



FSCO A04-000068

BETWEEN:

RUGANRAJ SEBAMALAI

Applicant

and

ROYAL & SUNALLIANCE INSURANCE COMPANY OF CANADA

Insurer

REASONS FOR DECISION

Before: Suesan Alves

Heard: Written submissions were received by September 30, 2005.

Appearances: Ruganraj Sebamalai represented himself
Alexander Nterekas represented himself
Kadey B.J. Schultz for Royal & SunAlliance Insurance Company of Canada

Issues:

Mr. Sebamalai was injured in an automobile accident on February 5, 2002 and claimed benefits from Royal. In January 2004, Laraia/Nterekas, a firm of paralegals, filed an application for arbitration with the Financial Services Commission of Ontario. In February 2005, Mr. Sebamalai stated to Royal's adjuster that the application had been filed without his authority. The paralegal firm then informed the Commission that the Applicant terminated his retainer and wished to withdraw the arbitration. Royal seeks terms and conditions of the withdrawal and its expenses of the arbitration.

For the reasons which follow, I am not persuaded that Mr. Sebamalai signed the arbitration application or authorized the proceedings. I conclude that the arbitration application should be withdrawn and the paralegal should bear Royal's expenses as agreed upon or assessed.

The issues in this hearing are:

1. Should the arbitration application be withdrawn?
2. If yes, what are appropriate terms, conditions or expenses award?

Result:

1. The arbitration application is withdrawn without terms, conditions or expenses against Mr. Sebamalai.
2. Mr. Nterekas shall bear Royal's expenses, as agreed upon or assessed.

EVIDENCE AND ANALYSIS:

Should the arbitration application be withdrawn?

Mr. Sebamalai seeks to withdraw the arbitration application. Royal seeks terms, conditions and expenses against Mr. Sebamalai or the paralegal firm which commenced the arbitration. Royal also alleges that Mr. Sebamalai could not have signed the arbitration application. The critical question is therefore whether Mr. Sebamalai commenced the arbitration application.

Did Mr. Sebamalai commence the arbitration application?

Mr. Sebamalai was injured in a motor vehicle accident on February 5, 2002. An unsigned application for arbitration was submitted in his name to the Financial Services Commission of

Ontario in January 2004 by Laraia/Nterekas, a firm of paralegals which had represented Mr. Sebamalai at mediation.

Page two of the application was unsigned by the Applicant. The certification that the representative had full authority to discuss and settle all issues was also not signed. The case administrator noted this difficulty, and returned the incomplete application to the firm. The application form dated January 20, 2004, with two signatures in the appropriate spaces was resubmitted by Laraia/Nterekas and registered by the Commission on January 23, 2004.

Royal filed a Response, a pre-hearing was conducted, and a date set for the hearing. Mr. Sebamalai did not attend the pre-hearing but was represented by Mr. Nterekas. At the pre-hearing Mr. Nterekas agreed to advise the Commission within thirty days whether he had been able to locate Mr. Sebamalai in order to sign authorizations to obtain the productions which Royal requested.

The Commission's practice is to send copies of its correspondence and notices to the parties to an arbitration, as well as to their representatives. The Commission's mail to Mr. Sebamalai was returned and the case administrator asked Mr. Nterekas to provide Mr. Sebamalai's current address. Mr. Nterekas advised that he had not been able to locate Mr. Sebamalai and asked to be removed as Mr. Sebamalai's representative on that basis.

I directed Mr. Nterekas to make further and better efforts to locate Mr. Sebamalai. Mr. Sebamalai's claim for income replacement benefits appeared to be of a significant nature, and Royal's Response to the arbitration application referred to medical reports which suggested that at least from the point of view of one of the Applicant's medical advisors, he may have sustained a closed head injury in the motor vehicle accident. I also invited Royal, in the context of a first party claim, to contact the policyholder to determine whether an updated address for Mr. Sebamalai might be obtained from that source.

Mr. Nterekas reported that his further efforts to contact Mr. Sebamalai had not been successful and renewed his request for removal. In light of the approaching hearing date, I granted the order based on Mr. Nterekas' inability to locate his client and obtain instructions.

Subsequently, counsel for Royal advised that her client had followed up with the policyholder, obtained Mr. Sebamalai's new address, interviewed him, and that Mr. Sebamalai had stated that he had not authorized the commencement of the arbitration.

