



Neutral Citation: 2010 ONFSCDRS 152

FSCO A07-002033

BETWEEN:

THE ESTATE OF LILIA KADOSH

Applicant

and

ECONOMICAL MUTUAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Anne Sone

Heard: By telephone conference call on June 2, 2010. A written submission was received on June 2, 2010.

Appearances: Jerry Balitski for The Estate of Lilia Kadosh
Neil Colville-Reeves for Economical Mutual Insurance Company

Issues:

The original Applicant, Ms. Lilia Kadosh, was injured in a motor vehicle accident on July 28, 2005. She applied for statutory accident benefits for caregiver, medical treatment and housekeeping and home maintenance benefits 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

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

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

The issues in this case, as listed in the pre-hearing letter dated February 7, 2008, are:

1. Is Ms. Kadosh entitled to receive weekly caregiver benefits at the rate of \$250 per week from July 28, 2005 and ongoing for the care of her husband, Mr. David Kadosh, pursuant to section 13 of the *Schedule*?
2. Is Ms. Kadosh entitled to receive a medical benefit for chiropractic treatment, physiotherapy and massage at Active Health Care in the amount of \$1,732.54, claimed pursuant to section 14 of the *Schedule*?
3. Is Ms. Kadosh entitled to payments for housekeeping and home maintenance services, at the rate of \$100 per week from July 28, 2005 to July 28, 2007 less amounts already paid, pursuant to section 22 of the *Schedule*?
4. Is Economical liable to pay Ms. Kadosh's expenses in respect of the arbitration under section 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8?
5. Is Ms. Kadosh liable to pay Economical's expenses in respect of the arbitration under section 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8?
6. Is Ms. Kadosh entitled to interest for the overdue payment of benefits pursuant to section 46(2) of the *Schedule*?

In August 2008, Ms. Kadosh unfortunately died. As a result, the Estate of Lilia Kadosh seeks to withdraw all of the disputes in the proceeding, on a without expenses basis.

Result:

1. The Estate of Lilia Kadosh is permitted to withdraw all of its disputes in the proceeding, on a without expenses basis.

ANALYSIS:

Background:

After a pre-hearing held on January 22, 2008 (but before her hearing scheduled for November 17, 2008), Ms. Kadosh died in August 2008. In a letter dated September 11, 2008 to the 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.

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

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. 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 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 advising 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.

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.

Subsequently, at a resumption of pre-hearing on November 20, 2009, (as had been requested by Mr. Colville-Reeves), the hearing of the arbitration in this matter was set down for June 7, 8, 9 and 10, 2010 at the Commission.

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.

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.

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 dated June 2, 2010, 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.

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.

After hearing submissions from Mazin Rooz Mazin, Economical and the solicitor for the Estate of Lilia Kadosh, I permitted Mazin Rooz Mazin to withdraw as solicitors or record for the Estate of Lilia Kadosh in a decision dated July 27, 2010.

At the time of these submissions, Mr. Balitsky proposed on behalf of the Estate of Lilia Kadosh, that he was willing to agree to the withdrawal of the Estate's claims against Economical for statutory accident benefits, on a without expenses basis. Economical agreed to these terms.

Law:

Subparagraph 70.1 (c) of the *Dispute Resolution Practice Code (Fourth Edition, updated September 2010)* states that a party may seek permission to withdraw all or part of a dispute by making an oral request to withdraw all or part of a dispute during a neutral evaluation, pre-hearing discussion, settlement discussion, preliminary conference or at a hearing.

Pursuant to subsection 70.2, an adjudicator may permit a party to withdraw all or part of a dispute where all the parties agree.

Conclusion:

When Ms. Kadosh passed away, Mazin Rooz Mazin requested that a representative of her Estate be appointed to give instructions regarding her dispute with Economical. This never occurred. As a result, Mazin Rooz Mazin sought and obtained permission to withdraw as solicitors of record of the Estate of Lilia Kadosh.

Subsequent to the withdrawal of Mazin Rooz Mazin, the solicitor for the Estate of Lilia Kadosh made an oral request to withdraw all of the Estate's disputes at the Financial Services Commission, on a without expenses basis. Economical agreed to the Estate of Lilia Kadosh withdrawing her claims for statutory accident benefits for caregiver, housekeeping, medical treatment and housekeeping and home maintenance against it, on a without expenses basis. For these reasons, I permit the withdrawal of the Estate of Lilia Kadosh's disputes against Economical, on a without expenses basis.

EXPENSES:

Under the circumstances, Economical did not request its expenses of this proceeding, and none are ordered.

Anne Sone
Arbitrator

December 23, 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. The Estate of Lilia Kadosh is permitted to withdraw all of its disputes in the proceeding, on a without expenses basis.

Anne Sone
Arbitrator

December 23, 2010
Date