



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fettback et al v. Yong*, 2018 BCCRT 571

B E T W E E N :

Mark Fettback as partner in Vitality Dance Company and Suzanne
Fettback as partner in Vitality Dance Company

APPLICANTS

A N D :

Kristin Yong

RESPONDENT

A N D :

Mark Fettback as partner in Vitality Dance Company and Suzanne
Fettback as partner in Vitality Dance Company

RESPONDENTS BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for dance lessons.
2. The applicants, Mark Fettback as partner in Vitality Dance Company and Suzanne Fettback as partner in Vitality Dance Company (the Fettbacks), say the respondent owes \$651.03 for unpaid dance lessons and costumes for her daughters, N and F. The Fettbacks also seek payment of \$1,938 for dispute-related expenses.
3. The respondent, Kristin Yong, says the fees claimed by the Fettbacks are for classes and examinations her daughters did not take.
4. In her counterclaim Ms. Yong says N was wrongfully terminated from the Fettbacks' dance company, and that the Fettbacks' withdrew her daughters from dance competitions without her agreement after fees were paid. She seeks \$4,633.41 in refunds and reimbursements for services and fees she says she paid for that were not performed as agreed.
5. The parties are self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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, she 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 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

8. 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.
9. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Must Ms. Yong pay the Fettbacks \$651.03 for dance lessons and costumes?
 - b. Must the Fettbacks reimburse Ms. Yong for services not provided as agreed, and if so, in what amount?

- c. Must Ms. Yong reimburse the Fettbacks \$1,938 for dispute-related expenses?

BACKGROUND

11. N and F attended the dance school operated by the Fettbacks. N was enrolled in the Company Program, which involved competing in dance competitions and preparing to take the Royal Academy of Dance (RAD) examination. F was enrolled in the Pre-Competitive Program, which involved competing in dance competitions.
12. Around February 2017, the Fettbacks dismissed their RAD-qualified ballet teacher, Ellen Kim.
13. The Fettbacks' daughter, Angel Fettback, was a co-owner and artistic director of the business. On March 21, 2017, she sold her share of the business to the Fettbacks. Angel continued to teach and work at the Fettbacks' business for some period of time after that date. Her resignation was officially announced to parents by Mr. Fettback in an April 18, 2017 email.
14. The evidence shows that after Ms. Kim's dismissal, there was conflict between Mr. Fettback and some parents, including Ms. Yong. The emails provided in evidence show that some parents were concerned that Fettbacks did not have a RAD-qualified ballet teacher to prepare their children for upcoming RAD examinations. Some parents, including Ms. Yong, sent their children to private lessons or lessons at other dance schools.
15. On April 1, 2017, Ms. Yong emailed the Fettbacks to give 1 month of notice that all of her daughters' dance classes would be terminated by May 7, 2017.
16. On April 4, 2017, Mr. Fettback emailed Ms. Yong and said N had been removed from the Company Program "for not meeting the required classes set out".

17. The Fettbacks provided a copy of a Company Dance Program contract signed by Ms. Yong and N on September 6, 2016. The contract includes the following provisions:

- Dancers who do not meet the expectations set out in the contract will be asked to leave the Company Program.
- Dancers who miss 3 or more days of class per term for non-medical reasons would be asked to leave the program, at the directors' discretion.
- No refunds for costumes or competition fees will be given to dancers asked to leave the program.

EVIDENCE AND ANALYSIS

18. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means that the Fettbacks bear the burden of proving their claims, and Ms. Yong must prove her counterclaims. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

19. The Fettbacks say Ms. Yong owes \$651.03 for unpaid invoices. There are separate invoices for F and N, which I will deal with in turn.

F Invoice

20. The May 6, 2017 invoice for F shows an outstanding charge of \$123.75 for a mini jazz costume, plus a \$20 late account fee, for a total of \$143.75.

