



# Civil Resolution Tribunal

Date Issued: September 22, 2020

File: SC-2020-005345

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Zhang v. Colobong*, 2020 BCCRT 1070

Default decision – non-compliance

BETWEEN:

SEAN ZHANG

**APPLICANT**

AND:

JEFFERY COLOBONG

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This final decision of the Civil Resolution Tribunal (CRT) has been made without the participation of Mr. Zhang, due to Mr. Zhang's non-compliance with the CRT's mandatory directions as required, as discussed below.

2. In his application for dispute resolution, Mr. Zhang said he visited the respondent chiropractor, Jeffery Colobong, on July 3 and 4, 2020. He said Dr. Colobong's treatment was inappropriate and left his whole body in pain. He sought \$5,000 in compensation. Dr. Colobong denies that he caused any injury, and says he treated Mr. Zhang to the standard of a competent chiropractor.
3. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

4. 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 CRT 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.
5. The case manager has referred Mr. Zhang'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.
6. 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.

7. 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.
8. For the reasons that follow, I dismiss Mr. Zhang's claims and this dispute.

## **ISSUE**

9. The issue in this dispute is whether I should dismiss Mr. Zhang's claim, hear the claim, or refuse to resolve the claim and the dispute, due to Mr. Zhang's non-compliance.

## **EVIDENCE AND ANALYSIS**

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

10. The applicant Mr. Zhang 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 CRT 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.
11. I note that CRT rule 5.4 normally requires Mr. Zhang to pay the decision fee. This is relevant, as discussed below.
12. Mr. Zhang filed his application for dispute resolution on July 10, 2020. He included his email address and phone number to be used in this dispute. The emails before me indicate that Mr. Zhang participated in facilitation without reaching a settlement. The case manager then made the following attempts at contact, which Mr. Zhang did not respond to any manner:

- a. On August 21, 2020, the case manager emailed Mr. Zhang to pay the \$50 CRT decision fee by August 24, 2020, to proceed to adjudication.
  - b. On August 24, 2020, the case manager emailed Mr. Zhang to pay the decision fee by noon that day.
  - c. On August 24, 2020, the case manager provided a “first warning”. They emailed Mr. Zhang to ask that he respond by August 26, 2020, to either pay the CRT decision fee or withdraw his claim. The case manager warned that the dispute could be referred to a CRT member to be decided without Mr. Zhang’s participation. The case manger also left a voicemail message.
  - d. On August 26, 2020, the case manager provided a second warning. They emailed Mr. Zhang again to ask if he wished to withdraw his claim or pay the CRT decision fee. The case manager provided a deadline of August 27, 2020 at 5:00 p.m. The case manager warned, again, that the dispute could be referred to a CRT member to be decided without Mr. Zhang’s further participation. They also cited CRTA section 36. The case manager also called Mr. Zhang’s phone number but received a “no longer in service” message.
  - e. On August 28, 2020, the case manager mailed and emailed a third and final warning letter. They set out the above events. They asked Mr. Zhang to reply by September 4, 2020 to advise if he wished to pay the decision fee or withdraw the claim. They referred to CRTA section 36 again.
13. The case manager then referred the matter of Mr. Zhang’s non-compliance with the CRT’s rules to me for a decision as to whether I should hear the dispute without Mr. Zhang’s participation.

***Should the CRT dismiss Mr. Zhang’s claim, hear the claim, or refuse to resolve the claim and the dispute, due to Mr. Zhang’s non-compliance?***

14. As noted above, Mr. Zhang initiated this CRT dispute. Mr. Zhang has provided no explanation about why he stopped communicating with the CRT as required. I find the case manager made a reasonable number of contact attempts. Mr. Zhang has

not responded to any of the case manager's contact attempts as detailed above, though he did in the past (including by phone). He has also failed to pay the decision fee under rule 5.4.

15. Mr. Zhang 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. Mr. Zhang provided his contact information as noted on the Dispute Notice. Mr. Zhang missed more than 3 deadlines to contact the case manager and was repeatedly warned about the consequences of non-compliance. I am satisfied from the evidence that Mr. Zhang knew about the case manager's contact attempts and failed to respond.

16. 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.

17. 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 tribunal's order addressing the non-compliance; and
  - e. The effect of the non-compliance on the tribunal's resources and mandate.
18. I find that in the circumstances of this case, it is appropriate to dismiss Mr. Zhang's dispute.
19. First, this dispute does not affect persons other than the named parties.
20. Second, the non-compliance here occurred after the facilitation phase was over, but before the process to prepare the dispute for a CRT decision had begun. Mr. Zhang did not provide any evidence or submissions. He effectively abandoned the process after the facilitation stage.
21. Third, given the case manager's attempts at contact and Mr. Zhang's failure to respond despite written warning of the consequences, I find the nature and extent of the non-compliance is significant. Mr. Zhang was unwilling to provide particulars of his claim, or to provide evidence to support his claim.
22. Fourth, I see no prejudice to the respondent Dr. Colobong in dismissing this dispute.
23. 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. Zhang.
24. I find that in the circumstances of this case, it is appropriate to dismiss Mr. Zhang's dispute. Although it is not a binding precedent, I agree with the CRT's reasoning in *Grand-Clement v. The Owners, Strata Plan, KAS 2467*, 2017 BCCRT 45 that it is problematic to force an unwilling applicant to pursue a dispute with the CRT. I agree that to do so would go against the CRT's mandate and impair the fairness of the

process by creating an imbalance of the CRT's fact finding and decision-making functions.

25. On the other hand, if I refuse to resolve the claim, there would be no finality to this dispute as it would be open to Mr. Zhang to make a further request for CRT resolution. I find that in refusing to resolve, there would be no finality and no consequence to Mr. Zhang for failing to participate, which would be unfair to Dr. Colobong.
26. In summary, in deciding to dismiss the claim rather than refuse to resolve it, thereby issuing a final order to resolve the dispute, I have put significant weight on the following factors:
  - a. The non-compliance occurred before the parties exchanged evidence and submissions (as no party has paid the decision fee under CRT rule 5.4),
  - b. The extent of the non-compliance is significant,
  - c. Dr. Colobong is not prejudiced if such an order is made,
  - d. The need to conserve the CRT's resources, and
  - e. There is no counterclaim.

## **DECISION AND ORDERS**

27. I dismiss Mr. Zhang's claims and this dispute.
28. Under section 49 of the CRTA, and CRT 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 not to follow that general rule.
29. Dr. Colobong is the successful party but has incurred no CRT fees and claims no dispute-related expenses. I therefore do not order any.

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David Jiang, Tribunal Member