



# Civil Resolution Tribunal

Date Issued: March 10, 2020

File: SC-2019-005918

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Marwaha v. Levinsky*, 2020 BCCRT 277

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

PRITPAL MARWAHA

**APPLICANT**

**A N D :**

SHANNON LEVINSKY

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

### **INTRODUCTION**

1. The applicant, Pritpal Marwaha, claims \$5,000 that she says she gave the respondent, Shannon Levinsky for an “investment” on October 9, 2017. The respondent denies that the applicant gave her the claimed \$5,000, and instead says the applicant gave the money to someone else when the applicant joined “the gifting group”.

2. The parties are each self-represented.
3. For the following reasons, I dismiss this dispute.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I infer from the respondent's submissions that she seeks an oral hearing, which I have not allowed for the following reasons.
6. Credibility of interested witnesses, particularly where there is conflict as there is here, cannot be determined solely by the test of whose personal demeanour in a court room or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found 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 documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the applicant give the respondent \$5,000 in October 2017?
  - b. If yes, must the respondent must return the \$5,000 to the applicant?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proving her claims on a balance of probabilities.
11. The applicant initially had difficulty uploading her evidence to the tribunal's online portal for submissions. The tribunal then assisted the applicant by uploading the evidence on her behalf, which I reviewed in considering her claims. While I have read all the parties' submissions and evidence, I have only addressed them to the extent necessary to explain my decision.
12. The applicant says she gave the respondent \$5,000 and expected a \$40,000 return on a venture called "Boss Life Pay it Forward" (Boss Life). The applicant says she was required to recruit new people to join in order to get a return on her money. The applicant describes Boss Life as an illegal "gifting circle". The applicant says the respondent "unfairly influenced and manipulated" her and took her money for an illegal purpose. The applicant asks that I order the respondent to return the \$5,000.

13. The respondent admits that she told the applicant about Boss Life and was involved in Boss Life herself. However, the respondent says the applicant did not pay her to join Boss Life. The respondent says the applicant paid \$5,000 to someone named “Jackie” in the gifting circle, who went by the name “Hypogirl”.
14. While I accept the applicant paid \$5,000 to join Boss Life, I find the applicant has not proven that she gave the \$5,000 to the respondent. There is no objective evidence on payment. The applicant admittedly has no receipt or record of her alleged payment to the respondent for Boss Life. The applicant provided no record at all of making the payment. The parties’ texts in evidence also do not say anything about the payment. I also have no information on Boss Life’s payment structure, such as who a new person pays when they join. I find the applicant’s disputed assertion insufficient to prove that she gave the \$5,000 to the respondent. Even if I am wrong on this, for the following reasons I would still find the applicant not entitled to a \$5,000 refund from the respondent for “investing” in Boss Life.
15. It is not my role to assess criminal liability for money ventures. However, on the applicant’s own evidence, I find Boss Life was likely a prohibited pyramid scheme contrary to the *Criminal Code* and sections 55 or 55.1 of the federal *Competition Act*. A pyramid scheme, for *Criminal Code* purposes, occurs when money is paid under the scheme that then entitles the person who paid the money to receive a larger sum by reason of the fact that others pay money or are obligated to pay money under the scheme.
16. In her submissions, the respondent cited 2 tribunal decisions, *Bains v. Chand*, 2018 BCCRT 92 and *Vafi v. Tabaei*, 2019 BCCRT 593, where the tribunal dismissed the applicants’ claims for reimbursement of money given for pyramid or “gifting circle” schemes. While earlier tribunal decisions are not binding on me, I agree with the respondent that the same legal principles apply here.
17. I find the applicant is not entitled to recover money paid on an illegal agreement. A principle often referred to by a Latin maxim “*ex turpi cause non oritur action*”, means that the applicant cannot seek to enforce an illegal agreement. For further

discussion on why a party cannot recover on an illegal agreement, see *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, 1983 CanLII 23 (SCC), *Ouston v. Zurowski*, 1985 CanLII 451 (BC CA) at para 8.

18. There are 2 exceptions to the above “*ex turpi*” maxim. The first is where the parties are not on even footing or “equal fault” for engaging in an illegal enterprise. The applicant does not say she took any steps to look into the legality of Boss Life. The applicant says that due to life circumstances she was in a “vulnerable mental state” at the time. I accept on the evidence that she was suffering some mental health issues. However, the medical evidence does not suggest her mental health would have prevented her from taking steps to ensure she did not join and participate in something illegal. If the applicant did not know Boss Life was likely illegal, I find she failed to take reasonable steps to investigate Boss Life or was likely willfully blind to its compliance with the law.
19. The applicant says the respondent induced her to join Boss Life and recruit more people to join to get a return on her money. However, I find the parties’ texts, which is the bulk of the applicant’s evidence, do not show that the respondent induced or pressured the applicant to join, recruit people or remain in Boss Life. Instead, the texts show the applicant trying to recruit new people at a time when the respondent was not actively participating and was preoccupied with a hospitalized husband. The evidence suggests that both parties had difficult life circumstances when they were part of the scheme. I find the applicant has not proven that she was on uneven footing with the respondent or that she was the less blameworthy party.
20. The second exception is where the applicant repents before the contract has been performed, which is not the case here. The texts show the applicant actively participated and tried recruiting people to join Boss Life after her October 2017 “investment”.
21. Given the applicant has not proven she gave the respondent \$5,000 and my finding that Boss Life was likely an illegal pyramid scheme, I find the applicant is not entitled to the return of her \$5,000. I dismiss the applicant’s claim.

22. As the applicant was unsuccessful and in accordance with the tribunal rules, I find the applicant is not entitled to reimbursement of her tribunal fees.

**ORDER**

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

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Trisha Apland, Tribunal Member