21. Angel Fettback provided a signed statement. She said Ms. Yong should not be charged for the mini jazz costume. Angel said she taught the class for which the costume was ordered, and she asked F at the last minute to appear in a performance as understudy for another student, S. Angel says S's costume was re-sized to fit F, and later a new costume was ordered for S, which was charged to F.

22. The Fettbacks agree that F was not registered in the class for which the costume was ordered. However, they say they did not approve of the decision to place F as understudy, or the requested costume alteration, so Ms. Yong must pay for it.
23. I find that the Fettbacks' approval was not required, as it was approved by Angel, who was teaching the class in question. Since F was not in the class and was essentially asked to be in the performance as a favour, I find it was unreasonable to charge her mother for the costume. I therefore find Ms. Yong is not responsible to pay the \$143.75 on F's invoice for the costume or the corresponding late fee.
24. Mr. Fettback provided a photo of F wearing what he says is the disputed costume in May 2017. While I accept that F kept the costume, I still find it was not reasonable to charge Ms. Yong for a costume that neither she nor her daughter asked for, as set out above. I also note there is no evidence that F or Ms. Yong were asked to return it.

N Invoice

25. The May 6, 2017 invoice for N shows a total of \$507.28 in outstanding charges. These charges are: \$240.40 for April 2017 tuition fees, \$50 for private "solo" classes, \$196.88 for a ballet exam, and a \$20 late account fee. I will deal with these charges in turn.

\$240.40 for April 2017 Tuition

26. On April 4, 2017, Mr. Fettback emailed Ms. Yong and said N had been removed from the Company Program. Ms. Yong says that by April 1, 2017 N was only signed up for Company Program classes, so since N was removed from the Company Program on April 4, 2017, she should not have to pay for services that were not provided.
27. I agree with Ms. Yong's submission on this point. She had originally emailed and said her daughters would withdraw on May 7, 2017. Mr. Fettback chose to remove N from the Company Program on April 4, 2017. The Fettbacks were therefore not

entitled to N's tuition for April 2017, as they decided she could not take the Company Program classes.

\$50 for Private "Solo" Classes

28. According to the invoice, Ms. Yong owed \$50 for a private "solo" class on March 24, 2017. The invoice shows that the class was originally billed at \$57.75, but the Fettbacks credited toward the bill from a cheque Ms. Yong provided on April 10, 2017.
29. Ms. Yong says she does not remember the class, and the Fettbacks have not provided evidence to establish who taught the class or that N took it. Ms. Yong says Angel was N's solo teacher, but in a May 3, 2017 email, Angel said that to confirm that the class happened she would need to see the teacher's logbook.
30. I agree that the Fettbacks have not provided evidence, such as a logbook entry, establishing that N took a solo class on March 24, 2017. They have not indicated the name of the teacher or the time of the lesson. Without such particulars, I find the Fettbacks have not proven their claim for \$50. While they provided a computer printout showing the 1 hour lesson, it was created by Mr. Fettback rather than a teacher, and was not signed or endorsed by N or Ms. Yong. Without any supporting evidence, I find the printout unpersuasive.

\$196.88 Ballet Exam Costs

31. The RAD examination was held on April 23, 2017. N did not attend the examination. The Fettbacks say they registered N and paid her examination fee in January 2017, and the fee is not refundable so Ms. Yong must pay it.
32. Ms. Yong says she never received written notification of the examination, and she had no reasonable expectation that the Fettbacks would provide an examination after N was removed from her program.

