



Civil Resolution Tribunal

Date Issued: February 26, 2019

File: SC-2018-000751

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hamakawa v. Karma Teachers et al*, 2019 BCCRT 227

B E T W E E N :

Aro Hamakawa

APPLICANT

A N D :

Karma Teachers and Emerson Lim

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Aro Hamakawa signed up for yoga teacher training at the respondent Karma Teachers, through communications with the respondent Emerson Lim. The applicant paid \$3,500. The applicant was able to attend only 9 out of 22 sessions. The applicant says that the respondents owe her a refund of \$1,772.27, according to the cancellation clause in the yoga teacher training agreement.

2. The respondent Karma Teachers says the respondent Emerson Lim was never authorized to act as their agent, and says it is not bound by any agreement Mr. Lim entered with the applicant. The respondent Karma Teachers says Mr. Lim took the applicant's money, personally.
3. The respondent Mr. Lim was served with the Dispute Notice but did not file a Dispute Response. He was Karma Teachers' founder and, as discussed below, their agent at all material times in this dispute.
4. The applicant is self-represented. The respondent Karma Teachers is represented by corporate principal or employee Andrew Fredericks.

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 118 of the *Civil Resolution Tribunal 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. 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.
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 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

9. The issue in this dispute is whether the applicant is entitled to a refund from the respondent Karma Teachers and/or the respondent Emerson Lim, for yoga teacher training that she could not attend.

EVIDENCE AND ANALYSIS

10. Based on the evidence, including an October 2016 archived copy of the Karma Teachers website, I find the following facts:
 - a. In October 2016, Emerson Lim was Karma Teachers' contact for their Vancouver yoga teacher training program.
 - b. Karma Teachers offered a 200-hour yoga teacher training program for a total cost of \$3,500, in late 2016/early 2017.
 - c. The cancellation policy for the Karma Teacher's yoga teacher training at that time was that any cancellation was subject to a \$500 administration fee. The refund amount would be pro-rated based on the number of days attended, less the \$500 fee.
 - d. In October 2016, the applicant paid \$3,500 to Karma Teachers Vancouver, through Emerson Lim, then the contact for the Vancouver-based yoga training program. I find the applicant entered a valid agreement with Karma Teachers, subject to terms including the cancellation policy, at that time. More on Mr. Lim's liability as agent for Karma Teachers below.

- e. In early December 2016, Emerson Lim, writing from an @karmateachers.com email address, provided the applicant with details on the yoga teacher training course starting in January 2016.
11. It is undisputed, and I find, that the applicant attended some of the yoga teacher training at Karma Teachers in January 2016. I infer from this that Karma Teachers knew the applicant was enrolled in their course, presumably through communication from Mr. Lim. If Karma Teachers did not obtain the applicant's tuition payment from Mr. Lim, that is an issue between them, not a ground to deny the refund owing to the applicant.
12. In February 2017, Karma Teachers had internal discussions about Emerson Lim's ongoing role, if any. However, the fact of these discussions was not known to the applicant.
13. On April 3, 2017, the applicant emailed Emerson Lim and the info@karmateachers.com email address, requesting a refund because she had only been able to attend 9 of the 22 classes. The applicant had requested make-up sessions, but no information had been provided.
14. The applicant requested a refund of \$1,772.27, which is the cost of 22 classes, less the \$500 administration fee.
15. On July 18, 2017, Karma Teachers posted to Facebook, with a message that explained that Emerson Lim "would no longer be leading KT Vancouver." The Facebook post acknowledges that Emerson Lim was the founder of Karma Teachers.
16. In the post, Karma Teachers pointed out that any communications from @karmateachers.com, as opposed to @karmateachers.org, were not communications from Karma Teachers. In this proceeding, Karma Teachers says Emerson Lim continues to own the karmateachers.com domain.

17. On January 13, 2018, the applicant wrote to Karma Teachers, at their mailing address and to the attention of Mr. Fredericks, requesting the \$1,772.27 refund.
18. Karma Teachers did not file any evidence that it responded to the applicant's January 13, 2018 refund request.
19. Karma Teachers argues that because it did not create a bank account at CIBC, where the e-transfers paid by the applicant were sent to Emerson Lim, it is not responsible for issuing her a refund. I disagree.
20. In *Keddie v. Canada Life Assurance Co.*, 1999 BCCA 541, the British Columbia Court of Appeal held that a company may be held liable for the conduct of its agent, if the agent had actual or apparent authority. At paragraph 28 the Court of Appeal explained apparent authority as follows:

A finding of apparent authority depends upon some representation through words or conduct on the part of the principal that leads a third party to believe the agent has the authority in question. Apparent authority is a product of the principal's outward conduct with respect to third parties, not of the principal's internal agreements or arrangements with its agent.
21. I find that Karma Teachers gave Emerson Lim apparent or actual authority to bind it in contractual agreements to enroll yoga teacher training candidates in October 2016 and early 2017. Specifically, the archived Facebook post from Karma Teachers in October 2016 advertises the course, and the cancellation policy, and asks that interested applicants contact Emerson Lim regarding the Vancouver location.
22. As well, Karma Teachers agrees that Emerson Lim was its founder, and was an integral part of its operations, even if not an employee, until it parted ways with him. The first evidence of public communication that Emerson Lim was no longer affiliated with Karma Teachers came in July 2017.

23. By that time, the applicant had requested, and was entitled to, her refund, under the agreement reached between her and Karma Teachers in October 2016, through the apparent or actual authority of Emerson Lim.
24. I order that the respondent Karma Teachers refund the applicant the \$1,772.27 owing under the cancellation policy, within 15 days of this decision.
25. Although the respondent Emerson Lim is technically in default, the evidence before me does not establish his personal liability to the applicant. Nothing prevents Karma Teachers from pursuing any claim it may have against Mr. Lim, subject to applicable limitation periods. Since I found that the respondent Emerson Lim was acting as agent for Karma Teachers, I dismiss the claim against him personally.
26. The applicant is also entitled to pre-judgement interest of \$37.95 under the *Court Order Interest Act* (COIA) on the \$1,772.27 from April 3, 2017, when she requested the refund in writing, to the date of this decision.
27. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$125 in tribunal fees and \$33.42 in dispute-related expenses, for which the applicant provided receipts and which I find reasonable.

ORDERS

28. Within 15 days of the date of this order, I order the respondent Karma Teachers to pay the applicant a total of \$1,968.64, broken down as follows:
 - a. \$1,772.27 as a partial refund for yoga teacher training,
 - b. \$37.95 in pre-judgment interest under the *COIA*, and
 - c. \$158.42, for \$125 in tribunal fees and \$33.42 for dispute-related expenses.

29. I dismiss the applicant's claim against Emerson Lim personally.
30. The applicant is entitled to post-judgment interest, as applicable.
31. 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.
32. 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.

Julie K. Gibson, Tribunal Member