



Civil Resolution Tribunal

Date Issued: July 13, 2018

File: SC-2017-006761

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rechsteiner v. Help Home Ventures Inc.*, 2018 BCCRT 330

B E T W E E N :

Enrico Rechsteiner

APPLICANT

A N D :

Help Home Ventures Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about whether the applicant Enrico Rechsteiner should be permitted to cancel his contract with the respondent Help Home Ventures Inc. As discussed further below, the applicant entered into a contract at a “Training Event” and says he did not get the full details. The respondent says it was a final sale. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. 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.
3. 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 or other reasons that might require an oral hearing.
4. 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.
5. 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.
6. The respondent submits that this dispute should be heard in Manitoba, but does not give any reasons or explanation for this submission. I infer it is likely because the respondent's business address is in Manitoba. The applicant says that since the respondent was soliciting contracts in BC, there is no reason why Manitoba law should be applied. I agree with the applicant. The most appropriate forum is BC, rather than Manitoba. I find the tribunal has jurisdiction over the parties' contract.

ISSUE

7. The issue in this dispute is whether the applicant is entitled to cancel his contract with the respondent, and if so, is he entitled to the \$3,146.85 he paid.

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 referenced the evidence and submissions as necessary to give context to my decision.
9. At a “Life Training Event” held by the respondent in Richmond, BC on May 13 and 14, 2017, the respondent sold the applicant a “Home Video Series” and access to “Live Coaching” from the respondent’s director Stefan Aarnio, for \$3,146.85 including sales tax (collectively, the subscription). While the applicant’s dealings were with the respondent’s director Mr. Aarnio or his organization, the billing was through the respondent. I note the applicant’s undisputed submission that the invitation to the event stated “This 2-Day event is NOT a pitch-fest – you, me, and my team will dive deep into what’s working NOW in real estate”.
10. During the training, the applicant says that just before the end of May 14, 2017, “through good sales tactics” he agreed to buy the subscription. The applicant says that in doing so he was sure, based on the sales person’s statement, that he would be able to cancel if he was not convinced of the program. Given my conclusion below, I do not need to resolve whether the respondent’s agent made that statement.
11. The respondent charged the applicant’s Visa for \$3,146.85 on May 15, 2017. The associated invoice describes the subscription as follows:

Inner Circle: Get Your First Deal Done at Home Video Series - \$2,997.00 -
Stefan Aarnio's Inner Circle: Get Live Coaching from Stefan Aarnio from
anywhere in the world!

12. On May 29, 2017, the applicant sought a refund, which the respondent refused. On May 30, 2017 the respondent told him the product sold was an online subscription.
13. On June 21, 2017, the applicant received from the respondent a package, which the applicant says he did not open. I infer this was a hard copy set of the online subscription materials.
14. Section 171 of the *Business Practices and Consumer Protection Act* (BPCPA) states that the Provincial Court has jurisdiction over proceedings to recover damages for failure to comply with the BPCPA. Since the tribunal has no authority to award damages under the BPCPA, this decision will decide only the contract dispute between the applicant and respondent. That said, I find it entirely appropriate to consider the provisions of the BPCPA in deciding whether the applicant is entitled to cancel the purchase and obtain a refund. This is not a case about the applicant sustaining some alleged consequential loss arising from the respondent's failure to comply with the BPCPA, in which case a claim for those damages would have to be made to the Provincial Court. Rather, this claim is about cancellation of the contract itself.
15. The applicant alleges that the respondent failed to comply with section 17 of the BPCPA, on the basis that the parties' contract was a direct sales contract or future performance contract. The applicant says that under the BPCPA, he has the right to cancel the contract within 1 year. I agree.
16. In particular, the applicant says the respondent's sale of the subscription does not comply with the BPCPA. I agree. While the applicant says he signed something, perhaps a receipt, he does not have it and the respondent did not provide him with it when the applicant asked for it. The respondent ultimately emailed the applicant that there was no contract. The material point is that I have no contract or receipt signed by either party in evidence. As noted above, all I have is the May 15, 2017 invoice and the parties' subsequent emails.

17. The respondent submits the applicant bought a “media/digital product” on May 14, 2017, which was a final sale. The respondent says the digital product was delivered to the applicant on May 14, 2017, with the receipt stating “This is a digital product”. The applicant denies this, and says the official sales receipt he received does not say “digital product” or “final sale”. The invoice does not say “final sale”. Nothing turns on whether the product was described as a digital product. What matters is that the subscription sale was a “direct sale” as defined by the BPCPA.
18. In particular, section 17 of the BPCPA defines a “direct sale” as being a contract between a seller and consumer for goods or services, where the contract is entered into in person at a place other than the seller’s permanent place of business. There are exceptions, which do not apply here. The subscription was a “direct sale”, because the seller sold it to the applicant in person at the 2-day event in Richmond, which was not the seller’s permanent place of business.
19. Sections 19 and 20 of the BPCPA set out the requirements for direct sales contracts, and thus they apply to this dispute. The respondent’s invoice failed to comply with the requirement that the agreement bear the signatures of the seller and the consumer. As noted above, there is no signed agreement or contract. Therefore, section 21 of the BPCPA, dealing with cancellation of direct sales contracts applies. It says that a consumer may cancel a direct sales contract by giving notice of cancellation to the seller no later than 1 year after the consumer receives a copy of the contract, if the contract does not meet the requirements of sections 19 and 20. I therefore find the applicant was entitled to cancel the contract, as he did so within a year.
20. I also accept the applicant’s undisputed evidence that he never used the subscription, either online or the hard copy package sent to him in June 2017.
21. I find the applicant is entitled to a refund of \$3,146.85, with pre-judgment interest under the *Court Order Interest Act* (COIA) from May 30, 2017. I find that the applicant must mail back to the respondent the package (which he says is unopened) he received in June 2017, without retaining any copy.

22. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was successful, I find he is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

23. Within 30 days of this decision, I find the respondent must pay the applicant a total of \$3,304.96, comprised of:

a. \$3,146.85 as a refund for the direct sale subscription purchase,

b. \$33.11 in pre-judgment interest under the COIA, and

c. \$125 in tribunal fees.

24. Immediately upon receipt of the refund described above, I find the applicant must by registered mail send to the respondent the package the applicant received from the respondent in June 2017, without retaining any copy.

25. 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.

26. 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

