



Civil Resolution Tribunal

Date Issued: September 11, 2018

File: SC-2017-005494

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *KLAVER v. Lucy De Pieri doing business as Serenity Homeopathic Clinic*,
2018 BCCRT 510

B E T W E E N :

ANDREA KLAVER

APPLICANT

A N D :

Lucy De Pieri doing business as Serenity Homeopathic Clinic

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a dispute about payment for homeopathic remedies. The applicant, ANDREA KLAVER¹, says the respondent, Lucy De Pieri doing business as Serenity Homeopathic Clinic, sold her remedies for herself and her children that did not work as promised.
2. The applicant seeks a refund of \$5,000 paid to the respondent for treatments.
3. The respondent says that while she treated the applicant and her children, she did not offer a guaranteed cure.
4. Both parties are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the

¹ Reproduced as written on the Dispute Notice.

documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. 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

9. The issue in this dispute is whether the respondent must pay the applicant a refund for homeopathic treatments.

EVIDENCE AND ANALYSIS

10. 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.

Breach of Contract

11. The applicant says the respondent told her repeatedly that she had the cure for her family's problems. The applicant says that if the respondent had not made those statements, she would not have continued to pay for treatments. The

respondent says that in the case of any medical treatment, including homeopathy, the applicant pays for the services performed, not for a specific outcome.

12. The relationship between a patient and a practitioner is contractual. A practitioner is under an implied contractual obligation to exercise reasonable care and skill: Ellen I. Picard & Gerald B Robertson, *Legal Liability of Doctors and Hospitals in Canada*, 4th ed., (Toronto: Carswell, 2007) at para. 433.
13. If a physician guarantees a specific outcome for a treatment or procedure, they may be found in breach of contract if the guarantee is breached. For example, in *Mok v Wong*, [1996] OJ No. 1971, a plaintiff sued a plastic surgeon for failing to improve her appearance. In *Mok*, the plaintiff did not succeed because the court found that even if the surgeon indicated to the plaintiff that he could improve her appearance, this was not a guarantee, but merely an expression of opinion, or a prediction of the probable outcome of the surgery. The court said that the fact that “the wish does not come true” does not impose contractual liability.
14. The respondent says the applicant had some benefit from the treatments, and that she never guaranteed a cure. She says she never uses the word “cure” with any of her patients.
15. The evidence provided by the applicant indicates that she and her daughters have complex conditions and symptoms. The burden of proof is on the applicant in this dispute, and I find she has not established that the respondent guaranteed a full cure for the applicant and her two daughters.
16. Also, I place significant weight on the “Informed Consent to Homeopathic Care” form signed by the applicant on October 17, 2016. That form sets out the respondent’s rates, and states that the applicant understood the respondent is not a licensed medical doctor, and that it was the applicant’s responsibility to seek medical diagnosis and advice for her present and future conditions. The form also said the applicant understood that there were some very slight risks to treatment, including aggravation of complaints. I find that this form supports the conclusion

that the respondent did not guarantee a cure, or even a positive treatment outcome.

17. The applicant also says the respondent charged too much compared to other homeopathic practitioners. However, I find she is not entitled to a remedy on that basis because she agreed to the respondent's prices at the time of treatment.

Negligence

18. All medical professionals owe a duty of care to their patients. The standard of care is that which conforms to the recognized practices of the profession. Thus, the standard of care applicable to this dispute is the standard of a competent homeopath.
19. I find the applicant has not established that the respondent failed to meet this standard.
20. The applicant says she did internet research on dispensing homeopathic remedies, and learned that the treatments provided by the respondent were incorrect and excessive. The applicant's submissions and evidence included passages taken from websites.
21. I place no weight on the applicant's opinion about correct homeopathic treatment because she is not a medical expert, and provided no expert evidence to support her submissions. I find the website information she provided unpersuasive because it was incomplete, the full website addresses were not provided, and the information does not take into account the specific symptoms of the applicant and her children, and the treatments provided by the respondent. Rather, it is general information presented without context. It does not provide a reasoned opinion about the symptoms and treatments of the applicant, or her children.
22. While the evidence shows the applicant was disappointed with the outcome of the respondent's treatments, she has not provided persuasive evidence, such as the

opinion of a qualified expert in medicine or homeopathy, that the respondent's treatments did not meet the standard of care for a professional homeopath.

23. For all of these reasons, I find the applicant is not entitled to a refund for homeopathic treatments provided by the respondent.
24. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I do not order reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDERS

25. I dismiss the applicant's claim and this dispute.

Kate Campbell, Tribunal Member