



Civil Resolution Tribunal

Date Issued: October 1, 2018

File: SC-2017-005840

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fettback et al v. Rooney*, 2018 BCCRT 572

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 :

Shannon Rooney

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 and related fees.
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 \$196.88 for unpaid dance lessons and dance examinations for her daughter L, plus a \$20 late payment fee.
3. The respondent, Shannon Rooney, says she is not obligated to pay because she had no reasonable expectation that she would have received the services.
4. In her counterclaim Ms. Rooney says the Fettbacks breached their contract by failing to provide agreed-upon services. She says the Fettbacks failed to provide a Royal Academy of Dance (RAD) certified ballet teacher, and withdrew L from dance competitions without notice. She seeks \$3,764.31 in compensation and reimbursements.
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. Rooney pay the Fettbacks \$196.88 for dance lessons and a dance examination?
 - b. Must the Fettbacks reimburse Ms. Rooney for services not provided as agreed, and if so, in what amount?

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

BACKGROUND

11. Ms. Rooney's daughter L attended the dance school operated by the Fettbacks. L was enrolled in the Company Program, which involved competing in dance competitions and preparing to take the RAD examination in April 2017.
12. Around February 2017, the Fettbacks dismissed their RAD-qualified ballet teacher, Ellen Kim.
13. The evidence shows that after Ms. Kim's dismissal, 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. Rooney, sent their children to private lessons or lessons at other dance schools.

EVIDENCE AND ANALYSIS

14. 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. Rooney must prove her counterclaims. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

\$196.88 for Unpaid Fees

15. The Fettbacks say Ms. Rooney owes \$196.88, plus a \$20 late fee. Their May 6, 2017 invoice shows a March 24, 2017 charge of \$196.88 for ballet exam costs.
16. The RAD examination was held on April 23, 2017. L did not attend the examination. The Fettbacks say they registered L and paid her examination fee in January 2017, and the fee is not refundable so Ms. Rooney must pay it.

17. Ms. Rooney says she received no notice of the examination. However, I find that she was provided sufficient information that L could have attended the examination. The Fettbacks provided a copy of an April 14, 2017 email stating that the examination would occur on April 23, and that the examination time would be provided after payment was received.
18. In early April 2017, Ms. Rooney had extensive email correspondence with Mr. Fettback regarding the RAD examination. She expressed her opinion that it was better for L to train with the old ballet teacher, Ms. Kim, rather than to “cross train” with a new teacher in the months before the examination. On April 2, 2017, Ms. Rooney asked Mr. Fettback to provide the date and time of the examination, as well as the name of the examination pianist. She repeated this request on April 3, 2017, stating that she needed this information to make plans. On April 4, 2017, Ms. Rooney wrote that Mr. Fettback had made it almost impossible to arrange a mock examination, as his teacher was not RAD-certified.
19. In a February 22, 2017 email provided in evidence, a RAD employee confirmed that the Fettback’s replacement ballet teacher was not registered with RAD, and therefore could not enter students for the RAD examination.
20. Ms. Rooney emailed Mr. Fettback again on April 13, 2017. She stated that Mr. Fettback had still not provided the requested information about the RAD exam, and it was now too late to successfully arrange a mock examination. She said these actions represented a breach of the Fettbacks’ contractual obligations.
21. Mr. Fettback sent an April 14, 2017 stating that the exam time would be provided after all fees were paid.
22. Based on this evidence, I find that the Fettbacks are not entitled to collect the \$196.88 exam fee, or the associated late payment fee. It was unreasonable to withhold the examination time and pianist’s name, particularly since Ms. Rooney’s emails specified that she needed that information in order to properly prepare L to pass the examination. I find her decision not to have L attend the examination was

reasonable in that circumstance, particularly given that she was never provided the examination time. The invoices show that Ms. Rooney paid over \$6,000 in fees to the Fettbacks in a timely manner in 2016 and 2017, so it was unreasonable for them to withhold the examination time based on a single outstanding payment of \$196.88.

23. For these reasons, I find that Ms. Rooney is not obligated to pay the \$196.88 exam fee or the \$20 late fee

Counterclaim

24. In her counterclaim, Ms. Rooney seeks reimbursement of \$3,764.31 in past charges paid to the Fettbacks and costs associated with cancelled dance competitions. I deal with these claims in turn.

