



Civil Resolution Tribunal

Date Issued: May 28, 2021

File: SC-2020-009384

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Compuran Computer Services Ltd. v. Hosseini*, 2021 BCCRT 584

BETWEEN:

COMPURAN COMPUTER SERVICES LTD.

APPLICANT

AND:

SEYEDEH FATEMEH HOSSEINI

RESPONDENT

AND:

COMPURAN COMPUTER SERVICES LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment of tuition fees.
2. The applicant, Compuran Computer Services Ltd. (Compuran), is a private college. The respondent, Seyedeh Fatemeh Hosseini, enrolled in a business administration program at Compuran, paid part of her tuition fees, and later withdrew from the program. Compuran says Ms. Hosseini must pay a total of 50% of her annual tuition under the parties' enrollment agreement. It claims \$3,770 in unpaid tuition fees.
3. Ms. Hosseini says she already paid Compuran \$5,665 for tuition fees and denies she owes anything further. She says Compuran is only entitled to keep 30% of her annual tuition under the enrollment agreement up to a maximum of \$1,300, because she withdrew before her program started. She asks that Compuran's claim be dismissed.
4. Ms. Hosseini counterclaims \$4,365 which, she says, is the tuition refund she is entitled to under the enrollment agreement. Compuran denies it owes any refund and says Ms. Hosseini has not paid the full 50% of tuition Compuran is entitled to under the enrollment agreement.
5. Compuran is represented by a director. Ms. Hosseini is represented by a family member.

JURISDICTION AND PROCEDURE

6. 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.

7. 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. 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 in the interests of justice.
8. 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.
9. 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.

ISSUES

10. The issues in this dispute are:
 - a. Does Ms. Hosseini owe Compuran any further tuition fees and, if so, how much?
 - b. Must Compuran reimburse Ms. Hosseini any tuition fees and, if so, how much?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one the burden is on the applicant, Compuran, to prove its claim on a balance of probabilities. The same burden applies to Ms. Hosseini to prove her counterclaim. I have reviewed the submissions and weighed the evidence provided by both parties, but only refer to that evidence I find relevant to the dispute.
12. Ms. Hosseini enrolled in Compuran's Business Administration co-op diploma program as an international student. Both parties signed an enrollment agreement on May 7,

2019. According to the agreement, Ms. Hosseini's year long program was scheduled to start on September 30, 2019 and end on September 18, 2020, with 960 hours of instruction. The program was divided into 11-week quarters, with breaks in between. Tuition for the year was \$18,850.

13. I find Ms. Hosseini withdrew from Compuran's diploma program in a March 31, 2020 email. It is undisputed that Ms. Hosseini did not attend any business administration classes at Compuran before she withdrew.
14. Appendix B of the enrollment agreement sets out Compuran's refund policy if the student withdraws. Section 3 says Compuran "may retain up to 50% of the tuition paid under the student enrolment contract" if the student does not attend "any of the 30% of the hours of instruction to be provided" (reproduced as written). Compuran says this section applies because Ms. Hosseini did not attend any business administration classes following the September 30, 2019 start date.
15. Ms. Hosseini says a Compuran employee told her on the phone that her diploma program start date would be April 6, 2020, which Compuran does not deny. She says that, because she withdrew before her April 6, 2020 start date, clause 4(a)(ii) of the agreement applies. It says that if a student withdraws more than 7 days after the contract's effective date and less than 30 days before the contract's start date, Compuran may retain up to 20% of the tuition due under the contract, up to a maximum of \$1,300.
16. The agreement does not define the effective date or start date. I find the effective date is likely the date the agreement was signed, which is May 7, 2019 here. I further find the contract's start date is likely the program start date, which is September 30, 2019 in the written agreement. However, as explained below, I find the parties verbally agreed to change the program start date twice, thus changing the contract's start date.
17. Compuran says it cannot modify the enrollment agreement because it is subject to the *Private Training Act* (PTA), which requires the agreement to contain certain

wording and provisions. While I agree that the PTA requires Compuran to include specific provisions in its enrollment agreement, such as refund policies, I find the legislative requirements do not prevent the parties from changing a program start date or end date. This is supported by Appendix C, Clause 6, which acknowledges that program completion dates may be amended by schedule interruptions, such as where a student takes a quarter off.

18. Compuran also says that the program dates in an enrollment agreement cannot be changed, because this would affect the students' study permits. While I accept that Ms. Hosseini's immigration status may have been impacted by the status of her schooling, that is between Ms. Hosseini and the Canadian government and not between Ms. Hosseini and Compuran. I do not find Ms. Hosseini's immigration status prevents the parties from changing the terms of the enrollment agreement.
19. There is no clause in the enrollment agreement which prohibits further amendments, either written or verbal. So, I find the parties' written enrollment agreement can be modified. While written agreements can be modified verbally, it is more difficult to prove that both parties agreed to the verbal changes. Here, I must determine what the agreed upon program start date was for Ms. Hosseini's diploma program in order to determine which refund policy applies.
20. It is undisputed that Ms. Hosseini did not start the business administration program on September 22, 2019. In an October 6, 2019 email Ms. Hosseini told Compuran that she had just obtained her student visa and asked Compuran for a program deferral letter. It is unclear whether Compuran provided that letter. However, Compuran says Ms. Hosseini chose to start at the next quarter on January 2, 2020. In its submissions Compuran neither admits, nor denies, that it agreed to Ms. Hosseini deferring her program start date. However, I find Compuran agreed to the January 2, 2020 deferral, as explained below.
21. Based on Compuran's receipts, I find Ms. Hosseini paid \$4,355 toward her tuition on October 20, 2019, after the October 6, 2019 email. It is undisputed that Ms. Hosseini arrived on Compuran's campus in December 2019 and took an in-person English test

at that time, which Compuran says is required of all students. Compuran says it reported Ms. Hosseini's deferred study to Canada Immigration and Citizenship, as it was required to do, in late December 2019. I find Compuran's actions indicate that it accepted Ms. Hosseini's program deferral to at least January 2, 2020.

