



# Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-006183

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *sohal v. KMV Business Advisors LLP*, 2019 BCCRT 308

B E T W E E N :

hardeep sohal

**APPLICANT**

A N D :

KMV Business Advisors LLP

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a refund for tax services and compensation for damages resulting from the respondent's alleged failure to file with the Canada Revenue

Agency (CRA) the applicant's year 2016 tax return. The applicant, Hardeep Sohal, claims \$3,000.

2. The respondent, KMV Business Advisors LLP, says that in May 2017 it prepared the tax return as agreed and gave the package to the applicant along with a cover letter and 2 copies of the tax return. The respondent says their letter clearly stated the applicant was required to deliver the tax return to a local tax centre. The respondent denies it owes the applicant any money.
3. The applicant is self-represented and the respondent is represented by Mike Singh, an employee. For the reasons that follow, I dismiss the applicant's claims.

## **JURISDICTION AND PROCEDURE**

4. 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* (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.
5. 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, they 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.

6. 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.
7. 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.

## **ISSUE**

8. The issue in this dispute is to what extent, if any, the respondent owes the applicant \$3,000 in damages for failing to file the applicant's tax return for the year 2016.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. It is undisputed the respondent completed the applicant's 2016 year tax return as agreed. This dispute is about whether the respondent was required to file it online for the applicant.
11. As noted above, the applicant claims \$3,000, which he says is to "refund all my money which I spent in this process including everything". There is however no evidence before me as to what the applicant paid the respondent to prepare his 2016 tax return nor any proof of anything else the applicant might have paid, such as a receipt for the \$1,000 penalty and interest he says he paid to CRA. There is no explanation of how the applicant arrives at the \$3,000 figure claimed.

12. The applicant provided a screenshot of his CRA's "authorized representative(s) list", which shows the respondent is authorized and had online access to the applicant's account. This screenshot is undated, although it notes the respondent's authorization does not expire. When he submitted this screenshot, the applicant wrote that it shows the respondent "had authorization to file my 2016 tax return online". However, the respondent provided CRA records that show this authorization was granted on March 28, 2018, long after the 2016 tax return was given to the applicant in April 2017. I agree with the respondent that the screenshot is not determinative of this dispute. I find that the applicant's submission of the 2018 screenshot as being an authorization that applied to the 2016 tax return was at best careless and at worst an attempt to mislead the tribunal. This leads me to prefer the respondent's evidence where the evidence conflicts.
13. The applicant says his relatives also used the respondent and had their tax returns filed online. The applicant denies he should have had to drop off his tax return personally or that he ever knew this was the respondent's expectation. I disagree.
14. In particular, the respondent's April 30, 2017 cover letter, 1-page in length, clearly states in the first paragraph that 2 copies of the 2016 tax return were enclosed and that "the original should be submitted to" the CRA, with the 2<sup>nd</sup> copy for the applicant's records. The applicant has provided no explanation for why he did not read this brief cover letter. While his submission is not entirely clear, to the extent the applicant submits it, I reject the suggestion the respondent did not give him the envelope containing the cover letter and the tax returns. This conclusion is supported by the fact that the authorization for the respondent to file returns online as his representative was not given until 2018.
15. The respondent's cover letter also instructs the applicant to contact CRA within 30 days if any of his information changes and if he does not receive his notice of assessment within 3 weeks. The applicant in his reply submission says he did not follow up with CRA because he was "trying to follow up" with the respondent. This is contrary to the cover letter's instruction, which expressly told the applicant to

contact CRA. Yet, the applicant also submits that the respondent told him he would get a refund of about \$200 and so he was “not worried much” and that he changed his residence in 2017 but only updated CRA with his new address in 2018. Again, I prefer the respondent’s version of events.

16. On balance, I find the applicant has not proved the respondent agreed to file his tax return for him. Even if the respondent had breached the parties’ agreement, the applicant has not provided any evidence to support his damages claim. I find the applicant’s claims must be dismissed.

17. As the applicant was unsuccessful, in accordance with the Act and the tribunal’s rules I find he is not entitled to reimbursement of tribunal fees.

## **ORDER**

18. I order the applicant’s claims and this dispute dismissed.

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Shelley Lopez, Vice Chair