



FSCO A11-002089

**BETWEEN:**

**YVONNE TUMABIL**

**Applicant**

**and**

**PAFCO INSURANCE COMPANY**

**Insurer**

## **REASONS FOR DECISION**

**Before:** Arbitrator Jeffrey Rogers

**Heard:** July 8, 2013, at the offices of the Financial Services Commission of Ontario in Toronto

**Appearances:** Mr. Alexei Antonov, student-at-law, for Mazin & Associates  
Ms Zeitoon Vaezzadeh, solicitor, for Pafco Insurance Company  
Ms. Tumabil did not attend

### **Issues:**

The Applicant, Yvonne Tumabil, alleged that she was injured in a motor vehicle accident on November 3, 2009. She applied for statutory accident benefits from Pafco Insurance Company ("Pafco"), payable under the *Schedule*.<sup>1</sup> Pafco refused to pay any benefits on the grounds that Ms. Tumabil was not injured in an "accident" as defined in the *Schedule*.

The parties were unable to resolve their disputes through mediation, and Ms. Tumabil applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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

A pre-hearing discussion was held on April 18, 2012. A hearing on the issue of whether Ms. Tumabil was injured in an “accident” was scheduled, commencing on February 19, 2013. That hearing was later rescheduled, to start on July 8, 2013.

Ms. Tumabil did not attend on July 8, 2013. Her solicitors sought an order removing their firm as her representative. Pafco sought an order dismissing the arbitration.

Therefore, the issues in this hearing are:

1. Should Mazin & Associates be removed from the record as Ms. Tumabil’s representative?
2. Should this arbitration be dismissed?

**Result:**

1. Mazin & Associates is removed from the record as Ms. Tumabil’s representative.
2. This arbitration is dismissed.

**EVIDENCE AND ANALYSIS:**

**Removal from the Record**

The motion for removal of Ms. Tumabil’s representative was originally scheduled to be heard by telephone conference call, on April 19, 2013. I adjourned the motion to be heard in person, on July 8, 2013. I was concerned that proceeding by telephone conference call restricted Ms. Tumabil’s ability to participate.

Mazin & Associates filed a Motion Record containing the affidavit of Gary Mazin, which sets the unsuccessful efforts made to contact Ms. Tumabil and obtain instructions. I am satisfied that Ms. Tumabil was given proper notice of the motion. I am satisfied that there has been a

breakdown in the solicitor/client relationship so that Mazin & Associates cannot continue to represent Ms. Tumabil. Mazin & Associates is therefore removed from the record as Ms. Tumabil's representative.

### **Dismissal of Arbitration**

Ms. Tumabil was given notice of the hearing and did not attend. She provided no information upon which it could be determined that the hearing should not proceed. Ms. Tumabil bears the onus of proving that she was injured in an "accident". Without that proof, this arbitration cannot succeed. Since no evidence has been presented in support of Ms. Tumabil's claim, this arbitration is dismissed.

### **EXPENSES:**

Pafco chose not to pursue its claim for expenses of the arbitration.

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Jeffrey Rogers  
Arbitrator

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August 26, 2013  
Date



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**and**

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**Insurer**

## **ARBITRATION ORDER**

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

1. Mazin & Associates is removed from the record as Ms. Tumabil's representative.
2. This arbitration is dismissed.

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Jeffrey Rogers  
Arbitrator

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August 26, 2013  
Date