



Civil Resolution Tribunal

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File: SC-2017-005891

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fettback et al v. Mason*, 2018 BCCRT 573

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 :

Carol Mason

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 \$281.02 for unpaid dance lessons and a dance costume for her daughter G.
3. The respondent, Carol Mason, says she is not obligated to pay because the Fettbacks withdrew their services without a refund.
4. In her counterclaim, Ms. Mason says the Fettbacks breached their contract by withdrawing or failing to provide agree-upon services. She says the Fettbacks failed to provide a Royal Academy of Dance (RAD) certified ballet teacher, and withdrew G from dance competitions without notice. She seeks \$4,284.51 in compensation and reimbursements. She also seeks \$697.49 for mental stress she says she and G suffered due to the Fettbacks' actions.
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. Mason pay the Fettbacks \$281.02 for dance lessons and costume fees?
 - b. Must the Fettbacks reimburse Ms. Mason for services not provided as agreed, and if so, in what amount?

- c. Is Ms. Mason entitled to an award of damages for mental stress, or mental stress suffered by daughter G?
- d. Must Ms. Mason reimburse the Fettbacks \$1,938 for dispute-related expenses?

BACKGROUND

- 11. Ms. Mason's daughter G attended the dance school operated by the Fettbacks. G 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. Mason, sent their children to private lessons or lessons at other dance schools.
- 14. In an April 9, 2017 letter to Mr. Fettback, Ms. Mason said G would be withdrawing from the dance company and studio as of May 7, 2017, after competitions were over. She said G would continue to participate in her classes at the studio for the month of April.

EVIDENCE AND ANALYSIS

- 15. 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. Mason must prove her counterclaims. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

\$281.02 for Unpaid Fees

16. The Fettbacks say Ms. Mason owes \$281.02. Their May 6, 2017 invoice shows the following unpaid charges:
- \$211 for April 2017 tuition
 - \$28.88 for a March 29, 2017 private solo class
 - \$21.12 for costume alterations
 - \$20 late payment fee
17. Ms. Mason said she paid \$200 in cash for April 2017 tuition, but without her consent the Fettbacks applied it to a \$196.88 ballet exam fee. The invoice is consistent with this assertion, as it shows 3 small payments on March 22, 2017 attributed to ballet exams, even though the ballet exams were not added to the invoice until March 25, 2017. This establishes that the Mr. Fettbacks retroactively attributed some of those March 2017 payments to the ballet exam fee. This is confirmed in a January 1, 2018 letter from Angel Fettback, the former artistic director of the dance studio (and Mr. Fettback's daughter).
18. As previously noted, the Fettbacks bear the burden of proving their claim for the outstanding invoice amounts. As the evidence shows that the May 6, 2017 invoice is inaccurate, I find Ms. Mason is not obligated to pay it, or the associated \$20 late fee. While it may be that Ms. Mason owed some amount for outstanding charges, the Fettbacks have not provided an accurate invoice that would allow me to assess such charges, and therefore have not proven their claim.

Counterclaim

19. In her counterclaim, Ms. Mason seeks reimbursement of \$4,014.51 in past charges paid to the Fettbacks and costs associated with cancelled dance competitions. I deal with these claims in turn.

\$2,309.75 for Past Tuition

20. Ms. Mason says the Fettbacks breached their contract of service by not meeting goals and objectives. However, while the July 2016 contract Ms. Mason signed set out requirements for parents and dancers, I find it did not set out corresponding requirements for the Fettbacks. While I accept Ms. Mason's evidence that the 2017 dance season was frustrating and upsetting for her and her daughter, I do not find that the Fettbacks breached their contract in such a way as to justify a retroactive refund for past classes that G attended.
21. G 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. Mason is not entitled to a refund for past classes.

\$200 for Private Dance Lessons

22. Ms. Mason claims \$200 reimbursement for private ballet classes with Ms. Kim, as the new ballet teacher provided by the Fettbacks was not registered with RAD (as confirmed in an email from RAD). I find that Ms. Mason is not entitled to this reimbursement, for the same reasons she is not entitled to a retroactive refund for tuition. While Ms. Mason'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. Mason is not entitled to reimbursement for private lessons.

\$72 for Company Workshops

23. Ms. Mason seeks a refund of \$73 because she paid \$175 for a series of dance workshops for G. She says some of the workshop notifications came too late, so the workshops were missed, and 1 workshop was not held.

24. Ms. Mason has not provided dates or particulars to support this claim, so I do not order this reimbursement.

\$1,302.76 for Dance Competition Costs

25. Ms. Mason says she is entitled to reimbursement of \$1,302.76 for dance competition fees, solo lesson and choreography fees, and costume fees related to 2 dances competitions. She says she paid these fees in advance and Mr. Fettback did not allow G to participate, contrary to Ms. Mason's wishes.
26. I find that Ms. Mason is entitled to this reimbursement. The emails provided in evidence indicate that G'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. For example, in an April 18, 2017 email, Mr. Fettback said he was pulling dance groups from a competition the next day because his daughter Angel had resigned, some students had withdrawn from the dance company, some students were taking classes at other dance studios, and some accounts were not paid in full.
27. In a January 1, 2018 letter, Angel Fettback wrote that Mr. Fettback removed G and other students from dance competitions with no notice, and at the cost of their parents. She said the reasons for this were unclear, and while the competitions did not want to remove L and the other children, Mr. Fettback insisted.
28. 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 G's participation for reasons not in her control, or that of Ms. Mason.
29. For these reasons, I find that Ms. Mason is entitled to reimbursement of \$1,302.76 for competition fees, solo lessons, costumes, and choreography related to dance competitions.

30. Ms. Mason also claims \$400 for travel and other costs incurred to attend an alternate competition. She says that if Mr. Fettback had allowed G to compete in the original completions, she would not have incurred these costs.
31. I find Ms. Mason is not entitled to reimbursement for alternate competition costs. First, she has not provided receipts or invoices to support these costs. Second, while it was understandable that Ms. Mason wanted G to compete again, the alternate competition was not mandatory. I also note that the competition in question occurred in May 2017, after Ms. Mason's contract with the Fettbacks had ended. This means that G's participation was not contractually required to participate, and the Fettbacks are not required to pay.

Damages for Mental Stress

32. Ms. Mason claims \$697.49 as damages for mental stress suffered by herself and G. Damages for mental distress are only awarded where there is independent evidence of the harm. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224., which I find helpful although it is not a binding precedent, where there is no medical evidence about mental distress, the claim must be dismissed.
33. Ms. Mason did not provide any medical evidence to support her claim. I therefore do not order damages for mental stress.

Summary

34. In summary, I find that Ms. Mason is entitled to reimbursement of \$1,302.76 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.
35. 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.

36. The Fettbacks and Ms. Mason each seek reimbursement of tribunal fees. The tribunal's rules provide that the successful party is generally entitled to reimbursement of tribunal fees. Ms. Mason was partially successful, so I order that the Fettbacks reimburse \$125 she paid in tribunal fees.

ORDERS

37. I order that within 30 days of the date of this decision, the Fettbacks pay Ms. Mason a total of \$1,446.88, broken down as follows:
 - a. \$1,302.76 as reimbursement for missed competitions,
 - b. \$19.12 in pre-judgment interest under the COIA, and
 - c. \$125 for tribunal fees.
38. Ms. Mason is also entitled to post-judgment interest under the COIA.
39. The Fettbacks' dispute is dismissed.
40. 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.

41. 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