Civil Resolution Tribunal

Date Issued: February 19, 2020

File: SC-2019-007797

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chi v. BC Matchmakers Ltd.*, 2020 BCCRT 187

Default decision – non-compliance

B E T W E E N :

YI CHI

APPLICANT

A N D :

BC MATCHMAKERS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: David Jiang

INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent, BC Matchmakers Ltd., due to the respondent's

non-compliance with the tribunal's mandatory directions as required, as discussed below.

2. This dispute is about an agreement for matchmaking services. The applicant, Yi Chi, says the respondent overcharged for its services and wrongly refused to refund $1,020.43. The applicant also claims $1,979.57 for the respondent's failure to cancel the agreement and for harassing her by phone and email. Finally, the applicant seeks an order that the respondent stop emailing and phoning her.

3. The respondent filed a Dispute Response. It disagrees with the respondent's claims, as discussed below.

4. The applicant is self-represented. The respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. Section 36 of the *Civil Resolution Tribunal Act* (CRTA) applies if a party to a dispute fails to comply with the CRTA or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the tribunal for resolution and the tribunal may:

    a. Hear the dispute in accordance with any applicable rules.

    b. Make an order dismissing a claim in the dispute made by the non-compliant party, or

    c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.

6. The case manager has referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I ought to refuse to resolve this dispute or dismiss it.

7. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the 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.

8. Where permitted under section 118 of the CRTA, the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

9. For the reasons that follow, I have allowed the applicant's claim to proceed and dismissed it.

ISSUES

10. The issues are as follows:

    a. Should I proceed to decide the applicant's claim, without the respondent's further participation, given its non-compliance?

    b. Is the applicant entitled to a refund of $1,020.43 for matchmaking services?

    c. Is the applicant entitled to $1,979.57 as compensation for harassment?

    d. Should I order the respondent to stop emailing and phoning the applicant?

EVIDENCE AND ANALYSIS

Non-compliance

11. My February 5, 2020 summary decision to hear the dispute without the respondent's participation due to the respondent's non-compliance was previously communicated to the parties by email through the case manager. The details supporting that decision are set out below.

12. The respondent is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by sections 25 and 32 of the CRTA and tribunal rules 1.4(1), 5.1 to 5.4, and 7.1 to 7.4, despite multiple attempts by the case manager to contact it with a request for a reply.

13. The respondent filed its Dispute Response on October 7, 2019, which included an email address and phone number to be used for this dispute. The case manager then made the following attempts at contact. The respondent did not reply to any of these attempts:

    a. On January 9, 2020, the case manager asked the respondent to respond to the applicant's settlement agreement by January 13, 2020.

    b. In emails dated January 14 and 15, 2020, the case manager reminded the respondent to reply and provided a deadline of January 15, 2020.

    c. On January 17, 2020, the case manager emailed the respondent a "first warning" that further action could be taken to find the respondent a non-compliant party, and asked for a response by January 20, 2020.

    d. On January 22, 2020, the case manager emailed the respondent to say that it needed to respond by January 24, 2020. The case manager said this was the "second warning" before further action could be taken to find the respondent a non-compliant party.

    e. On January 22, 2020, the case manager left a voicemail message for the respondent.

    f. On January 28, 2020, the case manager emailed the respondent a "final written warning". She advised that the respondent had to reply by February 3, 2020, and that without a reply, she might refer the dispute to a Tribunal Member to be heard and decided without the respondent's further participation. The case manager cited CRTA section 36 as part of her authority to do so.

g. That day, the case manager also phoned the respondent and left a message with a receptionist. She left a message asking for the respondent's representative to call her back by February 3, 2020.

14. The case manager then referred the matter of the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

Should the tribunal hear the applicant's dispute without the respondent's participation?

15. I find the case manager made a reasonable number of contact attempts. As referenced above, the respondent filed a Dispute Response which included both an email address and phone number. The case manager attempted both without success. Her efforts also included leaving a message with a receptionist.

16. The respondent has provided no explanation about why it failed to communicate with the tribunal as required. The respondent was informed in writing at the beginning of the facilitation process that it must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find the respondent knew about the case manager's contact attempts and failed to respond.

17. Tribunal rule 1.4(2) states that if a party is non-compliant, the tribunal may:

    a. Decide the dispute relying only on the information and evidence that was provided in compliance with the CRTA, a rule or an order,

    b. Conclude that the non-compliant party has not provided information or evidence because the information or evidence would have been unfavourable to that party's position, and make a finding of fact based on that conclusion,

    c. Dismiss the claims brought by a party that did not comply with the CRTA, a rule or an order, and

d. Require the non-compliant party to pay to another party any fees and other reasonable expenses that arose because of a party's non-compliance with the CRTA, a rule or an order.

18. Tribunal rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the tribunal will consider:

    a. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute,

    b. The stage in the facilitation process at which the non-compliance occurs,

    c. The nature and extent of the non-compliance,

    d. The relative prejudice to the parties of the tribunal's order addressing the non-compliance, and

    e. The effect of the non-compliance on the tribunal's resources and mandate.

