Civil Resolution Tribunal

Date Issued: July 16, 2019

File: SC-2019-002290

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Crius Financial Services Corporation v. Yang,*
2019 BCCRT 855

B E T W E E N :

CRIUS FINANCIAL SERVICES CORPORATION

APPLICANT

A N D :

CHENG HAO YANG

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This dispute is about reimbursement for training fees. The applicant brokerage, Crius Financial Services Corporation, says that the respondent, Cheng Hao Yang, owes $2,500. The respondent submits that it should not have to repay the training

fees as the training was inadequate and the agreement requiring this payment unfair.

2. The applicant is represented by Albert So, whom I infer is a principal or employee. The respondent is self-represented.

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*. 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 9.3(2), 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.

ISSUE

7. The issue in this dispute is whether the respondent breached the parties' contract and owes $2,500 as reimbursement for training fees.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

9. The parties agree that they entered into a "broker agreement" on July 21, 2017. The agreement states that the applicant sells insurance from a variety of insurers. The applicant serves as a "managing general agent". The agreement also states that the respondent agrees that it is an independent contractor working with the applicant to sell insurance products.

10. Section 5(c) of the agreement states that if the agreement is terminated for any reason (other than the respondent's death) within 24 months of July 21, 2017, the respondent must pay the applicant a training reimbursement fee of $2,500.

11. The parties agree that on or around October 21, 2017, the respondent advised that it was leaving the applicant to work with another managing general agent. The applicant says that under the broker agreement, it is now owed the $2,500 training fee as of November 9, 2017.

12. The respondent submits he should not pay the training fee because the training was inadequate. After attending several sessions, he concluded the training did not meet his expectations. The respondent provided three letters from other brokers that previously worked with the applicant. Broadly speaking, the brokers state that the applicant's training did not meet their expectations and was of limited value to their careers.

13. I find that the respondent owes the applicant $2,500 for the training reimbursement fee. Although the respondent submits that the applicant did not provide training to a professional standard, I was not provided enough evidence showing how or why this was the case. For example, the respondent did not describe what the applicant failed to cover or was mistaken about in training.

14. In contrast, the applicant provided evidence showing that it made training sessions available to the respondent and that the training was related to the work of being an insurance broker. This evidence included a training schedule from July to October 2017, attendance sheets, and completion certificates for the respondent. The training sessions had titles that appeared relevant to working as a broker.

15. The applicant also provided attendance sheets for May and June 2017, showing that the respondent attended the applicant's basic classes before entering into the broker agreement in July 2017. I accept the applicant's submission that these classes provided an approximation of what the training sessions were like after the respondent agreed to work with the applicant. I find it somewhat inconsistent for the respondent to object to the quality of training given that he sampled it earlier.

16. The respondent also does not say that the applicant made any specific misrepresentations about the training. Consistent with this, the respondent acknowledges that the signed broker agreement does not make any representations about the training. Given all the above, I find that the applicant provided the agreed-upon training.

17. The respondent also says that the broker agreement is unconscionable. In *Harry v. Kreutziger* (1978), 19 B.C.L.R. 166 (C.A.), a case referred to by the respondent, the court wrote that for an agreement to be unconscionable, there must be two elements present: 1) proof of inequality in the parties' respective positions due to the weaker party's ignorance, need or distress, which would leave him or her in the other stronger party's power, and 2) substantial unfairness in the bargain. When this has been shown, a presumption of fraud is raised, and the stronger party must show that the agreement was fair and reasonable.

18. I find that the first part of the test for unconscionability has not been met. The respondent submits that he was rushed into signing the broker agreement. He also says that the applicant signed up other individuals under the broker agreement that had difficulty with English. However, the respondent did not provide any details as to how he was rushed. He also did not submit that he had any language difficulties that prevented him from understanding the broker agreement, which is what matters in the dispute before me. These submissions do not show proof of ignorance, need, or distress.

19. I also find that the second part of the test for unconscionability has not been met. It is unclear why the training reimbursement fee should be considered substantially unfair. The applicant submits that it provides training with the expectation that it will assist the brokers it works with. Consistent with this, the broker agreement states that the respondent only pays for the training if he leaves within two years of signing the agreement. I accept the applicant's submission that it does not fully recoup its costs with this fee. I acknowledge that the respondent says the training is of low quality, but as noted above, the respondent provided insufficient evidence to establish that the applicant did not meet professional standards.

20. I find the facts of this dispute are similar to those in *Canaccord Capital Corp. v. Clough*, 1999 CanLII 5286 (B.C.S.C.). In that case an investment firm sought repayment of training costs after the trainee left the firm. The court concluded that investment firm was entitled to recover its training costs under the parties' agreement. The court noted that recovery of some of the cost of training was a reasonable requirement.

21. In summary, I find the applicant is entitled to payment of the training reimbursement fee of $2,500 under the parties' contract.

TRIBUNAL FEES AND DISPUTE-RELATED EXPENSES

22. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

23. The applicant was successful in this dispute. I therefore award it $125 for reimbursement of tribunal fees. The applicant did not claim any dispute-related expenses.

ORDERS

24. Within 30 days of this decision, I order the respondent to pay the applicant a total of $2,687.00, broken down as follows:

    a. $2,500.00 in debt,

    b. $62.00 in pre-judgment interest from November 9, 2017, under the *Court Order Interest Act* (COIA), and

    c. $125.00 as reimbursement of tribunal fees.

25. The applicant is entitled to post-judgment interest under the COIA.

26. 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.

27. 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.

David Jiang, Tribunal Member