Civil Resolution Tribunal

Date Issued: April 5, 2018

File: SC-2017-004147

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Just Virani Consulting Inc. v. Goto*, 2018 BCCRT 116

B E T W E E N :

Just Virani Consulting Inc.

APPLICANT

A N D :

Glen Goto

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Adam Shee

INTRODUCTION

1. The applicant, Just Virani Consulting Inc. (Virani), was hired to provide tax services for the respondent, Glen Goto. The applicant says that the respondent

has failed to pay $4,676.05 that it says is owing under a contingency fee agreement for the work it did to prepare and file documents with CRA in respect of disability tax credits for the tax years from 2007 through 2014 (the applications).

2. The respondent denies the existence of a contingency fee agreement and says that he agreed only to pay the applicant a reasonable fee at a reasonable hourly rate for the applications.

3. Both the applicant and the respondent are self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility that might require an oral hearing. Neither party requested an oral hearing.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issue in this dispute is whether the respondent is required to pay the applicant $4,676.05 for the services the applicant provided in respect of the applications.

BACKGROUND

9. The applicant has been providing tax services to the respondent for several years. The applicant typically charges the respondent $130, inclusive of GST, to complete the respondent's income tax return each year.

10. Sometime in 2016, the applicant's principal, Sam Virani, and the respondent discussed the possibility of the applicant preparing the applications.

11. Although the respondent instructed the applicant to prepare and file T1 Adjustment Requests for the years 2007 through 2014 (the adjustment requests), the matter of how the applicant would be paid for this service was not reduced to writing. The applicant says that the respondent agreed to pay for the applications on a "'no win; no fee' (50:50%) basis." The respondent says that he agreed to pay only "a reasonable fee at a reasonable hourly rate" for the applicant's preparation and filing of the applications.

12. On June 6, 2016, the applicant prepared the adjustment requests for the respondent. Each of the adjustment requests related to the "Disability Amount" on lines 316 and 5844 of the respondent's income tax returns for the years in which the adjustment requests were filed.

13. Each of the adjustment requests gave, as a reason for having been filed, that the respondent had "inadvertently omitted to claim the disability amount for self on his income tax return" and that he was seeking "relief under the Taxpayer Relief Provisions within the 10 year limitation period." Each of the adjustment requests also references an "approved form T2201 Disability Certificate" as being on file with CRA.

14. On June 8, 2016, the applicant wrote to the respondent to advise him that the respondent's name had been erroneously omitted from the adjustment requests and that revised adjustment requests were being prepared that included the respondent's name.

15. The applicant describes the process involved in preparing and filing the applications as "challenging." The applicant described CRA as having taken the position that, because the respondent had not claimed the disability tax credit since 2001, he no longer required the disability tax credit. No documentation was provided that indicated that CRA had taken this position, however.

16. The applicant says that it spent a lot of hours on "this file communicating with the CRA and attempting to convince them that his claim was legitimate." Overall, the applicant estimates that it spent 30 hours to prepare and submit the applications.

17. On July 4, 2016, CRA reassessed the respondent's tax returns for the years 2007 through 2013 and issued refunds totaling $9,352.11 (the refunds) to the respondent. No refund was issued to the respondent for the 2014 tax year for unrelated reasons.

18. The applicant and the respondent had at least some discussion and correspondence about the applicant's compensation, after CRA had issued the refunds, including a June 8, 2017 letter to the respondent from the applicant. That

letter makes reference to the respondent having agreed to a contingency fee arrangement in April of 2016.

19. The June 8, 2017 letter also refers to a May 18, 2017 agreement by the respondent to pay $3,900.00 to the applicant in three monthly installments of $1,300.00, payable on May 20, June 20, and July 20, 2017. There is also a hand written note on an "Instalment Payment Summary", a document which was submitted by the applicant, which reads: "30 hrs@ $130ph = $3,900." The note appears to have been signed by the respondent.

REASONS AND ANALYSIS

20. In a civil claim such as this, the applicant, Virani, bears the burden of proving the existence of an agreement with the respondent, Mr. Goto. The standard is proof on a balance of probabilities. In other words, in order to find that there was an agreement, I must be satisfied that it is more likely than not that the applicant and the respondent agreed to a contingency fee arrangement, or some other fee arrangement, in respect of the applicant's filing of the applications. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

21. I find the applicant has not proven that the respondent agreed to an arrangement to pay a percentage of any amounts refunded by CRA. First, no agreement of this nature was reduced to writing. Second, although the applicant appeared to have become aware of the refunds some time in the summer of 2016, the applicant does not appear to have rendered any invoice to the respondent which reflects a contingency fee arrangement. Finally, the only written document that references a contingency fee arrangement at all is a later letter, dated June 8, 2017, from the applicant to the respondent.

22. From the documentation provided by the applicant and the respondent, it is difficult to tell if there was any agreement between them as to how the applicant would be compensated for preparing and submitting the adjustment requests.

