



# Civil Resolution Tribunal

Date Issued: April 9, 2021

File: SC-2020-009113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tschudi v. De Bruyn*, 2021 BCCRT 373

B E T W E E N :

HANS RUDOLF TSCHUDI

**APPLICANT**

A N D :

BARRY DE BRUYN

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about a recreational vehicle (RV) sales commission. The applicant, Hans Rudolf Tschudi says the respondent, Barry De Bruyn, agreed to pay him a 15% commission for the marketing and sale of Mr. De Bruyn's RV. Mr. Tschudi says the buyer contacted Mr. De Bruyn directly and Mr. De Bruyn sold them the RV, but refused to pay Mr. Tschudi the commission.

2. Mr. Tschudi says he is entitled to the commission and seeks payment of \$3,150, 15% of the RV's \$21,000 sale price.
3. Mr. De Bruyn says he did not have an exclusive agreement with Mr. Tschudi to sell his RV and Mr. Tschudi did not sell the RV himself. Mr. De Bruyn says the parties agreed "No Sale – No Commission".
4. Mr. Tschudi and Mr. De Bruyn 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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. Section 42 of the CRTA says 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 CRT considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the parties' agreement gave Mr. Tschudi the exclusive right to market and sell Mr. De Bruyn's RV, and if so, whether Mr. Tschudi is entitled to payment of a 15% commission for the RV sale.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Mr. Tschudi must prove his claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. It is undisputed that the parties had an RV sales commission agreement and that the RV was sold for \$21,000. However, the parties dispute the agreement's terms. The central question in this dispute is whether Mr. Tschudi is entitled to the commission under the parties' agreement if he did not personally sell the RV.
12. Here, I find Mr. Tschudi is entitled to a 15% commission on the RV's \$21,000 sale price, which equals \$3,150. My reasons follow.

### ***The Parties' Agreement***

13. In evidence are the parties' emails discussing their agreement. Mr. De Bruyn emailed Mr. Tschudi for a proposal of what he would provide in exchange for his 15% commission. In his July 1, 2020 response, Mr. Tschudi wrote:

“In return for a 15% commission, I will take care of everything, advertising the sale, answering questions from prospects, cleaning up and staging the trailer in order to make it presentable, showings and cleanings thereafter. In the event of a sale, I will arrange for a meeting between the prospective buyer and you, issue the sale and transfer documents, and make sure that the transaction is being completed properly.”

14. Mr. De Bruyn responded on July 6, 2020 and said “your proposal is good for us”.
15. Both parties submit that the July 1, 2020 email proposal does not represent the whole agreement. I agree. I find the agreement was partly in writing and partly verbal. While a contract does not have to be written down, it is more difficult to prove that parties agreed to verbal contract terms.
16. Mr. Tschudi says the agreement was for him to exclusively market and sell Mr. De Bruyn’s RV. He says the parties agreed that all prospective buyers would be referred to him. Mr. Tschudi says the commission was payable regardless of whether he sold the RV personally. He admits the parties agreed “no sale, no commission”, but says that they also agreed that “sale” meant from any source. He also says that his marketing efforts resulted in the RV sale. Mr. Tschudi provided evidence of his marketing and sales efforts under the agreement, including advertising the RV for sale online and responding to numerous inquiries from potential buyers.
17. Mr. De Bruyn does not dispute that Mr. Tschudi marketed the RV and dealt with potential buyers. However, Mr. De Bruyn says the agreement was not exclusive and did not require him to pay Mr. Tschudi’s commission if Mr. Tschudi did not sell the RV. He says Mr. Tschudi did not sell the RV and his “tasks and activities did not, in any way, contribute to or result in the sale of the RV”. Mr. De Bruyn says the buyer contacted him directly and he sold the RV, so Mr. Tschudi is not entitled to his commission.
18. I find the emails between the parties after July 6, 2020 support Mr. Tschudi’s position on the parties’ agreement. In particular, Mr. De Bruyn sent numerous emails to Mr.

