



# Civil Resolution Tribunal

Date Issued: September 26, 2019

File: SC-2019-003674

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kulcsar v. Sadykow*, 2019 BCCRT 1138

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

**BENNETT KULCSAR**

**APPLICANT**

**A N D :**

**MANUELA SADYKOW**

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Lynn Scrivener

### **INTRODUCTION**

1. This is a dispute about the purchase of a dog named Iver. The applicant, BENNETT KULCSAR, says he purchased Iver from the respondent, MANUELA SADYKOW. Despite a health guarantee, the applicant says that Iver was ill at the time of the purchase and required veterinary care. The applicant seeks reimbursement of \$993.61 for veterinary expenses and a refund of the dog's \$2,200 purchase price.

The respondent says that she paid \$400 for treatment related to an eye infection, but denies that she owes the applicant any further money. She also says that the applicant did not follow their agreement, but that she is willing to refund the purchase price if Iver is returned to her.

2. The parties are 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* (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.
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, 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, 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.

## **ISSUES**

7. The issues in this dispute are:
  - a. whether the respondent should reimburse the applicant for \$993.61 in veterinary bills, and
  - b. whether the respondent should reimburse the applicant \$2,200 for the purchase price of the dog.

## **EVIDENCE AND ANALYSIS**

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The applicant provided evidence and both parties made 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. The applicant responded to the respondent's on-line advertisement for puppies for sale. According to the advertisement, the puppies had been vaccinated and dewormed. The advertisement stated "we provide a health guarantee", but did not provide details as to the nature or extent of this guarantee.
10. The applicant attended the respondent's residence to meet the dogs, and selected a puppy he named Iver. The applicant paid the respondent \$2,200 for the dog. Although it would appear that the final price differed somewhat from what the applicant agreed to originally, I find that nothing turns on this. On June 12, 2018, the parties signed an agreement and the applicant took Iver home.
11. Photographs and text message exchanges between the parties show that Iver had a red eye when the applicant picked him up. The applicant took Iver for a veterinary assessment the next day, and the veterinarian confirmed that Iver had an eye infection. The veterinarian ordered routine screening for parasites and other issues. This testing revealed that Iver had an infection called Giardia. Iver required

additional veterinary care for this condition and a secondary infection that his veterinarian attributed to the Giardia.

12. The applicant sought reimbursement from the respondent for the amount of the veterinary costs. The respondent reimbursed him \$400, but the parties were unable to come to an agreement about the remainder.
13. The applicant says that he agreed to purchase a healthy dog, but instead the respondent sold him a “fatally ill” dog. He seeks reimbursement for the \$993.61 in outstanding veterinarian bills related to the Giardia infection. The applicant says Iver’s health continues to be impacted by the Giardia and, that he incurs expenses related to Iver’s care each month. The applicant suggests that the respondent may be a “puppy broker” and states that he does not want to return Iver to her. He refers to media reports that purport to establish that the respondent sold sick puppies to other buyers.
14. The respondent says that the health guarantee covers genetic issues and does not require her to pay veterinary bills. Instead, buyers return sick dogs to her and she provides them with a refund or a new dog. According to the respondent, the \$400 refund was for the costs associated with the eye infection. She says that the parties’ agreement did not contemplate that the applicant would both keep Iver and receive a refund of the purchase price. The respondent denies that she owes the applicant any further money.
15. The applicant’s position is that the respondent has acknowledged that she is responsible for Iver’s veterinary bills and that she agreed to pay the entire amount. However, I find that this is not consistent with the contents of text messages between the parties. I am satisfied that the respondent did not agree to cover the whole amount of Iver’s veterinary bills. Although the parties were negotiating, they did not come to an agreement. Neither this text message exchange, nor the fact that the respondent initially refunded \$400 to the applicant, establishes the respondent’s responsibility for the remainder of the veterinary bills.

16. The parties agree that the “health guarantee” formed part of their signed agreement, but this document was not provided in evidence. I find that the applicant has not met his burden of proof to establish that the contractual health guarantee covers Iver’s diagnosed conditions or entitles him to compensation for the associated veterinary expenses.
17. The principle of “buyer beware” applies to this type of situation, unless a buyer can establish that a seller negligently or purposely misrepresented the state of the item sold in relation to a problem that the buyer could not have discovered for themselves (see, for example, *Vershinin et al v. Amnibahksh et al*, 2009 BCPC 175 at paragraph 3).
18. The redness in Iver’s eye was obvious on the date of his purchase. I am satisfied that the applicant could have discovered this condition for himself, and there was no misrepresentation of this condition on the part of the respondent. In any event, the respondent provided the applicant with a refund in excess of the apparent care costs for the eye infection.
19. Iver’s veterinarian provided confirmation of the diagnosis of Giardia and stated that, given the incubation period, Iver would have had this infection before the applicant brought him home. I do not find this opinion about the timing of the infection to be determinative of the matter. There is no indication that Iver was experiencing active symptoms of his Giardia infection at the time of purchase, and I note that the veterinarian’s screening was described as routine. I am not satisfied that the respondent knew or ought to have known, based on his presentation immediately prior to the sale, that Iver had Giardia. Based on the evidence before me, I am unable to conclude that the respondent negligently or purposely misrepresented Iver’s Giardia condition to the applicant.
20. In the absence of any misrepresentation by the respondent, the applicant assumed the risk of his purchase. I dismiss his claim for reimbursement of the veterinary bills. I also dismiss his claim for a refund of Iver’s purchase price as damages to offset future care costs, and note that these costs were not established in the evidence.

21. I infer that the applicant has a second basis for seeking reimbursement for Iver's purchase price. The applicant says that the respondent should face justice and be held accountable for her behaviour. Although he did not characterize the claim as such, the applicant is seeking punitive damages. While the tribunal does have the jurisdiction to award punitive damages, this type of remedy is reserved for conduct that is malicious and high-handed: see *Benda v. Cao et al*, 2018 BCCRT 323.
22. The Supreme Court of Canada stated in *Vorvis v. Insurance Corporation of British Columbia*, [1989] 1 SCR 1085 that the purpose of punitive damages is to punish extreme conduct worthy of condemnation, and that these damages are very rare in contract cases. In this case, although the applicant is unhappy with the respondent's position and his perception of her actions, I find that the evidence does not support the conclusion that the respondent acted in a malicious or high-handed manner, either prior to or after the sale. The fact that other buyers had negative experiences with dogs purchased from the respondent does not alter my conclusion in this regard. I dismiss the applicant's claim for damages.
23. Under section 49 of the CRTA and tribunal rules, the tribunal generally will order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was not successful, I dismiss his claim for reimbursement of tribunal fees.

## **ORDER**

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

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Lynn Scrivener, Tribunal Member