



# Civil Resolution Tribunal

Date Issued: May 8, 2020

File: SC-2019-007275

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chauhan v. Malkin*, 2020 BCCRT 505

**BETWEEN:**

**MINESH CHAUHAN**

**APPLICANT**

**AND:**

**CHRIS MALKIN AKA CHRISTOPHER MICHAEL BACCARDAX-  
SCULLY and UMAR MUTA**

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This is a contract dispute about payment of a reward. The applicant purchaser, Minesh Chauhan, entered into a presale purchase agreement for a condominium with the assistance of the respondent real estate agent Umar Muta, who was employed by Presales Vancouver. Presales Vancouver, a website that offered realtor services for various presale purchases, is not a party to this dispute.
2. The respondent, Chris Malkin, aka Christopher Michael Baccardax-Scully (Mr. Malkin), is Presales Vancouver's owner and operator.
3. Mr. Chauhan says that the respondents, through the Presales Vancouver website, offered him a reward for completing his presale purchase transaction, but have failed to pay the offered reward. He claims \$1,800 for the reward.
4. Both respondents deny offering, or agreeing to pay, a reward to Mr. Chauhan. The respondents ask that the dispute be dismissed.
5. All parties are self-represented.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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. None of the parties requested an oral hearing and I have decided to hear this dispute through written submissions.

8. Most of the argument in this dispute amounts to a 'he said, he said' scenario, with each party calling into question the credibility of the others. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me without holding an oral hearing. I have also considered the tribunal's mandate that includes proportionality and a speedy resolution of disputes. I also note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required in all cases where credibility is in issue.
9. 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.

## **ISSUE**

10. The issue in this dispute are whether either respondent should pay the applicant a reward and, if so, how much should they pay him?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim, such as this, the applicant must prove his claim, on a balance of probabilities. I have reviewed all evidence and argument submitted to the tribunal, but only refer to that which is necessary to explain my decision. Mr. Malkin has not provided any evidence or arguments, other than his initial Dispute Response, despite the opportunity to do so.
12. In 2016 Mr. Chauhan saw the Presales Vancouver website and contacted Mr. Malkin about purchasing a presale condominium. Mr. Chauhan says that part of the

reason he contacted Presales Vancouver, was because the Presales Vancouver website offered rewards to their clients with every completed purchase.

13. The Presales Vancouver website no longer exists. Mr. Chauhan submitted a screenshot of the website from March 22, 2016 which says that Presales Vancouver offers their clients rewards with every “completed purchase transaction”, including gift cards, luxury ski getaways, wine and golf experiences, and more. Reward values started at \$1,800 and each reward package was noted to be unique for each client. The website invited the reader to call or email the company to inquire about the type of reward available for the presale unit the client was looking to purchase.
14. Mr. Chauhan says that he met with Mr. Muta for the first time on April 19, 2016. Mr. Chauhan says that Mr. Muta confirmed that Presales Vancouver offered rewards to its clients. Mr. Muta says he was not aware of the rewards program being offered.
15. Mr. Chauhan says that he paid a deposit on a presale condominium on May 7, 2016. He says that he asked Mr. Muta about payment of the reward and Mr. Muta said he would need to speak to Mr. Malkin, as the owner of the company.
16. Mr. Chauhan says that, in a series of emails, Mr. Muta initially said he did not qualify for the reward, then said that “it would be looked after”. However, those emails are not in evidence before me.
17. Mr. Chauhan says that, during a telephone conversation on May 27, 2016 Mr. Muta told him that Mr. Malkin would honour the reward as advertised on the Presales Vancouver website, but that the reward would be paid out only after completion. Mr. Muta denies that he ‘said yes’ to Mr. Chauhan.
18. Mr. Chauhan contacted Mr. Muta again in August 2019 about payment of the reward. Mr. Muta agrees that he told Mr. Chauhan that he would contact Mr. Malkin. Mr. Chauhan says that he contacted Mr. Malkin directly, who said that he would look into the situation. Mr. Chauhan says neither Mr. Muta nor Mr. Malkin gave him an answer about the reward.

19. Mr. Malkin argues that his company stopped offering the rewards program months before Mr. Chauhan finalized his sale agreement. Mr. Malkin argues that Mr. Chauhan never raised the reward offer during his negotiation of the sales contract, or during the 7 day rescind period. I infer the owner refers to the 7 days following the payment of the deposit, during which a presales agreement can be rescinded by the purchaser, without penalty.
20. For a contract to exist there must be an offer, acceptance of the offer, and consideration, which is something of value given by each party. For the contract to be enforceable, there must be a 'meeting of the minds' about the contract's subject matter. If the essential terms are so lacking that the parties' real intention cannot be given any effect, the contract is unenforceable: *First City Investments Ltd. V. Fraser Arms Hotel Ltd.*, 1979 CanLii 606 (BCCA). I find that Mr. Chauhan has failed to prove the elements of a contract are present in this dispute.
21. I find that Mr. Chauhan has failed to prove that the reward program described on the Presales Vancouver website was an offer that existed at the time he entered into his purchase agreement. I accept that the program existed on March 22, 2016 but Mr. Malkin's evidence is that the program was discontinued before Mr. Chauhan finalized his purchase agreement. Mr. Chauhan did not provide a copy of the purchase agreement as evidence. I find it likely that he entered into the agreement sometime around May 7, 2016, when he paid his deposit. He has not proven that the reward program was a live offer at that time.
22. I do not accept that Mr. Malkin, through Mr. Muta, agreed to 'honour' the reward as advertised on the website, upon completion. Mr. Muta and Mr. Malkin both deny agreeing to this. While Mr. Chauhan refers to emails between himself and Mr. Muta, he did not submit copies of those emails as evidence and does not explain why he did not do so. Further, Mr. Chauhan did not provide any details about the type of reward when the website specifically says that each reward is unique, depending on what the client wants and which unit they purchase. This leads me to conclude that

Mr. Chauhan did not discuss the reward offer with either Mr. Muta, or Mr. Malkin, at the time he entered into the presale purchase agreement.

23. On balance, I find that Mr. Chauhan has failed to prove that he entered into a contract with Mr. Malkin, or Mr. Muta, for payment of a reward upon completion of a purchase agreement. I dismiss Mr. Chauhan's claim for \$1,800.
24. 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 purchaser was unsuccessful in this dispute, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses. The successful respondent did not pay fees or claim expenses.

## **ORDER**

25. I order the applicant's claims and this dispute be dismissed.

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Sherelle Goodwin, Tribunal Member