



Civil Resolution Tribunal

Date Issued: July 21, 2020

File: SC-2020-002625

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McMahon v. Tenenbaum*, 2020 BCCRT 804

BETWEEN:

DENNIS MCMAHON

APPLICANT

AND:

SHARON TENENBAUM

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about a cancelled photography workshop refund.
2. The applicant, Dennis McMahon, paid the respondent, Sharon Tenenbaum, \$1,700 for a photography workshop in Spain. Ms. Tenenbaum cancelled the workshop due

to Covid-19 travel restrictions. Although Ms. Tenenbaum refunded \$510 to Mr. McMahon, he claims a further refund of \$1,190 for the balance of the workshop fee.

3. Ms. Tenenbaum says the workshop was cancelled due to circumstances beyond her control and that the options she gave Mr. McMahon to reschedule the workshop were more than fair. She asks that the claim be dismissed.
4. Mr. McMahon and Ms. Tenenbaum are both self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (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.
6. The CRT 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.
7. The CRT 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 CRT 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 CRT 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

9. The issue in this dispute is whether Ms. Tenenbaum must refund the full cost of the workshop to Mr. McMahon.

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, Mr. McMahon must prove his claim on a balance of probabilities. Although I have reviewed all the parties' submissions and evidence, I refer only to that which explains and gives context to my decision.
11. On August 26, 2019 Mr. McMahon paid Ms. Tenenbaum \$1,700 to take her photography workshop. The workshop was to be held in Valencia, Spain, August 2-5, 2020. Due to Covid-19 travel restrictions, the workshop did not proceed. All this is undisputed.
12. On March 15, 2020, Ms. Tenenbaum told Mr. McMahon that the Spain workshop would be delayed until spring 2021 and offered him the option to attend an online version of the Spain workshop, attend the Spain workshop in person in the spring of 2021, or attend any future workshop. On March 17, 2020 Ms. Tenenbaum refunded Mr. McMahon \$510 of the workshop fee.
13. In a March 18, 2020 email Mr. McMahon declined Ms. Tenenbaum's offers and asked for a full refund of the workshop fee. Ms. Tenenbaum declined.
14. Ms. Tenenbaum says she had non-refundable expenses relating to the workshop and that most of the other participants accepted the changes she offered. While Ms. Tenenbaum's expenses are unfortunate, they do not alter the terms of the agreement between herself and Mr. McMahon.
15. I find that, by accepting Mr. McMahon's \$1,700, Ms. Tenenbaum agreed to provide the Spain workshop, as described. Both parties provided a copy of the cancellation and refund terms of the agreement. It says requests for cancellation up to 120 days prior to departure are refunded in full, minus a \$50 processing fee and a 2.9%

Paypal fee. I infer this means cancellations by workshop participants. The agreement also says that workshops will be cancelled and fees will be refunded in full, in the event of low registration. I infer this means cancellations by Ms. Tenenbaum.

16. Ms. Tenenbaum says she has discretion over how to deal with the cancelled workshop as the agreement did not promise a full refund in the event of a “force majeure” (unforeseen circumstances preventing someone from fulfilling a contract), which she says Covid-19 is. I disagree. There is no force majeure clause in the parties’ contract, and Ms. Tenenbaum cannot unilaterally impose terms into the contract without the consent of Mr. McMahon, which he has clearly not provided. In the absence of a force majeure clause, the existing cancellation terms of the agreement apply, even if unforeseen circumstances prevented Ms. Tenenbaum from fulfilling her terms of the agreement.
17. I accept that Ms. Tenenbaum was penalized for cancelling the workshop, due to non-refundable expenses she incurred. However, that is not relevant to the application of the cancellation provisions of the agreement. Nor do I find it relevant that other participants accepted Ms. Tenenbaum’s offers and thus amended their agreements with Ms. Tenenbaum. By refusing Ms. Tenenbaum’s offers, I find Mr. McMahon chose not to amend his agreement with Ms. Tenenbaum.
18. I find the terms of the agreement address cancellation due to low registration, which is an event outside Ms. Tenenbaum’s control. Further, the terms of the agreement call for a full refund, less certain fees, if a participant cancels more than 120 days before the workshop. March 15, 2020 was more than 120 days prior to August 2, 2020. In both circumstances Mr. McMahon would be entitled to a full refund of his workshop fees. Because Ms. Tenenbaum cancelled the workshop, I find she is not entitled to keep the processing fee or Paypal fee.
19. In summary I find Ms. Tenenbaum must refund Mr. McMahon the remainder of his workshop fee in the amount of \$1,190.

20. The *Court Order Interest Act* applies to the CRT. Mr. McMahon is entitled to pre-judgment interest on the \$1,190 from March 18, 2020, the date he requested the full refund, to the date of this decision. This equals \$6.98.
21. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175 in CRT fees.

ORDERS

22. Within 30 days of the date of this order, I order Ms. Tenenbaum to pay Mr. McMahon a total of \$1,371.98, broken down as follows:
 - a. \$1,190 as a refund of the remaining workshop fee
 - b. \$6.98 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
23. Mr. McMahon is entitled to post-judgment interest, as applicable.
24. Under section 48 of the CRTA, the CRT 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 tribunals 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.

25. 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. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member