



# Civil Resolution Tribunal

Date Issued: July 17, 2018

File: SC-2017-006660

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hendry Swinton McKenzie Insurance Services Inc. v. Adrenochrome Labs Inc.*, 2018 BCCRT 335

B E T W E E N :

Hendry Swinton McKenzie Insurance Services Inc.

**APPLICANT**

A N D :

Adrenochrome Labs Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

### INTRODUCTION AND JURISDICTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, due to the respondent's non-compliance with the tribunal's directions as required, as discussed below.

2. This dispute is about payment for insurance coverage.
3. The parties are each self-represented.
4. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. Hear the dispute in accordance with any applicable rules.
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the 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.
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.
7. For the reasons that follow, I have allowed the applicant's claim.

## ISSUES

8. The issues in this dispute are:
  - a. Should I hear the applicant's claim without the respondent's further participation, given the respondent's non-compliance?
  - b. Is the respondent required to pay the applicant \$3,409 for insurance coverage?

## EVIDENCE & ANALYSIS

### *Non-compliance*

9. My June 18, 2018 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.
10. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the case manager to contact it with a request for a reply.
11. The respondent filed its Dispute Response on November 30, 2017, which included its email address to be used for this dispute. The case manager then made the following attempts at contact:
  - a. *April 18, 2018 email:* The respondent was directed to respond by April 25 to confirm receipt of the case manager's email and to confirm participation in a scheduled facilitation teleconference. The email was returned as undelivered, so the case manager sent it to another email address listed on the

respondent's website. The case manager also telephoned the number provided in the tribunal claim documents, but the number was not in service.

- b. *May 8, 2018 email: The case manager sent the call-in information for a May 9, 2018 teleconference, and asked for a reply by email. The respondent was warned of the consequences for non-compliance.*
- c. *May 9, 2018: The respondent did not call in for the teleconference.*
- d. *May 9, 2018: The case manager emailed the respondent again, and also attempted to telephone it. The case manager then sent another email setting out a final warning for non-compliance, stating that if the respondent failed to respond, the dispute might be decided without its participation.*
- e. *May 9, 2018: The respondent's representative replied to the case manager's email final warning. He said he "had no idea", but did not explain why he did not respond to the case manager's previous emails.*
- f. *May 10, 2018 email: The case manager asked the respondent to provide valid contact information, and again set out the warning for non-compliance. The respondent did not respond.*

12. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

*Should the tribunal hear the applicant's dispute without the respondent's participation?*

13. As referenced above, the respondent filed a Dispute Response. The respondent has provided no explanation about why it failed to communicate with the tribunal as required. I find the case manager made a reasonable number of attempts to contact the respondent. The respondent was informed in writing at the beginning of the facilitation process that it must actively participate in the dispute resolution process and respond to the case manager's emails. Given that the respondent

provided its contact information on the November 2017 Dispute Response, and given that the respondent did respond to one of the May 9, 2018 emails, I find it is more likely than not that the respondent knew about the case manager's contact attempts failed to respond. In particular, the respondent failed to respond to the case manager's final email on May 10, 2018.

14. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
15. First, this dispute does not affect persons other than the named parties.
16. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process after providing a response.
17. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
18. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused

to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to it.

19. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.
20. In weighing all of the factors, I find the applicant's claim should be heard. In deciding to hear the applicant's dispute I have put significant weight on the following factors:
  - a. The extent of the non-compliance is significant;
  - b. The applicant is not prejudiced; and
  - c. The need to conserve the tribunal's resources.

#### *Insurance Payment*

21. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.
22. The applicant's claim is for payment of \$3,409 for insurance coverage. It says the respondent purchased insurance coverage in October 2015, and renewed that coverage in October 2016. The applicant says October 2016 renewal premium of \$10,054 was not paid by the respondent.
23. The applicant says that in December 2016, the respondent advised that it no longer needed the portion of the insurance that covered its US operation, so the applicant issued a credit of \$2,041, leaving an unpaid balance of \$8,013. The applicant says the respondent then paid \$1,000 toward the balance in January 2017. The applicant says that in April 2017 the respondent's policy was cancelled

for non-payment, so the insurance provider issued a credit of \$3,604. The applicant says the final outstanding balance owed by the respondent is \$3,409.

24. In its Dispute Response, the respondent said that when the applicant informed it that the October 2016 renewal premium for the insurance policy was \$10,054, they advised the applicant not to renew the policy because the rate was too high. The respondent says it did not consent to the October 2016 renewal, and did not sign any renewal forms. The respondent also said the following:
- In December 2016, the applicant sent the respondent a re-quote on the renewal premium, which included the understanding that the respondent no longer required insurance for its US Operation. The respondent advised the applicant not to renew the policy.
  - The applicant informed the respondent that the premium for insurance from October to December 2016 was owing, and said if the respondent paid \$1,000 this would cover the amount due and the account would be closed. The respondent paid \$1,000 in January 2017, but in March 2017 the applicant again said the October 2016 premium was overdue.
25. Thus, the respondent asserts that it never consented to insurance renewal, and informed the applicant in October 2016 and December 2016 not to renew their policy. However, the respondent has not provided any evidence to support those assertions. Also, the respondent's position that it did not agree to purchase insurance coverage from October to December 2016 is inconsistent with its own admission that it paid \$1,000 towards such coverage in January 2017.
26. Finally, where a respondent has failed to comply with the tribunal's directions as required, as in this dispute, an adverse inference may be drawn against that respondent. This means that if the person or organization refuses to participate, it is generally assumed that the other party's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default and the respondent's liability is assumed.

27. For the reasons set out above, and based on this assumption of liability against the respondent due to its failure to comply with the tribunal's directions, I find that the respondent is liable for \$3,409 insurance payment claimed by the applicant.
28. 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. As the applicant was successful in this dispute, I order that the respondent pay the applicant \$175 as reimbursement for tribunal fees. There were no dispute-related expenses claimed.
29. The applicant is also entitled to pre-judgment and post-judgment interest under the *Court Order Interest Act (COIA)*, as set out below in my order.

## **ORDERS**

30. I order that within 30 days of this decision, the respondent must pay the applicant a total of \$3,626.08, broken down as:
  - a. \$3,409 for insurance coverage,
  - b. \$42.08 in pre-judgment interest under the COIA, and
  - c. \$175 in tribunal fees.
31. The applicant is also entitled to post-judgment interest under the COIA.
32. 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.



33. 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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Kate Campbell, Tribunal Member