



FSCO A13-000131

BETWEEN:

JAMES MOREIRA RAMIREZ

Applicant

and

SECURITY NATIONAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Arbitrator Paulina Gueller

Heard: June 25, 2014 at ADR Chambers, Toronto, ON and by written submissions due July 31, 2014.

Appearances: No one attended for the applicant
Mr. Paul Barnes for Security National Insurance Company

Issues:

The Applicant, Mr. James Moreira Ramirez, was injured in a motor vehicle accident on April 3, 2011. He applied for and received statutory accident benefits from Security National Insurance Company (“Security National”), payable under the *Schedule*.¹ The parties were unable to resolve their disputes through mediation, and James Moreira Ramirez applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, and c.I.8, as amended.

¹ *The Statutory Accident Benefits Schedule - Effective September 1, 2010, Ontario Regulation 34/10, as amended.*

The issues in this hearing are:

1. Should Mr. Moreira Ramirez's application for arbitration be dismissed?
2. Is Mr. Moreira Ramirez liable to pay Security National's expenses in respect of his arbitration, and if so, in what amount?

Result:

1. Mr. Moreira Ramirez's application for Arbitration is dismissed.
2. Security National is entitled to its expenses of \$1,500.00 inclusive of HST.

EVIDENCE AND ANALYSIS:

Mr. Moreira Ramirez failed to participate in the arbitration process. Despite being notified, he did not attend the arbitration hearing that was held on June 25, 2014.

Mr. Moreira Ramirez's counsel, attended the pre-hearings held before Arbitrator Arbus. On March 3, 2014, the applicant's counsel brought a motion to be removed from the record. By letter dated March 18, 2014, Mr. Moreira Ramirez consented to the removal of Mazin & Associates Professional Corporation as the solicitors on record, therefore Mr. Moreira Ramirez became self-represented.

I am satisfied that Mr. Moreira Ramirez was aware of the Hearing scheduled for June 25, 2014.

Mr. Moreira Ramirez contacted the case administrator by telephone on various occasions. On June 6, 2014, Mr. Moreira Ramirez notified the case administrator by telephone that he was still unrepresented and incarcerated, but that he wanted to pursue his claim, and because he was unable to attend the Hearing, someone would come to represent him at the scheduled Hearing.

No one appeared at the Hearing for Mr. Moreira Ramirez. Mr. Barnes requested a 30 minute wait period to allow Mr. Moreira Ramirez the opportunity to attend.

The Hearing resumed after the 30 minute wait period with no one having appeared for Mr. Moreira Ramirez, and therefore the hearing proceeded in his absence.

At the hearing, on June 25, 2014, Mr. Barnes brought a motion to dismiss the application for arbitration. He also requested expenses against the applicant. Mr. Barnes provided me with a copy of the insurer's Bill of Expenses and a letter dated March 14, 2014 offering Mr. Moreira Ramirez a "without-costs dismissal of the pending arbitration".

On July 17, 2014, the case administrator received a voice-mail from Mr. Moreira Ramirez confirming receipt of our letters and notices, and advising that he was still incarcerated. He did not leave a call back number, and when the case administrator redialed the number listed in ADR Chambers' telephone history, no one answered the phone and there was no voice mail to leave a message.

After Mr. Moreira Ramirez's voice message on July 17, 2014, considering his reasons for not attending the Hearing and weighting the possibility that he would not be able to attend a future hearing in person, I asked Mr. Moreira Ramirez, by letter dated July 17, 2014, for submissions in writing by July 31, 2014, otherwise I would proceed with the arbitration process without his participation.

Mr. Moreira Ramirez has not replied to the above noted letter.

Result:

I am satisfied that the Notices of Hearing complied with the requirements set out in Rule 9.1 (c) of the Dispute Resolution Practice Code ("DRPC") and section 6 of the Statutory Power and Procedures Act ("SPPA"). All correspondence, including the notices of hearing, were sent to the address Mr. Moreira Ramirez provided.

Rule 37.9 of the 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.

Notwithstanding the notices and letters, the applicant did not attend the Hearing on June 25, 2014. Therefore, pursuant to Rule 37.9 of the *DRPC*, the hearing of June 25, 2014 proceeded in the applicant's absence. Furthermore, Mr. Moreira Ramirez did not provide submissions in writing by July 31, 2014.

I consider that Mr. Moreira Ramirez has been provided with ample opportunity to proceed with his claim, either by appointing a representative or by making submissions in writing.

In order to establish entitlement to benefits, the applicant has the onus of the proof, he must provide evidence supporting his claims. Mr. Moreira Ramirez did not attend the Hearing and he did not submit any evidence, failing to establish entitlement to the benefits being sought.

As a result, I dismiss Mr. Moreira Ramirez's Application for Arbitration.

EXPENSES:

Security National requested its legal expenses of the arbitration proceeding and provided a Bill of Costs for a total of \$6,959.18 (\$5,673.91 for Legal Aid rates for 60.1 hours of combined work time between lawyers and law clerk, plus \$547.66 for disbursements, plus \$737.61 for HST).

Rule 75.1 of the *DRPC* sets the criteria for an Arbitrator to consider when awarding expenses to a party. An adjudicator must be satisfied that the award sought is justified having regard to the criteria set out in Rule 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;
- b. any written offers to settle made in accordance with Rule 76;
- c. whether novel issues are raised in 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;
- f. whether the insured person refused or failed to submit to an examination as required under section 42 of Ontario Regulation 403/96 (Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996) made under the Act or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation; and
- g. whether the insured person refused or failed to submit to an examination as required under section 44 of Ontario Regulation 34/10 (Statutory Accident Benefits Schedule — Effective September 1, 2010), made under the Act, or refused or failed to provide any material required to be provided under subsection 44 (9) of that regulation.

In awarding expenses, I am taking into consideration the relevant criteria, which in this case include the parties' success in the proceedings, their conduct and offers to settle.

Mr. Moreira Ramirez failed to attend his arbitration proceedings and to prove his claim. Security National is the successful party and is entitled to its expenses. I consider the success and time that Security National's counsel spent in preparing responses to the Applications for Arbitration and a motion, preparing and attending pre-hearings and the Hearing, and, the letter of March 14, 2014 offering the applicant the without-costs dismissal.

However, I find that Security National was aware that Mr. Moreira Ramirez was incarcerated and self-represented. I am not persuaded that the applicant's claims or conduct was vexatious or frivolous. Therefore, I find it is reasonable to grant some of Security National's legal expenses, but I find the amount Security National claims to be excessive.

Accordingly, I exercise my discretion pursuant to subsection 282(11) of the Insurance Act, and order that Mr. Moreira Ramirez pay Security National expenses that I have assessed at \$1,500.00 inclusive of all fees, disbursements and HST.

This amount is payable forthwith.

Paulina Gueller
Arbitrator

October 9, 2014
Date



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BETWEEN:

JAMES MOREIRA RAMIREZ

Applicant

and

SECURITY NATIONAL INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mr. Moreira Ramirez' Application for Arbitration is dismissed.
2. Security National is entitled to its expenses of \$1,500.00 inclusive of HST.

Paulina Gueller
Arbitrator

October 9, 2014
Date