



Civil Resolution Tribunal

Date Issued: October 7, 2021

File: SC-2021-002917

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Armstrong v. Acker*, 2021 BCCRT 1075

B E T W E E N :

JENNIFER ARMSTRONG

APPLICANT

A N D :

DANA ACKER (Doing Business As REVOLUTION INK TATTOO &
PIERCING)

RESPONDENT

A N D :

JENNIFER ARMSTRONG

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about tuition fees for tattoo instruction. The applicant, Jennifer Armstrong, alleges the respondent, Dana Acker (dba Revolution Ink Tattoo & Piercing), “scammed” her with his 4-week tattoo course. Ms. Armstrong says she learned nothing and that there were no modules, theory, or organization. Ms. Armstrong originally claimed a refund of the \$5,000 tuition fee she paid Mr. Acker, but in submissions reduced this claim to \$4,500 to deduct for the \$500 tattoo kit she received and used.
2. Mr. Acker denies Ms. Armstrong’s claims. He says she put in poor effort and only attended ½ of the required dates to complete the course. Mr. Acker also says Ms. Armstrong negligently contaminated supplies and that he incurred expenses and business losses cleaning up an alleged health hazard he says Ms. Armstrong created. He also says she caused him emotional stress, time, and expenses to deal with this dispute. Mr. Acker counterclaims for \$5,000.
3. The parties are each self-represented.

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). 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.
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. Bearing in mind the CRT’s mandate that includes proportionality and a

speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under section 42 of the CRTA, 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 do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. To the extent Mr. Acker alleges slander by Ms. Armstrong, under CRTA section 10 I refuse to resolve that claim because it is outside the CRT's jurisdiction, as explained in CRTA section 119(a).

ISSUES

9. The issues in this dispute are:
 - a. Whether Mr. Acker misrepresented or breached the parties' tuition instruction contract by failing to provide adequate instruction, and if so, whether Ms. Armstrong is entitled to the claimed \$4,500 refund,
 - b. Whether Ms. Armstrong destroyed Mr. Acker's supplies, and if so whether he is entitled to compensation, and
 - c. Whether Mr. Acker is entitled to compensation for emotional stress and time spent on this dispute.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Ms. Armstrong has the burden of proving her claim, on a balance of probabilities (meaning "more likely than not"). Mr.

Acker has this same burden to prove his counterclaim. I have only referenced below what I find is necessary to give context to my decision.

Ms. Armstrong's \$4,500 tuition refund claim

11. The parties had no written signed agreement. I find the parties' email exchanges between February and August 20, 2020 discussed below collectively comprised their contract.
12. In February 2020, after reviewing Mr. Acker's website, Ms. Armstrong emailed him that she was interested in learning more about his tattoo course. Mr. Acker responded on February 25, 2020, and included the following details (quotes reproduced as written):
 - a. Classes are run on a monthly basis, with flexible start dates.
 - b. Training runs for 4 weeks, Thursday to Sunday, with varying hours.
 - c. Maximum of 2 students per term, so everyone gets "excellent 1 on 1 training".
 - d. The course covers "EVERYTHING from the absolute ground up, from you having zero knowledge, to being trained to tattoo professionally, either in a shop or on your own privately."
 - e. Two options were given: 1) shadowing, and 2) full instructional course, which cost \$5,000. The full course (which Ms. Armstrong chose) included a \$500 value tattoo kit. Upon completion, a certificate of completion would be provided.
13. Ms. Armstrong undisputedly paid Mr. Acker a total of \$5,000 for the course, with \$500 paid as a deposit for the tattoo kit and the balance paid by e-transfers on August 19 and 20 for the tuition.
14. I turn to the relevant chronology. On February 27, 2020, Mr. Acker emailed that the usual format was "set hours and days": Thursday and Friday 1pm to 9pm, Saturday 12 to 8pm, and Sunday 12 to 6 pm. However, he added that he has also offered

customized schedules, or allowed short leaves of absence. The same day, Ms. Armstrong responded “I’m in” and said she planned to start in September.