The case administrator contacted Mr. Sebamalai at the telephone number Royal provided, and arranged a pre-hearing resumption by teleconference call. Mr. Sebamalai participated, as did Mr. Nterekas. Mr. Francella, Royal's adjuster, participated as did Ms. Schultz, counsel for Royal. During the discussion, it seemed that it might be possible that there were two persons with the same name who were involved in the accident, and lived at the same address, and that while one was back at work, the other was alleging ongoing disability.

Mr. Sebamalai participated briefly until his cell phone gave out. The remaining participants agreed that a face-to-face pre-hearing resumption with an interpreter should be arranged with a view to getting to the bottom of things.

I revoked the Order removing Mr. Nterekas as Mr. Sebamalai's representative since Mr. Sebamalai had been located and the basis for the order was gone. Mr. Nterekas stated that he would write to Mr. Sebamalai to obtain the authorizations. The Commission sent out notices of the pre-hearing resumption and arranged for an interpreter.

Shortly before the scheduled face-to-face pre-hearing resumption, Mr. Sebamalai contacted the case administrator and advised that he would not attend as he would be away on vacation. Mr. Nterekas again requested that he be removed as Mr. Sebamalai's representative. He filed a document in which Mr. Sebamalai terminated his retainer and another in which Mr. Sebamali [sic] requested that the arbitration be withdrawn.

I made the Order removing Mr. Nterekas as Mr. Sebamalai's representative, as Mr. Sebamalai had dismissed him. However, in light of the allegation to the adjuster that the arbitration had been commenced without Mr. Sebamalai's authority, I left it open to Royal and to Mr. Sebamalai to claim relief against Mr. Nterekas. I adjourned the face-to-face resumption of the pre-hearing.

Royal wished an opportunity to negotiate terms of withdrawal with Mr. Sebamalai. I granted that request, and, failing a resolution, set timelines for receiving submissions on terms of withdrawal. There was no resolution and Royal provided its submissions. In paragraph 22 of those submissions Royal relied on Mr. Nterekas' letter of January 19, 2005, to the case administrator, enclosing a copy of his letter to Mr. Sebamalai dated August 5, 2004. In that letter Mr. Nterekas set out his attempts to contact Mr. Sebamalai commencing on November 25, 2003, stated that his phone calls and letters remain unanswered and that "we cannot continue to represent you in this matter as we have been unable to contact you and obtain instructions with respect to your arbitration." In other words, Mr. Nterekas had not heard from his client since on or before November 25, 2003. This was approximately two months before Mr. Nterekas resubmitted the arbitration application to the Commission which purported to have been signed and certified by Mr. Sebamalai.

Counsel for the Insurer reasoned that "either the sparse information provided by the Applicant's representative concerning his efforts to contact his client is incorrect, or the Applicant did not sign and certify the Application for Arbitration on the date set out at page 2 of the Application, January 23, 2004."

Royal submitted it had been put to considerable expense to respond to the arbitration, and sought its expenses against either Mr. Sebamalai or Mr. Nterekas.

In all the circumstances, I thought it prudent to provide Mr. Nterekas with a copy of the submissions which had been made by Royal and by Mr. Sebamalai. In a covering letter, I informed Mr. Nterekas that Royal was seeking its expenses from him or from Mr. Sebamalai

and provided a copy of section 282(11.2) of the *Insurance Act*. That section permits an arbitrator to award legal expenses against a paralegal who commences a proceeding without authorization. In that letter, I also invited Mr. Nterekas' representations which "may be in the form of written submissions, a request for a hearing to decide if Mr. Sebamalai authorized the commencement of the arbitration, or other reasonable way of communicating any position you may wish to take."

Mr. Nterekas responded in writing. He submitted, respectfully, that his "response was not anticipated by, nor requested by Royal Insurance." Mr. Nterekas set out the history of his difficulties contacting Mr. Sebamalai and provided copies of some of the correspondence.

Unfortunately, Mr. Nterekas did not address the key concerns—whether Mr. Sebamalai authorized the commencement of the arbitration, and whether either Mr. Nterekas or Mr. Sebamalai should be required to pay Royal's expenses.

In the absence of a response on the question of whether Mr. Sebamalai authorized the commencement of the arbitration, I am left with an arbitration application submitted by Mr. Nterekas which purports to have been signed and certified two months after Mr. Nterekas admits he last had contact with Mr. Sebamalai. I am persuaded by the documentation, and by Royal's submission that Mr. Sebamalai could not have signed or certified the application for arbitration. I therefore find the proceedings were commenced without Mr. Sebamalai's authority, and for that reason, they should be withdrawn.

