



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moniz-Lecce v. Vancouver Pops Performing Arts Society et al*, 2019
BCCRT 403

B E T W E E N :

Julia Moniz-Lecce

APPLICANT

A N D :

Vancouver Pops Performing Arts Society, Tom Kuo, and Dustin Tour &
Travel Inc.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about the refund of costs associated with a planned trip to Japan. The applicant, Julia Moniz-Lecce, says she paid the respondents Vancouver Pops Performing Arts Society (VPPAS), Tom Kuo, and Dustin Tour & Travel Inc. a total of

\$2,005 for a trip to Japan play with an orchestra. When the applicant learned she would not be permitted to play with the orchestra while in Japan, she cancelled her trip but received a refund of only \$500. She seeks an order that the respondents refund her the remaining \$1,505.00 she paid for the trip. The respondents deny responsibility for this amount.

2. The applicant and the respondent, Tom Kuo, are each self-represented. Mr. Kuo also represents the VPPAS. Dustin Tour & Travel Inc. is represented by an employee.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

- 7. The issues in this dispute are:
 - a. whether the respondents should reimburse the applicant for the \$1,200 outstanding in trip costs;
 - b. whether the respondents should reimburse the applicant for a \$200 registration fee; and
 - c. whether the respondents should reimburse the applicant for the \$105 she paid for a group dinner.

EVIDENCE AND ANALYSIS

- 8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
- 9. The VPPAS is a non-profit organization that promotes music education and operates the Vancouver Pops orchestra and choir. The respondent, Tom Kuo, is the artistic director of VPPAS.
- 10. The Vancouver Pops posted an advertisement on a website for an August 2018 trip to Japan to play with the Tokyo Seraphic Orchestra. The applicant, who plays the violin and the cello, joined the Vancouver Pops orchestra and registered for the Japan trip in September of 2017. Later, she booked her \$1,700 airfare and hotel through a group package facilitated by the respondent, Dustin Tour & Travel Inc., and which was booked through the website Expedia. Participating in the group booking was not mandatory, but rather an option presented to trip participants. The

applicant also paid \$105 for a group dinner/boat cruise scheduled for after the performance.

11. The applicant participated in the orchestra performances and rehearsals in 2017 and the first term of 2018. In the second term, the applicant missed some rehearsals due to other commitments. In July of 2018, the applicant and Mr. Kuo exchanged email messages about the applicant's lack of attendance at rehearsals and her level of preparedness for the Japan concert. On July 13, 2018, Mr. Kuo determined that the applicant was not sufficiently familiar with the music and disqualified her from performing in Japan. In a subsequent email, he clarified that while the applicant could not play in the Japan concert, she could still make the trip with the group.
12. The applicant stated that she was not aware of the attendance requirement and that she could have learned the music before the performance in Japan. She decided to cancel her trip, citing the tone of Mr. Kuo's emails. Later, she also referenced the fact that she had not been aware that the shared hotel room on the trip would involve a shared bed.
13. The applicant and a family member worked with Mr. Kuo and Dustin Tour & Travel Inc. to receive a refund or credit for her travel costs. Mr. Kuo notified the applicant that he had been able to obtain a refund of \$800 for her flight. However, he later advised that the airline had applied a \$300 change fee. Mr. Kuo e-transferred \$500 to the applicant's bank account.
14. Based on the evidence before me, I find that the applicant was, or ought to have been, aware that a lack of participation and preparation could impact her ability to play in the Japan concert. The invitation to the Japan concert identified co-requisites as "Must participate in all rehearsals and concerts in Term 1 (January to April) and Term 2 (May – July) of 2018. Must display adequate fluency of music for performance".

15. Further, several registration documents submitted to VPPAS by the applicant contain the statement “I agree to give diligence in attending all sessions, learning the music, and upholding the standard of the group. I agree to give all members/directors/instructors my utmost respect”. One document also contains the statement “I understand that failure to do the above may result in being moved to a lower level, withdrawal from performances, or removal from the ensembles”. Although the applicant suggests that other performers were treated differently under the attendance policy, I do not find that this is established by the evidence.
16. The applicant also identified complaints about the group travel package and the arrangements for room sharing. Email messages about the travel package refer to both 2 and 4 occupants per room for single travelers. These messages do not comment on the number of beds in each shared room. However, I do not find that the room sharing motivated the applicant’s decision to cancel the trip. The applicant communicated her decision to cancel her trip to Mr. Kuo on July 13, 2018, but the detailed itinerary that advised of the bed-sharing situation is dated three days later, on July 16, 2018. I therefore find this does not support the applicant’s position.
17. The applicant submits that she would not have signed up for the Japan trip had she known about the details of the travel arrangements or preparatory requirements. I find there is no indication that any of the respondents misrepresented the Japan trip to the applicant. The applicant could have made the trip without participating in the concert, but chose to cancel instead. As noted above, the applicant claims for refunds of the \$200 registration fee, the \$1,200 in travel expenses which have not been returned, and the \$105 she paid for a group dinner during the trip. Whatever the applicant’s motivation was for cancelling her trip, she bears the burden of establishing that she is entitled to the refunds she claims.
18. The respondents deny responsibility for the amounts claimed by the applicant. Mr. Kuo says that the claim should be against VPPAS, not him personally. Mr. Kuo also said that the funds paid by the applicant were non-refundable and non-transferable, and had already been passed on to other parties by the time the applicant cancelled

