



# Civil Resolution Tribunal

Date Issued: July 3, 2020

File: SC-2020-001864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Attfield v. Stadnyk*,  
2020 BCCRT 741

Default decision – non-compliance

**BETWEEN:**

ANDY ATTFIELD and CAROL ATTFIELD

**APPLICANTS**

**AND:**

MARK STADNYK

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## **INTRODUCTION**

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of the respondent, Mark Stadnyk, due to his non-compliance with the CRT's mandatory directions as required, as discussed below.
2. This dispute is about a contract to sell collectibles. The applicants, Carol Attfield and Andy Attfield, are mother and son. They say Mr. Stadnyk promised to sell Ms. Attfield's late husband's music equipment and collectibles and that they would pay him a commission. The Attfields say that Mr. Stadnyk did not sell several items and refused to give them back or pay for them. The Attfields request I order the items returned or order Mr. Stadnyk to pay the value of the items, which they say is \$3,000.
3. In the Dispute Response filed at the outset of this proceeding, Mr. Stadnyk says the contract was only with Ms. Attfield and not Mr. Attfield. Mr. Stadnyk also states that many of the items were worthless and that one expensive amplifier was given to him as commission. He says that he does not owe the Attfields anything and that Ms. Attfield told him she did not want the items back.
4. Mr. Attfield represents the applicants. Mr. Stadnyk represented himself, while he was participating.

## **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 CRT made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the CRT for resolution and the CRT 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 Mr. Stadnyk's non-compliance with the CRT'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 CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the CRTA. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
  9. I note that Mr. Stadnyk says he only contracted with Ms. Attfield to sell the items. However, the evidence suggests that Mr. Stadnyk has an interest in the items as they belonged to his late father. Therefore, I find that it is appropriate Mr. Attfield is named as a party even though it was Ms. Attfield who entered into the contract with Mr. Stadnyk.
  10. For the reasons that follow, I have allowed the Attfields' claim.

## **ISSUES**

11. The first issue is whether I should proceed to decide the Attfields' claim, without Mr. Stadnyk's further participation, given his non-compliance.

12. The second issue is to whether I should order Mr. Stadyk to return the items or pay the Attfields \$3,000.00.

## **EVIDENCE AND ANALYSIS**

### ***Non-compliance***

13. My summary decision to hear the dispute without Mr. Stadyk's participation due to his non-compliance was previously communicated to the parties by email on May 3, 2020 through the case manager. The details supporting that decision are set out below.
14. Mr. Stadyk 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 him with a request for a reply.
15. Mr. Stadyk filed his Dispute Response on March 2, 2020 which included his email address and phone number to be used for this dispute. The case manager then made the following attempts at contact:
  - a. By email on March 16, 2020 requesting Mr. Stadyk's reply by March 18, 2020.
  - b. By email on March 18, 2020 informing Mr. Stadyk that he had to confirm his availability for a settlement conference by March 20, 2020.
  - c. By phone on March 19, 2020 leaving a voicemail informing Mr. Stadyk that he needed to comply with the case manager's directions and that he had to reply by March 20, 2020.
  - d. By email on March 24, 2020 giving Mr. Stadyk a second warning that he had to comply with the case manager's directions and setting out that if he did not the case manager may refer the dispute to a tribunal member who may decide to hear the dispute without Mr. Stadyk's further participation.

- e. By phone on March 25, 2020 telling Mr. Stadnyk he had to reply by March 27, 2020. The case manager again explained to Mr. Stadnyk the consequences of not complying.
  - f. By text on March 26, 2020 explaining the need to respond and warning that a decision may be made without his participation if he did not reply.
  - g. By email on March 26, 2020 informing Mr. Stadnyk that he needed to respond by email or phone by March 27, 2020. The email indicated that without giving another warning the case manager may refer the dispute to a tribunal member who may hear the dispute without Mr. Stadnyk's participation.
  - h. By phone on March 27, 2020 indicating that this was the final warning.
  - i. By email on March 31, 2020 indicating that this was the third and final warning. The case manager again informed Mr. Stadnyk that he had to respond by April 3, 2020 or the case manager may refer the dispute to a Tribunal Member who may hear and decide the dispute without the respondent's participation.
16. All the emails were responded to by an autoreply saying that Mr. Stadnyk was away and would respond when he returned. The case manager referred the matter of Mr. Stadnyk's non-compliance with the CRT's rules to me for a decision as to whether I should hear the dispute without the respondent's participation.

***Should the CRT hear the Attfields' dispute without Mr. Stadnyk's participation?***

17. As referenced above, Mr. Stadnyk filed a Dispute Response. Mr. Stadnyk provided his contact information. I find Mr. Stadnyk then failed to take part in the facilitation process as required, and so he was non-compliant. On March 3, 2020, Mr. Stadnyk left a message in the CRT's negotiation portal telling Mr. Attfield that this would be the last email because Mr. Stadnyk was leaving the country for 6 months and then going abroad from August until February 2021. He wrote that he was not taking his computer and that he would not reply to emails.

