



Civil Resolution Tribunal

Date Issued: January 9, 2020

File: SC-2019-000558

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meinzer v. Chan*, 2020 BCCRT 33

B E T W E E N :

HAROLD MEINZER

APPLICANT

A N D :

BENJAMIN CHAN, HOOMAN ADJUDANI, THE EQUITABLE LIFE INSURANCE COMPANY OF CANADA, FS FINANCIAL STRATEGIES SERVICES INC., and VANCE FINANCIAL GROUP INC.

RESPONDENTS

A N D :

HAROLD MEINZER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant and respondent by counterclaim, Dr. Harold Meinzer, purchased a life insurance policy from the respondent The Equitable Life Insurance Company of Canada (Equitable).
2. Dr. Meinzer says that the respondent and sole applicant by counterclaim, Benjamin Chan, was his insurance agent. Dr. Meinzer says that despite his instructions to Mr. Chan to cancel the policy, it was automatically renewed. Dr. Meinzer seeks reimbursement of 16 months of premiums at \$299.70 per month, totaling \$4,795.20.
3. Mr. Chan says he was never Dr. Meinzer's insurance agent or advisor. Rather, his now-deceased father was Dr. Meinzer's agent, and in that context Mr. Chan provided Dr. Meinzer with the appropriate form to cancel the policy. However, Dr. Meinzer failed to complete the form until 15 months later.
4. Equitable denies liability on several grounds. Primarily, it relies on the policy, which provided for the premium increase and required written notice of termination.
5. Dr. Meinzer says the other respondents, Hooman Adjudani, Vance Financial Group Inc. (Vance), and FS Financial Strategies Services Inc. (FS) all played contributory roles and failed to act professionally. Mr. Adjudani, Vance, and FS did not respond to the Dispute Notice, despite being served, which I address below.
6. In his counterclaim, Mr. Chan seeks \$4,500 from Dr. Meinzer for Mr. Chan's time, legal fees and other related costs.
7. Dr. Meinzer and Mr. Chan are each self-represented. Equitable is represented by an employee or principal. For the reasons that follow, I dismiss Dr. Meinzer's claims against each respondent.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something or pay money. The tribunal may also order any terms or conditions the tribunal considers appropriate.

ISSUE

12. The issue in this dispute is whether any of the respondents must reimburse Dr. Meinzer for the increased insurance premiums he paid from August 2016 to November 2017.

EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the party making a claim or counterclaim must prove their claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

14. In submissions, Equitable raised the issue of a limitation period under the *Limitation Act*. Dr. Meinzer and Mr. Chan did not address the limitation issue in their submissions. However, I determined that it is not necessary to decide the applicability of the *Limitation Act* because I find Dr. Meinzer's claim against each respondent must be dismissed on its merits.
15. The essential facts are not in dispute. In August 2006, Dr. Meinzer purchased life insurance through Mr. Chan's father, Georgie Chan. Georgie Chan was an independent insurance agent operating under the managing general agency Vance. The terms of the life insurance policy were set out in Equitable's "Renewable & Convertible Term Insurance Policy" effective August 21, 2006 (Equitable policy). The monthly premium for the first 10 years was \$49.50. The monthly premium for the next 10 years, commencing August 21, 2016, was \$299.70. There were further scheduled premium increases every 10 years.
16. On June 22, 2016, Equitable sent a renewal letter to Dr. Meinzer reminding him of his upcoming premium renewal for the Equitable policy. It explained the premium increase to \$299.70 per month effective August 21, 2016. Dr. Meinzer does not say that he did not receive the letter, and I note that it was sent to the address Dr. Meinzer provided to the tribunal for use in this dispute, so I find that he received it.
17. On August 3, 2016, Mr. Chan emailed Dr. Meinzer a copy of the renewal letter. In his covering email, Mr. Chan mentioned that he had "taken over" for his father, Georgie Chan, who had since passed away. He advised that Dr. Meinzer's premium was increasing in August 2016. He provided his cell phone number and asked Dr. Meinzer to get back to him as soon as possible.
18. On August 4, 2016, Dr. Meinzer replied, stating:

