



Civil Resolution Tribunal

Date Issued: May 6, 2021

File: SC-2020-009245

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shaikh v. Serene Beauty Salon Limited*, 2021 BCCRT 475

B E T W E E N :

FAWZIA SHAIKH also known as ANNE SHAIKH

APPLICANT

A N D :

SERENE BEAUTY SALON LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Fawzia Shaikh also known as Anne Shaikh, paid the respondent, Serene Beauty Salon Limited (Serene), for hair removal services. Miss Shaikh says that she paid \$415 for multiple treatments but did not receive all of the treatments she paid for. She also says that Serene did not treat all of the areas of her face that they agreed to. She asks for a full refund.

2. Serene says that Miss Shaikh received all the services she paid for. Serene says that she chose not to proceed with the treatment process before it was complete. Serene asks that I dismiss Miss Shaikh's claim.
3. Miss Shaikh is self-represented. Serene is represented by its owner.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. 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.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
8. I note that Miss Shaikh provided a link to a Facebook page, which she says shows a video of the hair removal procedure. She also provided a link to the federal government's safety guidelines for laser hair removal. I cannot rely on live links because the websites' content may have changed. So, I have not viewed these links. In any event, Miss Shaikh does not allege that Serene performed the treatments unsafely. So, I find that the federal safety guidelines are not relevant. As for the video, based on the parties' submissions, I understand that this is a video of the hair removal process generally and not of Miss Shaikh receiving treatment from Serene. I find that a video demonstration would not help me make my decision. So, I did not ask Miss Shaikh to provide a copy of the safety guidelines or the video.
9. I also note that Serene provided evidence past the CRT's deadline. Miss Shaikh objected to this in her reply submissions but did not say why. I find that Miss Shaikh had the opportunity to comment on all the late evidence but chose not to. So, I find that the late evidence did not impact the fairness of the hearing.
10. Finally, in its submissions, Serene asks for an order that Miss Shaikh remove a negative online review. Serene did not file a counterclaim, so I find that this issue is not properly before me. In any event, the CRT would not have jurisdiction to order Miss Shaikh to remove the online review. This is because the CRT can only order injunctive relief, which is an order for a party to do something, in limited circumstances that do not apply to the online review.

ISSUE

11. The issue in this dispute is whether Miss Shaikh is entitled to a full or partial refund from Serene. This requires me to determine what the parties agreed to and how much Miss Shaikh paid to Serene.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Miss Shaikh as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
13. The parties agree about very little in this dispute. They both say that Serene provided laser hair removal treatments on October 1, October 15, and October 21, 2020. They agree that these 3 treatments were all on the same areas of Miss Shaikh's face. They both say that Miss Shaikh paid Serene \$115 by credit card on October 1, 2020. They agree that after these 3 treatments, Miss Shaikh asked for a refund, which Serene refused. Other than that, their evidence is very different.
14. Miss Shaikh says that her first appointment was on September 3, 2020. Miss Shaikh says that a Serene employee, M, quoted her \$360 for 7 treatments to remove hair from all of Miss Shaikh's lower face and neck. Miss Shaikh says that she told M that she only had \$100 cash on hand. She says that M asked her to go to a bank machine to get more because Serene would not charge tax if Miss Shaikh paid in cash. Miss Shaikh says that her husband, CG, took her to bank machine nearby where she took out \$250, which she paid to Serene. Miss Shaikh says that M treated 3 small areas of her face, 2 on each side of her jaw and 1 on her chin.
15. Miss Shaikh says that during the October 1 treatment, she asked M about the rest of the area she wanted treated. She says M told her this would cost \$110 more. As mentioned above, it is undisputed that Miss Shaikh \$115 by credit card at this appointment. Miss Shaikh says that this amount "included taxes".
16. Miss Shaikh says that at the October 21 treatment, she paid \$50 cash towards the \$110 for treating the rest of her lower face and neck. Miss Shaikh says that she tried to pay with her credit card but M wanted cash. Miss Shaikh says that she got the \$50 from CG. She made another appointment for November 4, 2020, but says she cancelled because she did not believe that M would treat the areas she wanted treated.