33. The September 6, 2016 contract signed by Ms. Yong has a section on examinations. It says that all students in the Company Program will work towards examinations, but taking the examinations is not mandatory. It says that students are responsible for all examination fees. It also says attendance at mock examinations is mandatory. The Fettbacks also provided an email from RAD confirming that there are no refunds for cancelled examinations.
34. In her January 1, 2018 statement, Angel said that after ballet teacher Ms. Kim was dismissed and Ms. Yong raised concerns about whether the replacement teacher was RAD-qualified, Mr. Fettback agreed that N and some other students could continue training with Ms. Kim at another dance studio. According to Angel, Mr. Fettback said he would work with these students and their parents to arrange mock examinations for practice, which are recommended by RAD. Angel said Mr. Fettback did not arrange mock examinations, and parents were not given written information about the examination.
35. I place significant weight on this evidence from Angel, as she was present during the relevant discussions and has knowledge of the RAD examination requirements. Based on her evidence, I find it is not reasonable for the Fettbacks to charge for N's examination fee, as it was their actions (firing the ballet teacher and failing to arrange mock examinations) that led to the situation where N did not attend the examination. While I find written notice of the examination was not required, given that the examination was held at the Fettbacks' premises, I agree that Ms. Yong reasonably assumed that N would not be allowed to participate. In making this finding, I note that N had been removed from the examination training program (Company Program) and had received no further communication indicating that she would be allowed to take the examination.
36. For these reasons, I find that Ms. Yong is not liable to pay any of the charges on N's invoice. For that reason, she is also not required to pay the \$20 late account fee.

Counterclaim

37. In her counterclaim, Ms. Yong seeks reimbursement for \$4,717.41 in past charges paid to the Fettbacks, as well as costs associated with cancelled dance competitions. I deal with these claims in turn.

\$2,249.36 for Dance Classes

38. Ms. Yong did not provide particulars to support this claim, other than her assertion that the Fettbacks breached their contract by preventing N from participating in dance competitions and the RAD examination. She says the Fettbacks should therefore provide a refund for past classes.
39. I do not agree. N took the disputed classes before the relationship between the parties broke down. The classes were provided and paid for in accordance with the contract that was in place at that time. Therefore, I find Ms. Yong is not entitled to a refund for past classes.

\$1,026.70 for Dance Competition Costs

40. Ms. Yong says she is entitled to reimbursement for \$1,026.70 for dance competition and choreography fees related to 2 dance competitions. She says she paid these fees in advance and Mr. Fettback did not allow N to participate by removing her from the Company Program.
41. I find that Ms. Yong is entitled to this reimbursement. Mr. Fettback says N was removed from the Company Program because she was no longer attending the mandatory classes. I agree that the September 6, 2016 contract requires such class attendance. However, in her January 2018 statement, Angel says Mr. Fettback and Ms. Yong reached a verbal agreement, in front of other parents, that N could maintain her training through lessons at other studios and with Angel, and could continue group competition classes at the Fettbacks' school. Angel said she and Mr. Fettback approved this plan, so she was confused by Mr. Fettback's

decision to remove N from the Company Program for not meeting the class requirement.

42. Mr. Fettback disputes this evidence, and says he did not agree to the alternate training plan. However, I am more persuaded by the evidence of Angel and Ms. Yong, as it is consistent, specific, and was provided in writing closer to the time of the events in question. Ms. Yong set out her understanding of that agreement in an April 5, 2017 email.
43. Based on this evidence from Angel, I find that Mr. Fettback was not justified in removing N from the Company Program. I note that the September 16, 2016 contract says that such removal is discretionary, and Angel said other less compliant students than N were not removed.
44. Since it was Mr. Fettback's decision to remove N from the Company Program that led to her not being able to participate in the prepaid competitions, I find Ms. Yong is entitled to a refund of the associated competition and choreography fees in the amount of \$1,026.70.

\$421 for Dance Competition Fees

45. Ms. Yong also claims \$421 for costume and entry fees for dance competitions that Mr. Fettback enrolled and then withdrew N's group from.
46. Again, I rely on Angel's January 2018 and find that the Fettbacks must reimburse Ms. Yong for these fees. Angel wrote that the competitions were taken away from the dancers without notice, and at the cost of the parents. She said the dancers were withdrawn by Mr. Fettback without their knowledge, and for unclear reasons. She said the competition organizers did not want to remove the dancers, but Mr. Fettback insisted.
47. Based on this evidence, I find that Mr. Fettback must reimburse Ms. Yong \$421 for cancelled dance competition costs.

