



# Civil Resolution Tribunal

Date Issued: September 20, 2019

File: SC-2019-002033

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Manji v. HSK Travel Specialists Inc.*, 2019 BCCRT 1112

**B E T W E E N :**

**BAHADURALI MANJI**

**APPLICANT**

**A N D :**

**HSK TRAVEL SPECIALISTS INC.**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

### **INTRODUCTION**

1. This is a dispute about responsibility for the cost of changing travel plans booked through a travel agency.
2. The applicant Bahadurali Manji says he requested airfare for a three-month trip from Vancouver to Europe but was booked for a two-month trip by mistake. The applicant

seeks \$2,869.93, which includes an airfare refund for a 'ruined vacation' as well as the cost of a later return flight he purchased.

3. The respondent HSK Travel Specialists Inc. says the applicant changed his mind about the trip length after the trip was booked, so the respondent is not responsible for any additional charges incurred.
4. The applicant is self-represented. The respondent is represented by Shamin Shariff, its managing director.

## **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* (CRTA). 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. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
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 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
  - 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**

9. The issue in this dispute is whether the respondent must reimburse the applicant \$2,869.93 for the cost of changes made to his travel plans.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove his claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but I only refer to what is necessary to explain and give context to my decision.
11. It is not disputed that the applicant met with the respondent's travel agent in late March 2018. The applicant was a first-time client and wanted to travel from Vancouver to Cologne, Germany, with a stopover in Lisbon, Portugal.
12. On March 30, 2018, the travel agent emailed the applicant with proposed travel dates, routes and prices. The agent estimated a price of \$1,400 for return travel from Vancouver to Lisbon July 5 to September 13, 2018. There was also a return flight within Europe departing Lisbon July 13 and returning September 12, 2018 for approximately \$400. There is no reply from the applicant in evidence.
13. On April 2, at 7:49 a.m. the travel agent emailed the applicant, stating that she was holding a seat for him for a Vancouver to Lisbon return trip July 5, 2018 to

September 13, 2018 for \$1,390.93. She asked the applicant to review the itinerary and let her know if he wanted to book the flight, saying they had until 5:00 p.m. to make the purchase. The attached itinerary confirmed the dates stated in the email. Again there is no reply in evidence.

14. The respondent says on April 2, 2018 the applicant accepted its offer and provided his credit card information over the phone to buy the tickets. The applicant's credit card statement confirms that on April 2, 2018 the respondent caused the applicant's credit card to be charged \$1,390.93 to Air Canada and \$402.54 to a Portuguese airline.
15. The respondent emailed the electronic ticket to the applicant on April 10, 2018. The applicant says upon receiving the electronic ticket, he immediately called the travel agent and advised her of her mistake. He says he had no prior opportunity to review the ticket. He says that when he called the travel agent, she told him to take the flight to Europe and then try to change the return flight.
16. The applicant says the April 2 quote was never sent to him. He says all his dealings with the respondent have been over the phone. In his Dispute Notice, he indicated that he does not have an email account.
17. On a balance of probabilities, I find that the applicant received the April 2 email. He acknowledged receiving the respondent's April 10 email at the same email address, and provided no explanation as to why he did not receive the April 2 email. Although he did not reply to the April 2 email, not replying was not inconsistent with his evidence that all his dealings with the respondent were by phone. I also note that the applicant's evidence includes emails he sent to third parties from the same email address.
18. The travel agent's April 2 email was clear that she was holding the seat until 5:00 p.m. and would not make the purchase until receiving confirmation from the applicant. I find it is more likely than not that the applicant, after receiving the April 2 email, called the travel agent to provide his credit card information. Although the

applicant says he provided his credit card information to the respondent “right at the outset”, I find this unlikely. There was no need to provide credit card information prior to booking flights. Also, the applicant did not dispute that he was a first-time client of the respondent, so the respondent would not have had his credit card information from a previous purchase. I find that on April 2, 2018, the applicant accepted the respondent’s offer and instructed the respondent’s travel agent to purchase the flights on his behalf.

19. In August 2018, the applicant asked the respondent to change his flight and cover the cost because it was her mistake. In an August 29, 2018 email, the travel agent agreed that the applicant informed her before his departure that he wanted a three-month trip. However, she said that this happened after the ticket was issued. The travel agent said she distinctly remembered the applicant calling and saying he needed to change the travel dates because his friend in Cologne was upset that he was only staying for 2 months and not 3. She said they discussed costs and the applicant agreed to try to change his flights from Europe to save money.
20. The applicant provided a letter from his friend FRK who lives in Germany. FRK wrote that the applicant always stayed for 3 months at a time, and that in April 2018 the applicant asked by phone if he could visit for 3 months. I find this evidence only shows that at some point in April the applicant’s intention was to travel for 3 months. That is not disputed, as the respondent acknowledged that shortly after April 10 the applicant called and advised that he wanted to stay for 3 months, not 2. In other words, this evidence does not disprove the respondent’s explanation that the applicant changed his mind about dates after the tickets were purchased.
21. The applicant submitted a note from his doctor stating that the applicant was prescribed “medication for three months for a trip overseas in late June 2018.” It is not clear whether “late June” refers to the date of the trip or the date the doctor saw the applicant, but given the trip commenced July 5 it is more likely that the doctor meant the doctor’s visit was in late June. Either way the doctor’s note does not

establish that the applicant communicated to the respondent prior to April 10 that he intended to travel for 3 months.

22. Given my finding that the applicant accepted the respondent's offer on April 2, one of two things happened: either the applicant changed his mind after the travel agent booked the tickets on April 2, or the applicant failed to check the travel dates in the April 2 email before confirming the purchase and mistakenly assumed the tickets were for 3-month travel.
23. If the former is true, there is no doubt that the applicant is responsible for the costs of changing his return ticket and is not owed a refund.
24. If the latter is true, then the parties had a contract with a unilateral mistake as to terms. That is, the applicant accepted the contract thinking it was for a 3-month trip, when it was in fact for a 2-month trip. The law of mistake holds that a mistaken party is generally entitled to relief only when the other party knew or should have known about the mistaken party's mistake, remained silent, and 'snapped' at the offer. See *256593 BC Ltd. v. 456795 BC Ltd. et al*, 1999 BCCA 137, citing *McMaster University v. Wilchar Construction Ltd.*, 1971 CanLII 594 (ONSC).
25. The evidence here does not establish that the respondent knew or should have known the applicant believed the contract was for a 3-month trip. Moreover, it was the applicant who accepted the respondent's 2-month trip offer. It was open to the applicant to review the terms and accept, reject or modify the offer.
26. The law expects contracting parties to take reasonable precautions. Here I find such precautions for the applicant would include carefully checking the dates on the proposed itinerary before confirming the purchase.
27. In summary, I find that the applicant either changed his mind about the trip after accepting the respondent's offer, or failed to read the trip details as set out in the respondent's emails before accepting the offer. In either case, the applicant's claim must be dismissed.

28. Under section 49 of the CRTA 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 his claims for tribunal fees and expenses.

## **ORDER**

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

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Micah Carmody, Tribunal Member