17. In total, Miss Shaikh says that she paid \$365 for 7 treatments of the jaw and chin areas and \$50 towards treatment for the rest of her lower face and neck. She says that she only received 4 of these treatments. She also says that M failed to treat the areas that the parties had agreed to. She says that she will have to start the treatment over with another company so she should get a full refund.
18. Serene denies that Miss Shaikh had an appointment on September 3, 2020. Serene also denies that it received any cash payments. Serene says that it discourages cash payments because of COVID-19. Serene says that Miss Shaikh's \$115 payment on October 1, 2020, covered 3 treatments, which Serene provided. Serene says that Miss Shaikh chose not to get any more treatments. Serene says that it can take between 6 and 12 treatments to fully remove hair, so Miss Shaikh's treatment process was incomplete when she stopped. Serene's submissions reflect 2 written statements that M provided in this dispute.
19. There is no written contract between the parties. Verbal contracts are enforceable just like written contracts, but it can be harder to prove what the parties agreed to. The burden is on Miss Shaikh to prove what the contract's terms were.
20. Miss Shaikh provides 3 pieces of evidence to support her version of events. First, she provided a written statement from her husband, CG. Second, she provided a bank statement showing that she took out \$250 cash on September 3, 2020. Third, she provided a copy of a receipt from Serene for the \$250 cash payment, which she says M wrote out on a "sticky note". She says that M only did this because Miss Shaikh insisted. The receipt said that Miss Shaikh bought 7 lower face treatments, paid \$250, and had \$100 left to pay. Some parts of the sticky note are not legible.
21. I find that Miss Shaikh has not proven her version of events. In his statement, CG said that he took Miss Shaikh to 4 appointments, took her to the bank machine on September 3, 2020, and gave her \$50 cash on October 15, 2020. However, he does not appear to have any first-hand knowledge about what happened between Miss Shaikh and M. For example, he did not say that he saw any money change

hands or hear any conversations between Miss Shaikh and M. So, I find that his evidence does not prove whether she paid any cash towards the treatments.

22. I accept that the bank record proves that Miss Shaikh took \$250 out of the bank but this does not necessarily mean that she paid it to Serene. Overall, I find that Miss Shaikh's evidence about how much she paid Serene is internally inconsistent. She says that she brought \$100 cash on September 3, 2020, specifically to pay Serene for treatment. Then, she says that she took out \$250 more from the bank machine, but still only paid \$250 to Serene. She does not explain why she did not pay more if she had \$350 cash and the treatments would cost \$360. Also, her evidence that M told her that the treatments would cost \$360 is inconsistent with the sticky note, which said that the treatments would cost \$350. Finally, she paid \$115 on October 1, 2020, bringing the total alleged payments to \$365. Her explanation is that the credit card payment included tax, but her evidence on this point is vague. In any event, I find the \$5 difference does not reflect the amount of tax that would apply.
23. I also find it unlikely that M insisted on cash payments for some transactions but not others. Serene also says that when customers pay with cash, it provides proper cash receipts, not sticky notes. I find it unlikely that Serene would produce a "receipt" for a customer by handwriting notes onto a sticky note. Miss Shaikh also does not explain why she insisted on a receipt for the first cash payment but not the second.
24. For these reasons, I find that Miss Shaikh's evidence about the cash payments is not credible or reliable. I do not accept that Miss Shaikh made any cash payments. I find that the only payment she made to Serene was the \$115 credit card payment on October 1, 2020.
25. I find that Miss Shaikh received 3 treatments for this \$115. Based on Miss Shaikh's evidence that M quoted her \$360 for 7 sessions, I find that she did not overpay for the 3 treatments she received. In other words, I accept Serene's evidence that Miss Shaikh paid \$115 for 3 treatments, which she received.

26. Miss Shaikh also argues that the treatments she received covered only a small part of her face when she had asked for hair removal for her whole lower face and neck. Again, I find Miss Shaikh's evidence inconsistent on this point. She says that her initial \$350 in payments was supposed to be for her lower face and neck. This is inconsistent with Miss Shaikh's claim that she agreed to pay a further \$110 for treatment for the rest of her lower face and neck. So, I find that she has not proven that Serene breached the parties' contract by treating only a portion of Miss Shaikh's face.
27. Finally, Miss Shaikh questioned whether M was certified to use the device. Serene provided both a certificate and a letter from the manufacturer confirming that M had taken the training required by the local health authority. I accept this evidence.
28. Therefore, I dismiss Miss Shaikh's claim for a refund.
29. 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. Miss Shaikh claimed \$100 in dispute-related expenses but abandoned this claim in submissions. In any event, she was unsuccessful. Neither party paid any CRT fees. Serene did not claim any dispute-related expenses. So, I make no order for any CRT fees or dispute-related expenses.

ORDER

30. I dismiss Miss Shaikh's claims, and this dispute.

Eric Regehr, Tribunal Member