



# Civil Resolution Tribunal

Date Issued: July 23, 2019

File: SC-2019-001025

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Recovery Enforcement Inc. v. York Aluminum Corp.*, 2019 BCCRT 898

B E T W E E N :

RECOVERY ENFORCEMENT INC.

**APPLICANT**

A N D :

YORK ALUMINUM CORP.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

### INTRODUCTION

1. This is a dispute about damages flowing from the cancellation of a waste services contract. The applicant, RECOVERY ENFORCEMENT INC., is a collections company within the Revolution Group of Companies, which includes Revolution Resource Recovery Inc. (Revolution). The applicant says that the respondent, YORK ALUMINUM CORP., tried to cancel its contract with Revolution, but did not

do so in accordance with its terms. The applicant wants the respondent to pay it for \$2,465.39 in liquidated damages, an outstanding invoice, and a bin removal charge. The respondent denies that it is responsible for the amount claimed.

2. The applicant is represented by an employee. The respondent is represented by Matthew Liang, who I infer is its principal.

## **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 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 must pay the applicant \$2,465.39 in damages as a result of the cancellation of its contract with Revolution.

## **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 have provided evidence and submissions 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. On August 12, 2014, the respondent entered into a Customer Service Agreement with Northwest Waste Solutions Inc. (Northwest) for waste and cardboard removal services. The cardboard bin was placed right away but, as the respondent was under contract with another provider, the waste bin was scheduled to be placed on October 30, 2018. The parties' agreement contemplated that the respondent would, at the appropriate time, terminate its agreement with the other service provider and commence service with Northwest.
10. In June of 2015, Northwest advised its customers that it had changed its name to Revolution.
11. On April 10, 2018, the respondent advised Revolution that it no longer required Revolution's services. Revolution removed the cardboard bin in what it called a gesture of goodwill to keep its customer happy, and on what it says was the understanding that the respondent would continue with the waste services portion of the agreement.
12. On July 1, 2018, Revolution wrote to the other waste removal provider on behalf of the respondent and terminated their agreement, in contemplation of it taking over the respondent's waste removal services. On October 30, 2018, Revolution placed a waste bin at the respondent's location. On November 8, 2018, the respondent contacted Revolution to advise that it no longer wanted the waste bin and would not

pay for Revolution's services. Attempts to resolve the matter were not successful. Revolution removed its bin from the respondent's location on November 30, 2018.

13. On January 15, 2019, Revolution assigned its rights under its agreement with the respondent to the applicant. On that same date, the applicant wrote to the respondent to advise of the assignment and make a formal demand for payment of \$2,465.39. The respondent did not make the requested payment.
14. The applicant says that the respondent did not cancel the Customer Services Agreement as required. The applicant seeks liquidated damages of \$1,925, an unpaid invoice for services of \$415.39, and a \$125 charge for the removal of the waste bin.
15. The respondent's position is that the Customer Services Agreement was formally cancelled and ended in August of 2017. The respondent says that Northwest's salesperson never told its staff about the renewal clause in the contract. The respondent also says that it still has an agreement with the other waste services provider, and that the contract with Revolution did not say that it could "transfer the contract to other company" without its consent. The respondent's position is that it cancelled the agreement properly, and suggests that there may be an administration problem with Revolution. It points to the presence of 2 different account numbers, which it says is proof that the applicant submitted altered or false evidence. The respondent says it should receive compensation of \$2,465.39 for unspecified reasons, but it did not file a counterclaim.
16. The applicant states that the 2 account numbers were the result of the cardboard bin being removed early. A new account number was assigned to the respondent when the waste bin was placed in October of 2018.
17. The Customer Service Agreement, which is signed by both parties, clearly sets out the term, renewal, and termination requirements of the agreement, as well as the respondent's obligation to terminate its previous waste services contract. The parties' agreement commenced on August 12, 2014 for a 36-month term. The

agreement was set to be renewed for successive 36-month terms unless it was terminated by sending notice by registered mail not more than 120 days and not less than 90 days prior to the renewal date. The second page of the agreement sets out its General Conditions, and specifically discusses improper termination of the agreement and the availability of liquidated damages. The parties initialed this paragraph and, although the respondent may not recall these terms being explained by Northwest's salesperson, it would appear that they were. I am not satisfied that the evidence supports the respondent's submission that the applicant altered or falsified evidence in this regard.

18. The parties' agreement commenced in 2014 and renewed for another 36-month term in August of 2017. The respondent's submission that the contract ended in 2017 is not consistent with its principal writing to Revolution in April of 2018 to discontinue services. Further, the April 10, 2018 letter was sent by regular rather than registered mail and not within the prescribed time frame (which would have been in April and May of 2020). I find that the agreement was not terminated as required by the terms of the parties' agreement. I also find that the respondent breached its agreement with Revolution by failing to maintain and pay for the services contemplated by the agreement.
19. Under the agreement, the respondent is required to pay liquidated damages for not terminating the agreement properly. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. The parties' agreement says that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the greater of the sum of its monthly billings for the most recent 12 months or the sum of amounts due for the balance of the term remaining under the agreement. Accordingly, I find that the applicant is entitled to liquidated damages in the amount of \$1,925.00.
20. In addition to the liquidated damages, the applicant requests an order that the respondent pay Revolution's October 31, 2018 invoice. This invoice represents

charges for the month when Revolution's waste bins were placed on the respondent's property and serviced by Revolution's personnel. Given my finding that the respondent did not properly terminate the agreement, it is responsible for the \$415.39 amount of this invoice.

21. The applicant also requests an order for the payment of a \$125.00 bin removal fee. The parties' agreement sets out a number of charges, including a bin removal fee of \$125.00. I find that the applicant is entitled to this amount from the respondent.
22. In summary, I find that the respondent must pay the applicant \$2,465.39. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from January 29, 2019 (being the due date for payment as set out in the applicant's January 15, 2019 letter), this amounts to \$23.18.
23. 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 \$125.00 in tribunal fees and \$10.37 in dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,623.94, broken down as follows:
  - a. \$2,465.39 in damages under the terminated agreement,
  - b. \$23.18 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$135.37 for \$125.00 in tribunal fees and \$10.37 for dispute-related expenses.
25. The applicant is entitled to post-judgment interest, as applicable.
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.

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Lynn Scrivener, Tribunal Member