

**CITATION:** *Fisher v Towel Funeral Insurance* [2016] QCAT 223

**PARTIES:** Gavin Darrell Fisher  
(Applicant)  
v  
Towel Funeral Insurance  
TAL Life Insurance  
(Respondents)

**APPLICATION NUMBER:** MCDO1194-15

**MATTER TYPE:** Other minor civil dispute matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Adjudicator Bertelsen**

**DELIVERED ON:** 30 June 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. The reopening application is granted.
2. All parties to the proceeding have leave to attend any hearing by phone. Where a party has not already done so, a nominated contact number is to be provided to the Tribunal at a reasonable time prior to any allocated hearing date.
3. The application is to be allocated a hearing date promptly.

**CATCHWORDS:** Other minor civil dispute matters - application – failure to appear – telephone attendance granted previously – applicant’s ill health – Tribunal’s exercise of discretion

**APPEARANCES:**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

## REASONS FOR DECISION

- [1] On 29 May 2015, Mr Fisher filed a consumer application in the Tribunal seeking an order that Towel Funeral Insurance pay him *'the money that is due to me that I have paid them over the years'*.
- [2] On 7 August 2015, TAL Life Insurance (formerly Tower Australia) was added as a respondent to the application. All parties were given leave to attend via phone. The application was subsequently relisted on 15 September 2015. The record indicates there were no appearances on that date. The application was dismissed.
- [3] On 1 March 2016, Mr Fisher filed three applications. Firstly, an application for reopening in which Mr Fisher stated his reasons for such application as being *'to have Towel Funeral Insurance pay me back the money they owe me and ins'*. Secondly, an application to attend hearing by remote conference *'due ill health'*. Thirdly, an application to extend a time limit or for waiver of compliance with procedural requirement for the reason *'to have Towel Funeral Insurance pay me the money they owe me and the ins'*.
- [4] On 15 April 2016, the Tribunal refused the reopening application, it appears, without reference to any other parties. That being the case, the Tribunal's decision 15 April 2016 was set aside and the same day submissions called for from all parties in respect of the reopening application, such to be lodged by 22 June 2016. No submissions have been received from any party.
- [5] Material placed on the file by Mr Fisher during the course of the proceeding indicates he is in ill health and hampered by serious medical issues. Telephone attendance was granted to Mr Fisher as far back as 7 August 2015 to attend hearing by phone. His contact phone numbers appear on his initiating application filed 29 May 2015.
- [6] Whilst there is a record of the Tribunal attempting to contact Mr Fisher by phone on 7 August 2015, there is no such record of any such attempt on 15 September 2015, the hearing date on which no parties at all appeared.
- [7] In the circumstances where attendance by phone had previously been granted, Mr Fisher's non-appearance on 15 September 2015 is excusable.
- [8] On balance, it seems that Mr Fisher's ill health and serious medical issues confronting him may well have precluded him from presenting any meaningful submissions at this point.
- [9] Observing the principles of procedural fairness, the initiating application, in all the circumstances, should be reopened, Mr Fisher's leave to appear by phone reaffirmed and the application listed for hearing.

### Orders:

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3. The application is to be allocated a hearing date promptly.