48. Ms. Yong also claims \$635 for travel and other costs incurred to attend an alternate competition. She says that if Mr. Fettback had allowed N's group to compete in the original completion, they would not have incurred these costs.
49. I find Ms. Yong is not entitled to reimbursement for alternate competition costs. She did not provide receipts to support the claimed costs, and there is no indication that the competition was mandatory. I note that it occurred in May 2017, after Ms. Yong's contract with the Fettbacks had ended, so N was not contractually required to participate.

\$200 for Private Dance Lessons

50. Ms. Yong claims \$200 reimbursement for private ballet classes with Ellen Kim, after Ms. Kim was dismissed by the Fettbacks.
51. The evidence shows that Ms. Yong and some other parents were concerned when Ms. Kim was dismissed because Mr. Fettback did not provide a RAD-qualified or certified instructor to replace her. The January 17, 2018 email from RAD says that only a RAD-registered teacher can enter students for examinations. The email said that Mr. Fettback's replacement teacher was not RAD-registered, so RAD persuaded Ms. Kim to leave her name on the examination entry so the students could take the examination.
52. The evidence before me indicates that due to this solution created by RAD, 4 of the Fettback's students were able to take and pass the RAD examination in April 2017. There is no evidence that these students paid for additional private dance lessons. While Ms. Yong's decision to pay for private lessons was understandable, it was optional rather than mandatory. For that reason, I find that Ms. Yong is not entitled to reimbursement for private lessons.

\$73 for Workshops

53. Ms. Yong says she was overcharged \$25 for 1 dance workshop, and should be reimbursed \$48 for workshops that were not provided.

54. I find Ms. Yong is entitled to the \$25 reimbursement for the overcharged workshop. She provided an invoice showing that she was charged \$175 for a workshop on October 2, 2016, but the Company Program Welcome Package says the workshop charge was \$150.
55. Regarding the \$48 for missed workshops, while I agree that N missed scheduled workshops, I cannot see from the provided invoices that Ms. Yong was charged for these. I therefore do not order this reimbursement.

\$28.35 for Ballet Skirts

56. Ms. Yong's invoices show she was charged \$28.35 for ballet skirts. In an April 22, 2017 email to Mr. Fettback, she authorized another parent to pick up the skirts for her. Mr. Fettback did not appear to respond to this email or provide the skirts. He says the skirts were handed out in class, but he does not say when. Ms. Yong's email indicates that this occurred after her daughters were no longer attending classes.
57. From the evidence, I conclude that Ms. Yong did not receive the skirts. I therefore find she is entitled to reimbursement of \$28.35 for the skirts.

Summary

58. In summary, Ms. Yong is entitled to reimbursement of \$1,447.70 for missed dance competitions, \$25 for a workshop overcharge, and \$28.35 for ballet skirts. This equals \$1,501.05. Ms. Yong is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA), as set out in my order below.
59. The Fettbacks seek \$1,938 for dispute-related expenses, including debt collection fees and legal fees.
60. The tribunal's rules provide that the successful party is generally entitled to reimbursement of dispute-related expenses. The Fettbacks were not successful in

this dispute, so I find they are not entitled to reimbursement of dispute-related expenses.

61. Also, as set out in the tribunal's rules, the tribunal generally does not order reimbursement of legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, so I would not order reimbursement of legal fees in any event.
62. The Fettbacks and Ms. Yong each seek reimbursement of tribunal fees. The tribunal's rules provide that the successful party is generally entitled to reimbursement of tribunal fees. Ms. Yong was substantially successful, so I order that the Fettbacks reimburse Ms. Yong \$125 for tribunal fees.

ORDERS

63. I order that within 30 days of the date of this decision, the Fettbacks pay Ms. Yong a total of \$1,648.25, broken down as follows:
 - a. \$1,501.05 as reimbursement of invoiced fees,
 - b. \$22.20 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
64. Ms. Yong is also entitled to post-judgment interest under the COIA.
65. 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.
66. 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.

Kate Campbell, Tribunal Member