her trip. It would appear that the applicant paid funds to VPPAS, not to Mr. Kuo personally. I agree with Mr. Kuo's position that he is not personally responsible for the applicant's claims.

19. Dustin Tour & Travel Inc. says it booked the applicant's air and hotel package as instructed by Mr. Kuo. Upon cancellation of the applicant's trip, it worked to secure a refund for the air ticket, but did not make any change to the hotel portion of the trip as the other passenger in the shared room was still going.
20. The applicant seeks the refund of the \$200 registration fee she paid for the Japan trip. The evidence before me shows that the registration fee for performers varied depending upon the date it was paid, with a fee of \$100 for early bird registration, \$200 for standard registration and \$300 for late registration. Some (but not all) of the documentation about the Japan trip described this fee as non-refundable.
21. A September 12, 2017 registration form completed by the applicant states "I confirm my participation on this tour with this early bird registration (\$100 CAD)". However, the applicant did not transfer the funds for her registration fee until January of 2018, at which time the applicable fee was \$200. The form completed by the applicant does not specify whether the fee was refundable or not. As noted above, Mr. Kuo's submission is that the fee was non-refundable.
22. The evidence before me shows that the applicant received information prior to her registration that the fee would be non-refundable. Although it would appear that this was not reiterated when she paid her fee, the applicant has not established the status of the registration fee had changed such that it had become refundable at the time she paid it. Accordingly, I find that she is not entitled to a refund of this amount.
23. The circumstances are similar for the \$105 fee the applicant paid for the group dinner/boat cruise. The applicant's view is that she should be able to get her money back as the event had not occurred at the time of her cancellation. However, Mr. Kuo's position is that this amount was non-refundable and the funds had been forwarded to the vendor already.

24. The documentation was silent as to whether this payment was refundable. In the circumstances, I am not satisfied that the applicant has shown that the fee for the group dinner/boat cruise would be refunded in the event of a cancellation. Therefore, she is not entitled to a refund of the \$105 paid.
25. The applicant also seeks a refund of the \$1,200 portion of travel costs for which she has not yet received reimbursement. The initial email about the travel package discussed a non-refundable \$250 deposit. The email to which the applicant responded when arranging her travel did not give the opportunity to make a deposit, and required participants to pay the full \$1,700 cost for the travel package. None of the documentation before me states that the costs of the travel package would be refundable in the event of a cancellation.
26. The applicant provided copies of the cancellation policies from the hotel and airline and made submissions about the possible refund or credit that she could have received had the travel been booked directly with the airline and the hotel rather than through Expedia. However, I do not find this information to be helpful. As discussed above, the applicant chose to participate in the group booking instead of making her own arrangements. Accordingly, her entitlement is governed by the refund policies of the vendors in the context of the group booking.
27. The itinerary for the trip shows that Expedia does not charge cancellation or change fees. However, it goes on to state that the airline charges change fees of \$300. The document also states that the air ticket is non-refundable and non-transferrable. It does not address the possibility of a credit towards future travel for cancelled flights. At the applicant's request, Mr. Kuo was able to negotiate a partial refund, minus the change fee, despite the airline's policy. In the circumstances, I find that the applicant has received the full amount to which she is entitled for her cancelled flight.
28. As for the hotel portion of the travel package, the group booking was made for a number of shared rooms. Although the applicant chose not to go, the room assigned to her was still required by her intended roommate. While the applicant

suggests that the rooms could have been re-arranged to accommodate her absence, this is not supported by the evidence. I find that the applicant is not entitled to a refund for the hotel portion of the travel costs paid.

29. I acknowledge the applicant's disappointment in not being able to participate in the Japan concert as she had hoped. However, I find that she has not met her burden to establish that she is entitled to refunds as a result of her voluntary decision to cancel the trip. Accordingly, I dismiss her claims.

30. 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. As the applicant was unsuccessful, I dismiss her claim for reimbursement of tribunal fees and dispute-related expenses.

ORDER

31. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member