



# Civil Resolution Tribunal

Date Issued: July 23, 2018

File: SC-2017-003698

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leyland v. The Awesome Media Network Inc.*, 2018 BCCRT 355

**B E T W E E N :**

Jeff Leyland

**APPLICANT**

**A N D :**

The Awesome Media Network Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This is a dispute about payment for contractual sales services the applicant, Jeff Leyland, says he performed for the respondent, The Awesome Media Network Inc. The applicant claims \$3,000 plus GST for \$3,150, as outstanding for his April 2017 monthly retainer. 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.

## **ISSUE**

6. The issue in this dispute is whether the applicant is entitled to payment of his April 2017 monthly retainer, for the claimed amount of \$3,150.

## **EVIDENCE AND ANALYSIS**

7. 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.

8. There is no dispute that the parties' September 1, 2016 contract was for a 13-month term. It provided for a monthly retainer payment of \$3,000 plus GST, for a total of \$3,150, the amount claimed in this dispute. There is no dispute that the contract provided the monthly retainer was payable at the end of the month. There is also no dispute that the respondent did not pay the \$3,150 for April 2017.
9. The applicant says he continued to perform his duties under the contract during April 2017, and that through his efforts the respondent obtained customer leads, which resulted in sales for the respondent after April 2017. The applicant submits that the contractual obligation to pay the monthly retainer is not subject to an assessment of the services performed or sales obtained during that month. The applicant says the contract provides that sales objectives were to be measured in 4 sales periods to account for natural highs and lows of the sales cycle. The applicant says he exceeded his targets in both the first and second sales periods of the contract.
10. The respondent says the contract was that it would pay the applicant for work performed. The respondent says the applicant had 'essentially "checked out" and was looking for other work', and did not perform the work outlined in the contract for April 2017. The respondent says that if it were the applicant's employer, it would be obliged to pay him, but as he was an independent contractor the respondent's obligation was only to pay the applicant for work performed. The respondent says the applicant admits he did not do the work for the month in question, on the basis that he says his sales targets were 'above average' in the months prior to April 2017.
11. The respondent submits the applicant has failed to prove he performed his duties in April 2017, such as the number of calls or emails made as opposed to an average month. The respondent relies upon its graph, which it says shows that the applicant's sales by month illustrate that he 'checked out' and did a "minimal amount of work" during April 2017.

12. In reply, the applicant says the respondent took away his email access on April 29, 2017, 1.5 days before the end of the sales month. However, the applicant says he has confirmed with a former client that the applicant's proposal sent in early April 2017 was accepted on April 29, 2017, a sale for which the applicant says the respondent did not pay his 25% commission amounting to \$1,625. I make no finding about the \$1,625, as the applicant did not include that as part of his claims in this dispute.
13. The contract expressly states that the manner in which the services (described in the contract) are to be performed and the specific hours to be worked by the applicant will be determined by the applicant. It also states that the respondent would rely on the applicant to work as many hours as reasonably necessary. The services described include (but are not limited to): contributing input, ideas, and strategies that would lead to increased metric and income, and to provide no less than 10 inbound leads per month. The contract states the applicant's fee under the contract was \$39,000, payable in 13 monthly installments of \$3,000, on the last day of each month. In addition, the applicant was entitled to a 25% commission on any and all sales he made and managed.
14. The applicant listed 4 proposals that he sent out in April 2017 that generated sales after his email access was withdrawn. I agree with the applicant that the contract does not stipulate the number of sales he must generate. The applicant says his monthly sales objective was \$9,000 per month and that his average monthly sales were \$9,449.13 per month from September 2016 to April 2017. In response, the respondent's evidence consists of a graph it drew showing the applicant's sales for April 2017 were \$1,000, when other months ranged from \$3,400 to \$19,185.
15. On balance, I prefer the applicant's evidence. It is more detailed and in line with the parameters of the parties' contract. I do not accept the respondent's suggestion that the applicant had any obligation to prove the number of calls or emails he made during a month. The contract simply does not require that. The contract also supports the applicant's position that the \$3,000 monthly retainer was

an averaged installment of the overall \$39,000 figure. It was expected that there would be fluctuation month to month in terms of output and sales generated. The contract allows for termination before the 13-month term ended, on 30 days written notice. There is no suggestion before me that the applicant failed to give adequate notice.

16. I find the applicant is entitled to payment of \$3,150 as claimed, under the parties' contract. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was successful, I find he is not entitled to reimbursement of the \$175 he paid in tribunal fees.

## **ORDERS**

17. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$3,360.99, comprised of:
  - a. \$3,150 as payment for the applicant's April 2017 services,
  - b. \$35.99 in pre-judgment interest under the *Court Order Interest Act* (COIA), from April 30, 2017, and
  - c. \$175 in tribunal fees.
18. The applicant is entitled to post-judgment interest under the COIA, as applicable.
19. 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.
20. 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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Shelley Lopez, Vice Chair