Hi

I'm getting my insurance through my sun life rep

Thank you

Harold

19. The same day, Mr. Chan replied by email to Dr. Meinzer, attaching a cancellation form for the Equitable policy. He advised that if they did not inform Equitable of the cancellation, the policy would automatically renew at the new premium rates. He asked Dr. Meinzer to sign and scan the form, and offered to remit it to Equitable.
20. Dr. Meinzer did not complete the attached form or respond to Mr. Chan's August 4 email. He says he missed the email, although he does not deny that his email account received it. The next time Dr. Meinzer contacted Mr. Chan was by text message 15 months later, on November 22, 2017. He asked Mr. Chan to cancel the Equitable policy. Mr. Chan emailed him the cancellation form again.
21. Dr. Meinzer signed the cancellation form on November 24, 2017 and returned it to Mr. Chan by email on December 4, 2017. Equitable received the cancellation form on December 5, 2017 and immediately cancelled the policy. No further premiums were withdrawn from Dr. Meinzer's account.

Is Mr. Chan liable to Dr. Meinzer in negligence or breach of fiduciary duty?

22. Dr. Meinzer and Mr. Chan provided extensive submissions on whether Mr. Chan was acting as Dr. Meinzer's insurance agent or simply contacting him out of courtesy. I find it is unnecessary to address those arguments given my conclusion that even if Mr. Chan owed Dr. Meinzer a fiduciary duty, Mr. Chan did not breach that duty and is not liable for Dr. Meinzer's increased premiums.
23. Dr. Meinzer submits that Mr. Chan's conduct in allowing the Equitable policy to renew fell below the standard of a reasonable and prudent insurance agent. He says a reasonable insurance agent would, at minimum, ask the client questions to assess his life situation and financial position. Dr. Meinzer also says Mr. Chan should have confirmed whether 2 policies were warranted and what the other policy covered. It is undisputed that Mr. Chan did none of those things. However, I do not agree with Dr. Meinzer that these actions were required in the circumstances, even if Mr. Chan was acting as Dr. Meinzer's insurance agent.

24. I find that Dr. Meinzer's intention to cancel the Equitable policy was not apparent from his 1-sentence email to Mr. Chan and lack of response thereafter. Although Mr. Chan interpreted Dr. Meinzer's email as indicating a possible intention to cancel the policy, Mr. Chan's August 4, 2016 email was clear that Equitable would not cancel the policy without the completed cancellation form. The cancellation form required Dr. Meinzer's signature.
25. Dr. Meinzer says he missed Mr. Chan's August 4 email but does not deny that his Hotmail account received the email. He says that he was transitioning to a Gmail account and the Hotmail account turned into a junk email account. This does not explain how he missed Mr. Chan's August 4 email given that he replied to Mr. Chan's August 3 email from his Hotmail account. Regardless, it is not Mr. Chan's fault that Dr. Meinzer missed the email. I find that Mr. Chan was not required to follow up with Dr. Meinzer because Mr. Chan provided clear instructions for what was required to cancel the policy.
26. Dr. Meinzer submits that Canadian courts have held that agents are liable if they fail to adequately insure after receiving instructions from a client (*Fine Flower Ltd. v. General Accident Assurance Co. Canada* (1977 CanLII 1182 (ON CA))). While I accept that general principle, I do not agree that it applies to liability for premiums after receiving instructions to cancel insurance. However, that is immaterial as I find that Dr. Meinzer did not give Mr. Chan instructions to cancel the policy.
27. Dr. Meinzer's email only indicated that he was getting insurance from a different agent. He did not say that he wished to cancel the policy. When Dr. Meinzer did not reply to Mr. Chan's August 4 email, I find Mr. Chan's decision not to follow up was reasonable in the circumstances. Mr. Chan is not responsible for Dr. Meinzer's failure to act. I dismiss the claim against Mr. Chan.

Is Equitable liable to Dr. Meinzer?

28. There is no suggestion that Equitable breached the terms of the Equitable policy. Rather, Dr. Meinzer says that Equitable mishandled the transfer of the policy from

Vance to other managing general agencies, including FS. The role of managing general agencies was not explained in submissions or evidence. Nonetheless, the evidence does indicate that Equitable made errors in failing to transfer Dr. Meinzer's policy to appropriate managing agencies in a timely manner. However, Dr. Meinzer has not established a link between these errors and his alleged losses – the increased premiums he paid.

