



Neutral Citation: 2013 ONFSCDRS 137

FSCO A11-003197

BETWEEN:

PAULENA VICTOR JOSEPH

Applicant

and

WAWANESA MUTUAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Rosemary Muzzi

Heard: October 17, 2013, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Alexander Mazin for Ms. Victor Joseph
Ryan Kirshenblatt for Wawanesa Mutual Insurance Company

Issues:

This date had originally been set for the hearing of a preliminary issue — was Ms. Victor Joseph involved in an accident as defined in the *Schedule*. However, Ms. Victor Joseph did not appear. Mr. Mazin appeared seeking to be removed from the record due to a loss of communication with Ms. Victor Joseph. Wawanesa seeks a dismissal of the arbitration with an order for expenses due to Ms. Victor Joseph's failure to attend.

Result:

I made an order removing counsel from the record. Counsel had been representing Ms. Victor Joseph since at least the pre-hearing in this matter, held on July 11, 2012. The solicitor and client relationship subsisted until sometime in the summer of 2013 at which time Ms. Victor Joseph

ceased communicating with counsel. The parties had agreed on a settlement, but Ms. Victor Joseph never completed the settlement documents despite counsel's best efforts to facilitate this transaction. Further, the telephone numbers she had provided to counsel had been disconnected. There has been no further communication.

In the circumstances, I allowed counsel to be removed from the record.

Wawanesa asked that the arbitration be dismissed with an order for expenses.

Ms. Victor Joseph has not appeared at the Commission since July 2012. She was purportedly injured in a motor vehicle accident on April 3, 2010, an allegation that Wawanesa disputes and an issue that was to be arbitrated at this hearing. Ms. Victor Joseph has been notified of all proceedings at the Commission and has never communicated directly with the Commission nor informed the Commission of any change in address or contact information.

In the circumstances, I find that it is appropriate that the application for arbitration be dismissed.

EXPENSES:

With respect to its expenses, Wawanesa advised that its counsel has appeared for at least two in-person proceedings and had commenced preparation for the preliminary issue hearing. Having considered the criteria indicated in the Expense Regulation I find that Wawanesa is entitled to its expenses which I fix in the amount of \$1,500.

Rosemary Muzzi
Arbitrator

October 29, 2013
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. The application for arbitration is dismissed.
2. Wawanesa is entitled to its expenses fixed at \$1,500.

Rosemary Muzzi
Arbitrator

October 29, 2013
Date