22. The parties agree that, after Ms. Hosseini's in-person English test, Compuran recommended she take an English as a Second Language (ESL) course. The parties signed a second enrollment agreement on January 8, 2020 for a 12-week ESL course starting on January 6, 2020 and ending on March 7, 2020. It is undisputed that Ms. Hosseini paid an extra \$2,500 for the ESL program. The agreement does not specify whether it replaces the first enrollment agreement for the business administration program, or whether both enrollment agreements run at the same time.
23. Compuran says the ESL enrollment agreement is separate and runs at the same time as Ms. Hosseini's business administration program. It says Ms. Hosseini was expected to complete the ESL classes outside the diploma classes. Ms. Hosseini says Compuran required her to take the ESL classes before starting her diploma program. Based on the wording of both enrollment agreements, I agree with Ms. Hosseini.
24. Appendix C, Section 6 of both the diploma and the ESL enrollment agreements say the program completion is based on the student's continuous full-time enrollment and that both programs are to be delivered on-site. I find it unlikely that Ms. Hosseini would complete 2 full-time programs at the same time. Further, the diploma program enrollment agreement says the program is taught in English and requires proof of English language proficiency. I find this means Ms. Hosseini needed to successfully complete the ESL program before taking the diploma program.
25. I note that, in a February 25, 2020 email, Compuran asked Ms. Hosseini to make a final decision on which diploma program she was registering in for next quarter. Ms. Hosseini responded that she wished to register in the interior design diploma program. I find this indicates that Compuran accepted that Ms. Hosseini had not yet started the business administration diploma program. Further, as Compuran does

not dispute it, I accept Ms. Hosseini's statement that a Compuran employee told her she would start her diploma program on April 6, 2020.

26. On balance, I find the parties verbally agreed to defer Ms. Hosseini's diploma program start date another quarter, to April 6, 2020. As I find the contract start date is the same as the program start date, I find the parties effectively changed the contract start date to April 6, 2020, by deferring the diploma program start date.
27. Compuran says Ms. Hosseini requested an enrollment confirmation letter in February 2020 for personal reasons. It says this shows Ms. Hosseini was enrolled in the diploma program at that time, but never completed any of the classes. Neither party provided copies of their emails about the confirmation letter, or copies of the letter Compuran provided. Even if Compuran had issued an enrollment confirmation letter, I find that would not establish that Ms. Hosseini's diploma program had already started.
28. Overall, I find Ms. Hosseini withdrew from the diploma program before the amended April 6, 2020 contract start date, but after the May 7, 2019 contract effective date. So, I agree with Ms. Hosseini and find Appendix B, Section 4(1)(ii) applies. I find Compuran is entitled to retain 20% of Ms. Hosseini's tuition, up to a maximum of \$1,300. I find Compuran is only entitled to keep \$1,300, because it is less than \$3,770, which is 20% of Ms. Hosseini's \$18,850 business administration diploma tuition.
29. Based on Compuran's receipts, I find Ms. Hosseini paid Compuran \$1,650 on May 5, 2019 which, I find included a \$350 application fee. So, I find Ms. Hosseini paid Compuran \$1,300 in tuition, plus a further \$4,355 for tuition on October 20, 2019, for a total of \$5,655 toward the business administration program tuition. These payments were separate from the additional \$2,500 I find Ms. Hosseini paid Compuran for the ESL program. As Compuran is only entitled to keep \$1,300 of Ms. Hosseini's diploma program tuition, I find it must refund \$4,355 to Ms. Hosseini.

30. Compuran says Ms. Hosseini should have to pay the \$3,770 based on her agreement to pay that amount in a series of April 2020 emails submitted as evidence. Based on those emails I find Ms. Hosseini agreed to pay the \$3,770 that Compuran told her she owed for withdrawing from the diploma program under Appendix B, section 3 of the diploma enrollment agreement. I find Ms. Hosseini's agreement to pay was based on both parties' incorrect interpretation of the refund policies set out in the enrollment agreement. I further find the emails do not create a new, binding contract between the parties, as there is no consideration (something of value) that Ms. Hosseini would get for paying the \$3,770. Further, I find Ms. Hosseini retracted her agreement to pay when she filed her dispute response and counterclaim in this proceeding.
31. Overall, I find Ms. Hosseini owes no further tuition fees. I dismiss Compuran's claim for \$3,770. I further find Compuran must refund Ms. Hosseini \$4,355 in tuition fees.
32. The *Court Order Interest Act* applies to the CRT. Ms. Hosseini is entitled to pre-judgment interest on the \$4,355 tuition fee refund from March 31, 2020, the date of her withdrawal, to the date of this decision. This equals \$39.39.
33. 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 Ms. Hosseini is entitled to reimbursement of \$125 in CRT fees.

ORDERS

34. I dismiss Compuran's claim.
35. Within 30 days of the date of this order, I order Compuran to pay Ms. Hosseini a total of \$4,519.23, broken down as follows:
 - a. \$4,355 as a refund for tuition fees
 - b. \$39.23 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.

36. Ms. Hosseini is entitled to post-judgment interest, as applicable.
37. 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.
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. 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