29. As noted above, Dr. Meinzer received Equitable's June 22, 2016 renewal letter, which outlined the premium increase and the effective date of August 21, 2016. This information about premium increases was not new information. It was provided in the Equitable policy itself. Included with the renewal letter was a policy statement that said the policy would automatically renew, and asked Dr. Meinzer to contact his financial advisor or an Equitable customer service representative if he had questions. He did neither of those things. There is no dispute that Dr. Meinzer did not attempt to contact Equitable until December 5, 2017, when Equitable received the signed cancellation form.
30. I find that Dr. Meinzer agreed in August 2006 to the increased premiums that took effect in August 2016. I find that he was, or ought to have been, aware of the premium increase, particularly given the reminders provided by Equitable and Mr. Chan. I find that Dr. Meinzer has not established that Equitable did or failed to do anything that caused or contributed to his failure to cancel the policy before December 5, 2017. I dismiss the claim against Equitable.

Are Mr. Adjudani, Vance or FS liable to Dr. Meinzer?

31. Tribunal records show that Mr. Adjudani, Vance and FS were served with the Dispute Notice according to the tribunal rules. Each failed to respond and so each is technically in default. As a general rule, the tribunal will assume that a person who is in default is liable. However, I find that the presumption of liability is overridden by the evidence before me.

32. Dr. Meinzer says that Mr. Adjudani owed him a legal duty as Mr. Adjudani requested to have the Equitable policy transferred to him sometime after Georgie Chan passed. There is no dispute that on July 21, 2016 Mr. Adjudani became the advisor on record for the Equitable policy. According to Equitable's evidence, Mr. Adjudani was under investigation for fraud and subsequently had his insurance agent licence terminated. Dr. Meinzer says that both Mr. Adjudani and Mr. Adjudani's managing agency, FS, failed to contact him and failed to follow the Insurance Council of BC's code of conduct. He says they therefore contributed to his losses.
33. I find that Dr. Meinzer has not established that Mr. Adjudani or FS had an obligation to contact him before his premiums increased. Moreover, I find that such contact would not likely have resulted in Dr. Meinzer avoiding his alleged losses, given that Mr. Chan and Equitable both contacted Dr. Meinzer about the scheduled premium increase, and he did nothing. There is nothing in Dr. Meinzer's submissions or evidence to suggest that Mr. Adjudani or FS caused or contributed to his failure to cancel the automatically renewing Equitable policy. Therefore, despite their failure to file a Dispute Response, I dismiss Dr. Meinzer's claims against Mr. Adjudani and FS.
34. As for Vance, Mr. Chan explained that Vance was Georgie Chan's former managing general agent until around 2012. It was not the managing general agent for the Equitable policy when the premiums increased. Dr. Meinzer's submissions only make incidental references to Vance. Nothing in his submissions or evidence suggests that Vance was responsible for his failure to cancel the automatically renewing policy. Therefore, I dismiss Dr. Meinzer's claims against Vance.

Is Dr. Meinzer responsible for Mr. Chan's legal fees, other expenses, or stress?

35. Mr. Chan counterclaims for \$4,500 for his time spent, legal fees and other costs. He says that amount is appropriate due to the stress, anxiety and interruptions caused

by Dr. Meinzer. Mr. Chan says that Dr. Meinzer brought complaints to different regulatory bodies, and those complaints, though unsuccessful, had the potential to harm Mr. Chan's professional reputation. He also says he incurred expenses seeking professional assistance responding to this dispute, although he does not provide a breakdown or receipts.

36. Section 20 of the CRTA provides a general rule that parties are to represent themselves in tribunal proceedings. Claims for time spent on a dispute are generally not allowed, consistent with self-representation where legal fees are not reimbursed. I see no reason to deviate from that practice here, and in any event there is no objective evidence to substantiate the fees and expenses.

37. While I accept that responding to Dr. Meinzer's complaints may have been stressful and unpleasant, claims for mental injuries normally must be proven by objective evidence, such as medical reports. Mr. Chan did not provide any objective evidence. He also provided no evidence that he suffered any economic loss as a result of Dr. Meinzer's complaint. I dismiss the counterclaim.

38. 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. Dr. Meinzer's claim and Mr. Chan's counterclaim were both unsuccessful, so I make no order for tribunal fees or expenses. The other respondents did not pay any tribunal fees or claim dispute-related expenses.

ORDER

39. I dismiss Dr. Meinzer's claims, Mr. Chan's counterclaims, and this dispute.

Micah Carmody, Tribunal Member