19. In the circumstances of this case, I find it is appropriate to hear the applicant's dispute without the respondent's further participation, relying on the information and evidence provided by the applicant and in the respondent's Dispute Response form. My reasons are as follows.

20. First, this dispute does not affect persons other than the named parties.

21. Second, the non-compliance here occurred early in the facilitation process, and the respondent has provided no evidence or submissions. The respondent effectively abandoned the process.

22. Third, given the case manager's attempts at contact and the respondent's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.

23. Fourth, I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear

the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy, which would be unfair to her.

24. Finally, the tribunal's resources are valuable. Its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party refuses to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek participation from the respondent.

25. In deciding to hear the dispute, I find the applicant's claim should be heard. In deciding to hear the dispute, I have put significant weight on the following factors:

    a. The extent of the non-compliance is significant,

    b. The need to conserve the tribunal's resources, and

    c. There is no counterclaim.

Is the applicant entitled to a refund of $1,020.43 for matchmaking services?

26. Having decided to hear the dispute without the respondent's participation, I turn to the merits of the dispute.

27. Where a respondent filed a response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against them. This means that if the respondent refuses to participate, it is generally reasonable to assume that the applicant's position is correct on the issue at hand. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute and is in default.

28. Having said that, I reviewed the Dispute Response, because it was filed before the respondent's non-compliance.

29. The applicant says she visited the respondent's offices on July 16, 2019 and paid the respondent for matchmaking services. She says the respondent advised her

that she would be charged $995.19 CDN. Instead, she says the respondent charged $1,020.43 CDN. She seeks reimbursement of full $1,020.43 CDN.

30. In its Dispute Response, the respondent disagreed with the applicant's claims and said it charged the correct amount. It said, "no refund is due" but it was "willing to cancel" the full balance the respondent "owes". I do not interpret this to mean that the respondent agreed it should repay $1,020.43 CDN.

31. The applicant provided a signed copy of the parties' agreement dated July 16, 2019. The agreement states a price of $760.42 USD. The agreement also states $995.19 CDN as the price after conversion to Canadian dollars.

32. The applicant also provided her credit card statement showing a July 16, 2019 transaction for $760.42 USD, converted to $1,020.43 CDN, to "BC Matchmakers".

33. I find that the evidence supports the conclusion that the parties agreed that the applicant would be charged $760.42 USD. Ultimately, she was charged this amount. The written documents support the conclusion that the respondent did not overcharge the applicant.

34. I acknowledge that the applicant paid $1,020.43 CDN rather than $995.19 CDN. However, I am not persuaded that the respondent misrepresented the price. The applicant paid by credit card. The credit card statement in evidence notes that any transactions made in foreign currency are converted to Canadian dollars at exchange rates determined by the credit card issuer. The statement specifically says the credit card exchange rate includes a markup percentage.

35. The applicant also provided her July 18, 2019 email to the respondent. In the email, the applicant wrote she wished to cancel the agreement. She specifically noted the cancellation was not due to anything the respondent did, but rather "personal circumstances". This email does not support the applicant's claim that the respondent overcharged her.

36. Ultimately, I find the key point is that the respondent charged the applicant $760.42 USD, as agreed to in the contract, and that the applicant paid this amount.

37. Further, the applicant did not point to any term in the agreement that allowed her to obtain a refund. I note that section 19 of the agreement says that "fees payable" are "non-refundable", save for any right for cancellation under the BC *Business Practices and Consumer Protection Act* (BPCPA). The applicant did not say she was seeking a refund under the BPCPA or that the respondent breached its provisions.

38. I dismiss this claim.

Is the applicant entitled to $1,979.57 as compensation for harassment?

39. The applicant says the respondent caused damage by not canceling the agreement and continuously emailing and phoning her. To the extent the applicant argues this conduct amounted to harassment, I note that in *Total Credit Recovery v. Roach,* 2007 BCSC 530, a decision that is binding on me, the court found that "the weight of authority in this Province is against the development of such a tort". I therefore find that there is currently no recognized cause of action in British Columbia for the tort of harassment.

40. Even if there was such a recognized tort in this province and I found the respondent liable, I would not award the applicant her claimed damages. The respondent provided no evidence to justify an award of $1,979.57.

Should I order the respondent to stop emailing and phoning the applicant?

41. The applicant seeks an order for the respondent to stop emailing and phoning her. This is an order for injunctive relief, and the tribunal does not have jurisdiction to grant such an order under CRTA section 118. See *Betz et al v. Brandolini et al,* 2019 BCCRT 1155 at paragraph 8, which is not binding but applicable. Under CRTA section 10, I must refuse to resolve this claim.

42. Under section 49 of the CRTA, 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.

43. The respondent was successful in this dispute. I award no tribunal fees or dispute-relates expenses as there is no indication the respondent paid any.

ORDER

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

David Jiang, Tribunal Member