

In this case, the solicitor acting on matters relating to the Estate provided written consent to Mazin Rooz Mazin's withdrawal, immediately after the motion. Accordingly, I permit Mazin Rooz Mazin's withdrawal as solicitors of record for the Estate of Lilia Kadosh.

Anne Sone
Arbitrator

July 27, 2010
Date



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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. Mazin Rooz Mazin is permitted to withdraw as the representative for Lilia Kadosh in this proceeding.

Anne Sone
Arbitrator

July 27, 2010
Date