18. I find the case manager made a reasonable number of contact attempts. Mr. Stadnyk was informed in writing at the beginning of the facilitation process that he must actively participate in the dispute resolution process and respond to the case manager's communications, including emails. I find Mr. Stadnyk clearly knew about the case manager's contact attempts and failed to respond. I do not accept Mr. Stadnyk's statement that because he was travelling, he could not be reached. There is no explanation as to why Mr. Stadnyk could not check his emails, even if he did not have his personal computer with him. Further, Mr. Stadnyk's phone was functioning, and the case manager's messages were going to voicemail. I find that Mr. Stadnyk received the communications and refused to respond.

19. Rule 1.4(2) states that if a party is non-compliant, the CRT 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.

20. Rule 1.4(3) says that to determine how to proceed when a party is non-compliant, the CRT 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 CRT's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the CRT's resources and mandate.
21. In the circumstances of this case, I find it is appropriate to hear the Attfields' dispute without Mr. Stadnyk's further participation, relying on the information and evidence provided by the Attfields and in Mr. Stadnyk's Dispute Response form. My reasons are as follows.
  22. First, this dispute does not affect persons other than the named parties.
  23. Second, the non-compliance here occurred early in the facilitation process, and Mr. Stadnyk has provided no evidence or submissions. Mr. Stadnyk effectively abandoned the process after providing a response.
  24. Third, given the case manager's attempts at contact and Mr. Stadnyk's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant.
  25. Fourth, I see no prejudice to the Attfields in hearing the dispute without Mr. Stadnyk's participation. The prejudice to Mr. Stadnyk of proceeding to hear the dispute is outweighed by the circumstances of his non-compliance. If I refused to proceed to hear the dispute, the Attfields would be left without a remedy, which would be unfair to them.
  26. Finally, the CRT'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 CRT to continue applying its resources on this dispute, such as by making further attempts to seek participation from Mr. Stadnyk.

27. In weighing all of the factors, I find the Attfields' claim should be heard. In deciding to hear the Attfields' dispute I have put significant weight on the following factors:
- a. the extent of the non-compliance is significant,
  - b. the Attfields are not prejudiced, and
  - c. the need to conserve the CRT's resources.

### ***Merits of the Dispute***

28. Having decided to hear the dispute without the Mr. Stadnyk's participation, I turn to the merits of the dispute.
29. Where a respondent filed a Dispute Response but has since failed to comply with the tribunal's directions, an adverse inference may be drawn against him. 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.
30. Having said that, I reviewed the Dispute Response, because it was filed before Mr. Stadnyk's non-compliance. Mr. Stadnyk did not dispute that he entered into the contract with Ms. Attfield. However, he says that most of the items he agreed to sell were worthless because they were incomplete or broken. He says that after Ms. Attfield cashed a cheque for \$1,000 in November 2019 he was entitled to keep the remaining valuable items as commission for the time he spent trying to sell the items.
31. I find that Mr. Stadnyk's comment that most of the items were incomplete or broken does not make sense because I find he would not agree to try to sell them if this was the case. Further, Mr. Stadnyk provided no evidence that Ms. Attfield said that he could keep the other items as commission. I reject Mr. Stadnyk's position set out in his Dispute Response.



32. Email exchanges between the parties list the items which Mr. Stadyk agreed to sell. Mr. Stadyk indicated that he threw out some of the items. Therefore, I find it inappropriate to order the return of the items. The Attfields have requested \$3,000 in damages to cover the value of the items. Mr. Stadyk sent the Attfields an email saying if they wanted an amplifier and speaker back it would cost \$3,000, although he said part of the reason he wanted that amount was because of the way he felt he had been treated. On a judgement basis, I find that \$3,000 is an appropriate value of the goods because there are other items besides the amplifier and speaker that are detailed in the emails that are also worth money. In total, I find the \$3,000 the Attfields request is fair compensation for the items Mr. Stadyk did not return.
33. Therefore, I find Mr. Stadyk must pay the Attfields \$3,000.
34. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) as of the end of November 2019, or November 30, 2019, because it is the date Mr. Stadyk last made a payment of the value of the items. This totals \$34.41.
35. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. I therefore order the respondent to reimburse the applicants for CRT fees of \$125. The applicants did not make a claim for dispute-related expenses.

## **ORDERS**

36. Within 30 days of the date of this order, I order Mr. Stadyk to pay the Attfields a total of \$3,159.41 broken down as follows:
  - a. \$3,000 in damages for the value of the items,
  - b. \$34.41 in pre-judgment interest under the COIA, and
  - c. \$125.00 in tribunal fees.
37. The Attfields are entitled to post-judgment interest, as applicable.

38. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.
39. As set out in 58.1(3) of the CRTA, a party may only enforce this order if the time for making a notice of objection has passed and a Notice of Objection has not been filed. Under section 48 of the CRTA, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that the CRT may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
40. The non-compliant party, Mr. Stadnyk, has no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

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Kathleen Mell, Tribunal Member