15. On August 17, 2020, Mr. Acker emailed Ms. Armstrong to say he had adjusted how he ran his classes after shop renovations, and would be increasing the classes to 3 students, and eventually to 4 students. He offered an earlier August 20, 2020 start date, and Ms. Armstrong replied that she agreed.
16. On August 19, 2020, Mr. Acker emailed Ms. Armstrong and the 2 other students about classes starting on August 20, 2020. The 4-week schedule was Thursday to Sunday as set out above, from August 20 to September 13, for a total of 30 hours per week.
17. On August 21, 2020, Ms. Armstrong emailed to say that she had forgotten to mention that for September 13 and “the rest of the Thursdays” she could not attend, and was wondering if she could make it up but added “I’m good though”.
18. On Wednesday August 26, 2020, Ms. Armstrong emailed Mr. Acker that she would be late to class, arriving between 4 and 5pm, which I infer referred to the scheduled Thursday class on August 27.
19. On September 3, 2020, Ms. Armstrong emailed that she would not be able to attend on Friday but would attend Saturday. Mr. Acker agreed. Ms. Armstrong submits she “stopped going” on September 4, 2020. I accept this but note there is no evidence she told Mr. Acker that September 4 would be her last day. Ms. Armstrong did not seek any refund until 7 months after the course concluded. I agree with Mr. Acker that Ms. Armstrong’s friendly tone in this September 3 email is inconsistent with her assertion that she felt bullied and humiliated by Mr. Acker by that point.
20. Ms. Armstrong admits she missed the last week of classes, or 25% of the course. She denies missing other days and says she just arrived late. I find the email evidence described above does not entirely support her position. In any event, I find for her own personal reasons Ms. Armstrong chose to skip at least 35% of class time, which I find significant.

21. I find that having enrolled in the course and taken some of it, Ms. Armstrong is not entitled to a refund for being late or simply choosing not to show up on certain days, without adequate notice. Given this, I find I do not need to decide if Mr. Acker's website advertised the course as non-refundable if cancelled less than 7 days before the start date (as he alleges), or, if there was no mention of refunds as Ms. Armstrong alleges. This is not a situation where Ms. Armstrong paid a deposit and cancelled before the contracted course began.
22. Next, Ms. Armstrong appears to argue she is entitled to a refund because Mr. Acker's course was not certified by the Private Training Institutions Branch (PTIB) at the time Ms. Armstrong took the course. A screenshot from a PTIB text says it requires BC private training institutions to obtain a PTIB certificate if the program offers "at least one career-related program with 40 hours or more of instructional time and tuition of at least \$4,000".
23. In this civil dispute, I find nothing turns on whether Mr. Acker's program was PTIB certified. I say this because there is no evidence before me that he ever represented to Ms. Armstrong that it was. The fact that he may not have complied with PTIB's registration requirements is not determinative of Ms. Armstrong's refund claim that she did not receive adequate instruction. This conclusion is consistent with the non-binding but persuasive decision in *Qin v. Vancouver International College of Health and Wellness Inc.*, 2019 BCCRT 687, where the CRT member similarly found a failure to be PTIB certified irrelevant to the civil claim.
24. Further, I find the fact that Ms. Armstrong did not know that the tattoo industry was not specifically regulated does not mean Mr. Acker breached their agreement. Mr. Acker did not represent he was regulated and it was open to Ms. Armstrong to do her own research before choosing Mr. Acker's course, including reviewing PTIB's publicly accessible website of certified institutions.
25. I also find it irrelevant that Mr. Acker was not registered with the Better Business Bureau, in which participation is voluntary. Similarly, the fact that Mr. Acker's business had a "moderate" "non-critical hazard" rating with Fraser Health in March

2019 and June 2020 is also not determinative of whether he provided instruction as agreed. In any event, Ms. Armstrong took the tattoo course in August 2020, and so the non-critical hazard ratings in 2019 and June 2020 are not particularly relevant.

