



Civil Resolution Tribunal

Date Issued: June 21, 2018

File: SC-2017-004423

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *It's Academic Educational Staffing Ltd v. Richmond Holdings and Assets Inc.*, 2018 BCCRT 273

B E T W E E N :

It's Academic Educational Staffing Ltd

APPLICANT

A N D :

Richmond Holdings and Assets Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant It's Academic Educational Staffing Ltd. had a signed agreement with the respondent Richmond Holdings and Assets Inc. that the respondent would pay the applicant a recruiting fee if the respondent engaged or hired a candidate recommended by the applicant.

2. The applicant says the respondent engaged or hired 2 candidates the applicant recommended. The applicant says about 3 weeks later the respondent cancelled the candidates' engagement. The applicant says the respondent nonetheless owes the recruiting fees under the agreement, and claims \$4,497.40 accordingly. The parties are self-represented, with John Becker representing the applicant and Raakesh Bharathi representing the respondent.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (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.
4. 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, and I note that neither party requested an oral hearing.
5. 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.
6. 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

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$4,497.40 in recruiting fees for the applicant's candidates that the respondent engaged but later cancelled their engagement.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The parties' signed 2017 "Recruiting Agreement" contains the following relevant terms (my bold emphasis added):
 - a. 'Candidate' refers to an individual introduced to the respondent by the applicant "as a **potential Worker**".
 - b. 'Engage or Engagement' means any employment, **engagement** or use of a Candidate by the respondent on a permanent or temporary basis, whether under a contract of service, agency arrangement "or any other engagement".
 - c. 'Fee Schedule' is the Appendix that sets out the applicable fees and terms payable by the respondent. **If the respondent and the Candidate "formally agree to an Engagement" at any time after the Introduction, the respondent must pay the applicant the Placement Fee.**
 - d. Under the Appendix: Fee Schedule, the term states **the Placement Fee is only due if the applicant's recommended Candidate is "successfully hired"**, and is payable 14 days after the Candidate signs their employment agreement or job offer. The Placement Fee for K-12 and ESL Certified Teachers is \$1,900.
 - e. 'Introduction or Introduce' means, after the effective date, the respondent's interview of a client or delivery to the respondent of a resume or other

information that identifies the Candidate as a prospective worker. The agreement's effective date is simply "2017".

- f. 'Probationary Period' is 12 weeks from the worker's employment start date.
 - g. 'Replacement Worker' is a candidate hired to replace a Worker originally introduced by the applicant. As the applicant's warranty, if the respondent is unsatisfied with a Candidate and the Candidate is "terminated, resigns or does not show up" during the Probationary Period, the applicant will carry out a second search for another suitable Worker. The warranty is void if the respondent breaches any of the agreement's terms, including failing to meet the payment terms.
 - h. 'Worker' means a Candidate "whom [the respondent] agrees to engage".
 - i. Payments – the placement fee is applicable "only if a Worker is Engaged by [the respondent]". **The placement fee is payable based on the Fee Schedule, after the respondent receives the applicant's invoice.** I note this term differs from above, which stated the respondent must pay within 14 days of engaging the Candidate.
 - j. Assignment – Neither the applicant nor the respondent may assign the agreement without the other party's prior written consent.
 - k. Despite the agreement's termination provisions (4 weeks written notice), all of the obligations under the agreement survive termination.
10. The agreement is signed by Mr. Becker on behalf of the applicant, and by Mr. Bharathi on behalf of the respondent.
11. The respondent's first argument is that the employment offers to the applicant's candidates were made by a company, unrelated to the respondent, which apparently is named by its website address "www.rcis.ca". I do not accept this argument. It is clear that Raakesh Bharathi was the person who was making the offers and that he was aware of the Candidates because of the applicant's

introduction, as described in the parties' agreement. To the extent the respondent may have passed on the Candidates to www.rcis.ca, that is an impermissible assignment under the parties' agreement. The respondent is responsible for Mr. Bharathi's conduct relating to the 2 Candidates, A and J.

12. It is undisputed that the job offers at issue were to Candidates introduced by the applicant. On July 12, 2017, Mr. Bharathi wrote an email to A and J. Mr. Bharathi wrote, "We'd like to formally extend an offer of employment to you!" and then set out the employment terms and attached a draft contract for their review. Mr. Bharathi concluded his email with "Look forward to you guys joining us on this exciting journey ...".
13. On July 14, 2017, Mr. Bharathi emailed A and J to say "Great to hear that you've accepted our offer of employment!" Mr. Bharathi then set out a variety of logistical issues relating to visa applications and documentation requirements. Contrary to the respondent's submission, the respondent's offer to A and J was clearly not just a "preliminary email offer". Also contrary to the respondent's submission, I find there is nothing in the parties' agreement that states a "full contract of employment" must be signed by the Candidates before the applicant's fee is payable.
14. Based on the above, I find the respondent, through Mr. Bharathi, had a completed contract of engagement with each of A and J. In other words, there was a contract of employment between them. The respondent "successfully hired" A and J as potential Workers, within the meaning of the parties' agreement.
15. On July 14, 2017, the applicant sent the respondent its invoice #11046 to Mr. Bharathi's attention. The invoice totaled \$4,497.40, the amount claimed in this dispute. The invoice set out two placement fees of \$1,990 each for A and J, plus \$517.40 in Ontario HST, given the respondent's location in Ontario. Under the parties' agreement, the applicant's delivery of their invoice triggered the respondent's obligation to pay it within 14 days.

16. The respondent's expressed concerns on July 16 and 18, 2017 about the timing of A and J's passport renewals is irrelevant, as is his August 3, 2017 decision to email A and J that the respondent was "unable to continue forward with the hiring". Nothing in this decision addresses any remedy A and J may have with respect to the respondent's decision in this respect.
17. In summary, I find that given the agreement's terms and my conclusions above, the respondent must pay the applicant's invoice of \$4,497.40. The applicant is entitled to pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), from July 28, 2017.
18. In accordance with the Act and the tribunal's rules, I find that the successful applicant is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

19. Within 14 days of the date of this decision, I order the respondent to pay the applicant a total of \$4,711.37, broken down as follows:
 - a. \$4,497.40 as payment of the applicant's invoice 11046,
 - b. \$38.97 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
20. The applicant is also entitled to post-judgment interest, as applicable.
21. 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.

22. 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.

Shelley Lopez, Vice Chair