Terms, conditions, expenses

The question then is whether terms or conditions should be imposed, or an award of expenses made as provided by Rule 70 of the *Dispute Resolution Practice Code*. Royal seeks relief against Mr. Sebamalai or alternatively against Mr. Nterekas.

I accept that Royal has been put to time and expense in responding to the arbitration application commenced in Mr. Sebamalai's name. Pursuant to Rule 75.2 of the *Code*, I award Royal its reasonable expenses as agreed upon or assessed because I find that this is a proceeding which should not have been commenced. The person in whose name the arbitration was brought did not authorize the proceeding or sign the arbitration application. Thus the entire proceeding was improper and was an abuse of process.

Relief against Mr. Sebamalai

Mr. Sebamalai made a brief submission in which he noted that he had not received anything from the arbitration and questioned why he should have to pay Royal's expenses. I find it would be inappropriate to make Mr. Sebamalai personally pay for Royal's expenses, since I am not persuaded that he commenced the arbitration application.

Relief against Mr. Nterekas

Section 282(11.2) of the *Insurance Act*, R.S.O. c.I.8, as amended, provides:

Liability of representative for costs

282(11.2) An arbitrator may make an order requiring a person representing an insured person or an insurer for compensation in an arbitration proceeding to personally pay all or part of any expenses awarded against a party if the arbitrator is satisfied that,

- (a) in respect of a representative of an insured person, the representative commenced or conducted the proceeding without authority from the insured person or did not advise the insured person that he or she could be liable to pay all or part of the expenses of the proceeding;
- (b) in respect of a representative of an insured person, the representative caused expenses to be incurred without reasonable cause by advancing a frivolous or vexatious claim on behalf of the insured person; or

- (c) the representative caused expenses to be incurred without reasonable cause or to be wasted by unreasonable delay or other default. 2002, c. 22, s. 127.

Non-application to solicitors

(11.3) Clause (11.2) (a) does not apply to a barrister or solicitor acting in the usual course of the practice of law. 2002, c. 22, s. 127.

Opportunity to make representations

(11.4) An order under subsection (11.2) shall not be made unless the representative is given a reasonable opportunity to make representations to the arbitrator. 2002, c. 22, s. 127.

Mr. Nterekas is a paralegal registered as a statutory accident benefits representative. I have afforded him an opportunity to make representations. I have concluded that this arbitration proceeding was commenced without Mr. Sebamalai's authority. I find that the steps Mr. Nterekas took, purportedly on Mr. Sebamalai's behalf, caused expense to be incurred by Royal without reasonable cause.

In the case of *Miri-Lashkajani et. al and ING Insurance Company of Canada*, (FSCO A04-000305, A04-000027 and A04-000014, October 27, 2004), Arbitrator Wilson held that the delay and default in that case "although nominally the responsibility of the applicant, directly" lay at the feet of the paralegal in question and ordered the paralegal to pay the Insurer's expenses. I agree with his approach. I also agree with Arbitrator Wilson that "Both section 282(11.2) of the *Insurance Act* and the expense regulation impose sanctions for conduct which "caused expenses to be incurred without reasonable cause or to be wasted by unreasonable delay or other default."

In this case, since the arbitration application was submitted by Mr. Nterekas, I find Mr. Nterekas should bear Royal's reasonable expenses as agreed upon or assessed. Failing agreement, the case administrator may be contacted to arrange for an assessment of expenses.

Order:

1. The arbitration application is withdrawn without terms, conditions or an award of expenses against Mr. Sebamalai.
2. Mr. Alexander Nterekas shall pay the arbitration expenses of Royal & SunAlliance as agreed upon or assessed.

Suesan Alves
Arbitrator

October 31, 2005

Date



FSCO A04-000068

BETWEEN:

RUGANRAJ SEBAMALAI

Applicant

and

ROYAL & SUNALLIANCE INSURANCE COMPANY OF CANADA

Insurer

ARBITRATION ORDER

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

1. The arbitration application is withdrawn without terms, conditions or an award of expenses against Mr. Sebamalai.
2. Mr. Alexander Nterekas shall pay the arbitration expenses of Royal & SunAlliance Insurance Company of Canada, as agreed upon or assessed.

Suesan Alves
Arbitrator

October 31, 2005

Date