23. *Quantum meruit* is a legal term which means reasonable compensation for work performed where the amount due is not set out in a legally enforceable contract. What is clear and not in dispute is that the applicant did prepare and submit the applications. It is also relatively clear that the refunds were the result of the applications having been submitted. For his part, the respondent does not seriously dispute that he instructed the applicant to prepare and file the applications or that the applications were the reason for the refunds being paid.

24. Having prepared and filed the applications, I am satisfied that the applicant is entitled to compensation. The question is how much the applicant's work is worth.

25. The applicant says that it performed about 30 hours of work on the respondent's behalf in preparing the applications and in communicating with CRA. The respondent denies this allegation and provided a number of documents, including the adjustment requests themselves, which he says undermine the applicant's claim that it spent 30 hours on the applications.

26. First, the T1 Adjustment Request is a one-page form. The applicant was required to enter only the respondent's name and social insurance number, an address, information about the authorization that it had been given by the respondent, the portions of the respondent's return for which an adjustment was being requested, and a brief explanation as to why the adjustment was being requested.

27. Second, although the applicant described having had numerous communications and correspondence with CRA about applications, the applicant did not provide any supporting documentation.

28. Third, although the applicant describes the process of filing the applications as "challenging," the respondent's refunds and reassessments were processed on July 4, 2016, less than a month after the date that the applicant prepared the revised adjustment requests. The time between the applications being submitted and the refunds being issued does not indicate an especially challenging process. It is noteworthy that the respondent's notices of assessment for the 2010 and 2012 tax years were processed by CRA within about three weeks of the date of the applicant's invoices for preparing the respondent's returns for those years.

29. Finally, the applicant provided no breakdown of the time it spent on the process of preparing and submitting the applications, giving as a reason for not tracking its time that it expected to be paid on a contingency fee basis. However, by not tracking its time, the applicant has made it difficult to assess the value of its work.

30. For the above reasons, I am not satisfied that the applicant has proven that it was required to spend 30 hours in preparing and filing the applications.

31. As noted, the applicant and the respondent had some discussions in the spring of 2017 about the appropriate compensation to be paid to the applicant. The applicant says that, at that time, the respondent agreed to pay $3,900.00 in three instalments to the applicant. However, if the respondent did agree to pay $3,900.00 to the applicant, the evidence indicates that he would have done so on the understanding that the applicant had spent 30 hours in the process of preparing the applications, as per the May 18, 2017 handwritten notation.

32. Given that I have found that any agreement to pay the applicant $3,900.00 was based on the inaccurate representation that the applicant had spent 30 hours of time doing the work instructed by the applicant, I am also not satisfied that there is a valid agreement for the respondent to pay $3,900.00 to the applicant for the work it performed.

33. In the absence of any other evidence from the applicant as to the time spent by it, I find that fair and reasonable compensation for preparing and filing the applications is $130.00, inclusive of GST, for each of the adjustment requests, which is the same fee it charged the respondent for preparing his complete tax returns. While it appears that the process of completing the applications may be less involved than the process of completing a full tax return, such remuneration would also compensate the applicant for work that was related to the applications, such as communicating with CRA. As there were 8 adjustment requests, I find that the applicant is entitled to a total of $1,040.00, inclusive of GST.

34. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. Because the applicant's claim was successful in that it was awarded some compensation and because it had been paid nothing by the respondent prior to filing its Dispute Notice, I see no reason in this case not to follow the general rule and order reimbursement of its tribunal fees of $175.

35. The respondent says that personal service of the Dispute Notice was not necessary in this case. Rule 51 of the Civil Resolution Tribunal Rules permits delivery of a Dispute Notice to a respondent by email, fax, registered mail, or courier delivery requiring a signature or by delivering it in person. Although the applicant successfully delivered a demand letter to the respondent by registered mail on June 8, 2017, it chose to serve the Dispute Notice personally because it "thought it would be best to hire a third party server to deliver the summons" due to the "history and changed behaviour of Mr. Goto." While personal service may not have been the most cost effective means of delivering the Dispute Notice, it is permitted under the rules and, in this case, I find that the cost of personal service was not excessive or unreasonable. I award the applicant $10.50 for the cost of delivery of the June 8, 2017 demand letter and allow $85.05 for the cost of personal service of the Dispute Notice on the respondent.

ORDERS

36. Within 30 days of the date of this order, I order the respondent to pay to the applicant a total of $1,316.76, broken down as follows:

    a. $1,040.00 as compensation for the applications;

    b. $6.21 in pre-judgment interest, running from August 3, 2017, 30 days after the refunds were issued to the respondent, to the date of this decision, under the *Court Order Interest Act*, and

    c. $175.00 in tribunal fees and $95.55 for dispute-related expenses.

37. The applicant is entitled to post-judgment interest, as applicable.

38. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

39. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Adam Shee, Tribunal Member