26. Ms. Armstrong also provided screenshots of various prior ‘graduates’ of Mr. Acker’s program. The fact that Mr. Acker issued them a certificate of completion from his course is irrelevant. Ms. Armstrong also appears to argue that Mr. Acker’s representation he had other instructors was false, which he denies. I also find this irrelevant to the question of whether Mr. Acker provided Ms. Armstrong with reasonable tattoo instruction.
27. Ms. Armstrong also provided screenshots of a conversation she had with someone she describes as a fellow student. Their full name is not identified. The other person essentially agreed with Ms. Armstrong that Mr. Acker rushed the instruction and that they felt they did not learn anything. I find this evidence vague and unhelpful in determining whether Mr. Acker provided Ms. Armstrong with adequate instruction.
28. While Ms. Armstrong complains Mr. Acker never gave her “any kind of breakdown of the course”, the evidence before me does not show she ever asked for one or that he ever promised one. Significantly, while Ms. Armstrong says Mr. Acker failed to “deliver on the material terms” of their agreement, she does not identify what was specifically lacking. In any event, since Ms. Armstrong chose to miss at least 35% of the course work I find she has not proved Mr. Acker’s tuition was lacking given what she missed. Further, while Ms. Armstrong alleges the supplies provided were substandard, she submitted no evidence of this.
29. Finally, I accept that Ms. Armstrong did not engage well with Mr. Acker’s teaching method. He says she simply reacted poorly to his providing her with constructive feedback that she was failing the course due to poor effort. In any event, to the extent Ms. Armstrong alleges Mr. Acker’s tattoo course was “subpar” or below industry standards for tattoo instruction, I find this is outside ordinary knowledge and would require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). Here, there is none. So, I find it unproven that Mr. Acker’s course was subpar.

30. In summary, I find it unproven that Mr. Acker provided instruction contrary to the parties' agreement or below industry standards. I also find no evidence of misrepresentation, although Ms. Armstrong did not specify any particular representation that was allegedly misleading or false. So, I find Ms. Armstrong has not established she is entitled to any refund for the course. I dismiss Ms. Armstrong's claim.

Mr. Acker's \$5,000 counterclaim

31. Mr. Acker says Ms. Armstrong contaminated and therefore destroyed a full cabinet of supplies, by grabbing the items with ink and blood-soaked hands, without changing gloves. He says he showed Ms. Armstrong the video footage of her (and perhaps another student). While materials were included with the tuition fee, he says he is entitled to compensation from Ms. Armstrong for carelessly ruining his supplies. While Mr. Acker said he and his employee spent 5 hours doing "extensive cleaning", he provided no supporting evidence and in particular no witness statement from his employee or any photos or the video. I find Mr. Acker has not proven Ms. Armstrong caused the alleged damage.

32. In his Dispute Response to Ms. Armstrong's claim, he valued these contaminated supplies at \$1,000. However, in his response to Ms. Armstrong's evidence statement, Mr. Acker twice valued the ruined supplies at only \$100. I cannot reconcile the different amounts, and there are also no receipts or descriptions of the ruined supplies. In the absence of supporting evidence, even if I had found Ms. Armstrong responsible for the alleged damage to supplies, I find the value unproven. I dismiss this aspect of the counterclaim.

33. In his evidence, Mr. Acker says he bills out at \$180 per hour, and has spent "dozens" of hours on this dispute. The CRT's rules say that except in extraordinary cases the CRT will not award compensation for a party's "time spent". There is nothing extraordinary about this dispute, and the amount of evidence and submissions is not particularly voluminous.

34. As for emotional stress, Mr. Acker submitted no medical evidence in support, which I find would be necessary to support this claim. While I accept participation in this dispute was inconvenient for Mr. Acker, I find there is no legal basis for emotional stress damages in the circumstances. I dismiss Mr. Acker's counterclaim.
35. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Both parties were unsuccessful in their respective claims and so I make no order for fee reimbursement. Neither party claimed dispute-related expenses.

ORDERS

36. I refuse to resolve Mr. Acker's counterclaim for slander, under section 10 of the CRTA as slander is outside the CRT's jurisdiction. I dismiss Ms. Armstrong's claim and dismiss the balance of Mr. Acker's counterclaim.

Shelley Lopez, Vice Chair