\$1,984.23 for Past Tuition

25. Ms. Rooney says the Fettbacks breached their contract of service by preventing L from participating in dance competitions and the RAD examination. She says the Fettbacks should therefore provide a refund for past classes.
26. I do not agree. While I accept that there was conflict between the parties after Ms. Kim was dismissed, Ms. Rooney chose to keep L enrolled while at the same time sending her to private lessons with Ms. Kim. In her April 2017 emails to Mr. Fettback, she said she had planned to return L to class after she finished training for the RAD exam with Ms. Kim. The relationship between the parties broke down and ended after that. I find Ms. Rooney is not entitled to a retroactive refund on that basis. In making that finding, I note that although the June 9, 2016 program contract she talked about described competitions and the RAD exam, the contract contains no guarantees that students will participate in these events.
27. For these reasons, I find Ms. Rooney is not entitled to a refund for past tuition.

\$200 for Private Dance Lessons

28. Ms. Rooney claims \$200 reimbursement for private ballet classes with Ms. Kim. I find that Ms. Rooney is not entitled to this reimbursement, for the same reasons she is not entitled to a retroactive refund for tuition. While Ms. Rooney's decision to pay for private lessons was understandable, it was optional rather than mandatory. The Fettbacks were not contractually obligated to provide a specific teacher, or a teacher with a specific certification. For that reason, I find that Ms. Rooney is not entitled to reimbursement for private lessons.

\$983.60 for Dance Competition Costs

29. Ms. Rooney says she is entitled to reimbursement of \$983.60 for dance competition and choreography fees related to 2 dances competitions. She says she paid these fees in advance and Mr. Fettback did not allow L to participate.
30. I find that Ms. Rooney is entitled to this reimbursement. The emails provided in evidence indicate that L's performances at 2 separate competitions were cancelled with short notice, largely due to conflicts between Mr. Fettback and other parents about unpaid fees and other aspects of their participation in the dance program. While the Fettbacks and the dance competitions all have policies precluding fee refunds, the evidence before me indicates that it was Mr. Fettback's decision to cancel L's participation for reasons not in her control, or that of Ms. Rooney.
31. For example, in a January 1, 2018 letter, Angel Fettback, Mr. Fettback's daughter and the former artistic director of the dance school, wrote that Mr. Fettback removed L from 2 competitions. She said L was removed with no notice, at the cost of her parents. She said L was removed for unclear reasons, and while the competitions did not want to remove L and the other children, Mr. Fettback insisted.
32. For these reasons, I find that Ms. Rooney is entitled to reimbursement of \$983.60 for competition fees, costumes, and choreography.

33. Ms. Rooney also claims \$596.48 for travel and other costs incurred to attend an alternate competition. She says that if Mr. Fettback had allowed L to compete in the original completions, she would not have incurred these costs.
34. I find Ms. Rooney is not entitled to reimbursement for alternate competition costs. While it was understandable that Ms. Rooney wanted L to compete again, the alternate completion was not mandatory. I also note that it occurred in May 2017, after Ms. Rooney's contract with the Fettbacks had ended, so L was not contractually required to participate, and the Fettbacks are not required to pay.

Counterclaim Summary

35. In summary, Ms. Rooney is entitled to reimbursement of \$983.60 for missed dance competitions. She is also entitled to pre-judgment interest on this amount, under the *Court Order Interest Act* (COIA), as set out in my order below.
36. The Fettbacks seek \$1,938 for dispute-related expenses. 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. However, I would not order most of the claimed expenses in any event. \$1,800 of the claimed amount was claimed as the cost of expert reports, but no expert reports were provided in evidence. What the Fettback's cite as an expert report is actually legal fees. 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 even if the Fettbacks' claims had succeeded.
37. The Fettbacks and Ms. Rooney each seek reimbursement of tribunal fees. The tribunal's rules provide that the successful party is generally entitled to reimbursement of tribunal fees. Ms. Rooney was partially successful, so I order that the Fettbacks reimburse \$125 she paid in tribunal fees.

ORDERS

38. I order that within 30 days of the date of this decision, the Fettbacks pay Ms. Rooney a total of \$1,123.03, broken down as follows:
- a. \$983.60 as reimbursement for missed competitions,
 - b. \$14.43 in pre-judgment interest under the *Court Order Interest Act* (COIA),
and
 - c. \$125 for tribunal fees.
39. Ms. Rooney is also entitled to post-judgment interest under the COIA.
40. I order that the Fettbacks' dispute is dismissed.
41. 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.
42. 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