Tschudi that I find confirm Mr. Tschudi's evidence about the agreement's terms, including the following:

- a. On July 27, 2020, Mr. De Bruyn wrote "While up there I noticed someone had manipulated the telephone numbers on the For Sale sign! I believe that the large 778 number is yours (as intended). Please have a look and fix it such that your number is prime and our home number and my cell are secondary. Anyone calling our numbers will be immediately referred to you!" (my emphasis).
  - b. On August 2, 2020, Mr. De Bruyn wrote "Yesterday I discussed, with RS, my employing you to do sales activities and he was in agreement."
  - c. On August 15, 2020, Mr. De Bruyn wrote "Our friends previously from the park...have agreed to buy the RV only...I have accepted their offer...I mentioned to him that I was using your services for marketing and sales but he said that he wished to deal with me as we are camping friends in the park."
19. On balance, I prefer Mr. Tschudi's evidence about the agreement's terms. I find that his evidence is more in line with the parties' agreement as set out in the July 1, 2020 email, and the conduct of the parties afterwards, as evidenced in the parties' numerous emails. I find that when looking at the totality of the evidence, the parties' agreement included terms that all prospects would be referred to Mr. Tschudi and that Mr. Tschudi would have exclusive conduct of the RV sale.
20. Mr. Tschudi says that his marketing efforts generated the buyer and resulted in the RV sale. Mr. De Bruyn disagrees. Given my findings above that the parties' agreed that all prospects would be forwarded to Mr. Tschudi and he had exclusive conduct of the RV sale, I find that nothing turns on whether Mr. Tschudi's marketing efforts generated the buyer.
21. Mr. De Bruyn also says that he advised Mr. Tschudi their "project was over verbally on the day of the sale and later by email". I do not accept these submissions. The

emails to Mr. Tschudi do not show any indication that Mr. De Bruyn wanted to terminate the agreement. I find that when Mr. De Bruyn received the offer to purchase the RV from his friend, he no longer wished to pay Mr. Tschudi's commission.

22. The evidence also shows that Mr. Tschudi continued to market the RV and respond to sale inquiries advising prospective buyers that "a sale is pending on this unit" between the time Mr. De Bruyn told Mr. Tschudi of the potential RV sale on August 15, 2020 and the time Mr. Tschudi was told the RV had been sold. Even if I did accept that Mr. De Bruyn advised Mr. Tschudi that he wanted to end their agreement, I find the parties did not agree that Mr. De Bruyn could unilaterally cancel their agreement at any time.
23. I find that Mr. De Bruyn breached the parties' agreement when he failed to refer the buyer to Mr. Tschudi to finalize the RV sale and instead completed the RV sale himself. I also find that doing so did not release Mr. De Bruyn from his obligation to pay Mr. Tschudi's commission under the parties' agreement. So, I find Mr. De Bruyn breached the parties' agreement when he failed to pay Mr. De Bruyn his 15% commission on the RV sale price and Mr. Tschudi remains entitled to his commission, which equals \$3,150.
24. The *Court Order Interest Act* applies to the CRT. Mr. Tschudi is entitled to pre-judgment interest on the \$3,150 commission from September 25, 2020, the date Mr. Tschudi requested payment of his commission after the September 2020 RV sale to the date of this decision. This equals \$7.63.
25. 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. I find Mr. Tschudi is entitled to reimbursement of \$175 in CRT fees. Mr. Tschudi did not claim any dispute-related expenses, and so I award none.

## ORDERS

26. Within 30 days of the date of this order, I order Mr. De Bruyn to pay Mr. Tschudi a total of \$3,332.63, broken down as follows:
- a. \$3,150 in debt for the RV sale commission,
  - b. \$7.63 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$175 in CRT fees.
27. Mr. Tschudi is entitled to post-judgment interest, as applicable.
28. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

29. 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.

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Leah Volkers, Tribunal Member