



# Civil Resolution Tribunal

Date Issued: December 20, 2021

File: SC-2021-004474

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fodor v. Happy Buddha Tattoo Studio Incorporated*, 2021 BCCRT 1326

B E T W E E N :

MARGARET A FODOR

**APPLICANT**

A N D :

HAPPY BUDDHA TATTOO STUDIO INCORPORATED

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## INTRODUCTION

1. This dispute is about tattooing. The applicant, Margaret A. Fodor, hired the respondent, Happy Buddha Tattoo Studio Incorporated (HBTS), to give her a tattoo. Ms. Fodor says HBTS exceeded her budget before the tattoo was finished, a \$200 deposit was not returned, and she was very disappointed with her experience. She

claims \$5,000, the maximum CRT small claim amount, for pain and suffering and being taken advantage of.

2. HBTS says it charges by the hour, its quoted times and costs are only non-binding estimates, and it did not agree to a fixed price for Ms. Fodor's tattoo. HBTS says that Ms. Fodor forfeited a \$200 deposit by cancelling an appointment with no notice, although the remaining tattoo work could have been completed during that appointment, in less than 1 hour and for no additional payment. HBTS says it performed the services Ms. Fodor paid for, and owes nothing.
3. Ms. Fodor is self-represented in this dispute. An authorized employee or principal represents HBTS.

## **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. 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.
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 do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. Ms. Fodor admits she signed a “waiver” document for HBTS’s work. She does not dispute that the document had the same content as an unsigned version in evidence. The document said that the courts of British Columbia have “personal jurisdiction and venue over me and shall have exclusive jurisdiction for the purpose of litigating any dispute arising out of or related to this agreement.” The CRT is not a court, but neither party objected to it resolving this dispute. So, I find the parties waived the requirement that their dispute be heard in a BC court, and I find the CRT may decide it.

## **ISSUE**

9. The issue in this dispute is whether HBTS reasonably performed its services as agreed, and if not, whether it owes Ms. Fodor \$5,000 or another amount.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Ms. Fodor as the applicant must prove her claims on a balance of probabilities (meaning “more likely than not”). 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. In her submissions, Ms. Fodor breaks down her \$5,000 claim as follows:
  - a. \$2,300 for “intent to take advantage”,
  - b. \$2,300 for pain and suffering, and a bad experience,
  - c. \$200 for having to pay someone else to complete the tattoo work, and
  - d. \$200 for a deposit refund.

12. The undisputed evidence is that Ms. Fodor saved money for a long time so that she could get her first tattoo. After an initial consultation, she hired HBTS for that work, which took several appointments. Ms. Fodor admits that she was aware HBTS charged \$185 per hour plus tax. Ms. Fodor says she paid a total of \$1,205 for the tattoo work HBTS performed. HBTS says the total to date is \$1,122.68: \$922.69 for 4.75 hours of work not including tips, plus a \$200 deposit Ms. Fodor forfeited because she cancelled an appointment with no notice. Ms. Fodor provided no receipts, and HBTS says its premises burned in a fire after the disputed events, so there is limited proof of the total paid. Given the outcome of my decision below, nothing turns on this.
13. Ms. Fodor says she told HBTS from the outset that her tattoo budget was \$900, and that she did not want to exceed that amount. Although Ms. Fodor knew HBTS charged \$185 per hour, she says it should not have agreed to do the tattoo work if it could not be completed for at most \$900. HBTS does not deny that it initially estimated the tattoo could be completed for \$900, but says this was only a non-binding estimate. HBTS says the parties did not agree to a fixed price. I find that the \$1,122.68 or \$1,205 the parties say Ms. Fodor paid is reasonably similar to the \$900 estimate, and is not unreasonably excessive.
14. There is no written estimate or quotation in evidence. There is also no written contract in evidence specifically about the price or potential price of Ms. Fodor's requested tattoo. I find the only direct evidence of whether the parties agreed to a maximum price is the parties' own statements, which contradict each other. However, in the circumstances, I find that the agreed hourly pricing suggests that the tattoo price was not fixed or limited to a maximum amount. Having weighed the evidence, I find Ms. Fodor has not met her burden of proving that HBTS agreed to complete the tattoo for \$900 or less.
15. Ms. Fodor does not dispute that HBTS performed the tattoo work she paid for, except she says that it overcharged her on April 15, 2021 when the tattoo artist spent time helping another client during her appointment. HBTS denies charging Ms. Fodor for time spent with other clients. Ms. Fodor does not identify how long the artist spent

working on her tattoo that day, and whether HBTS charged her for more than that amount of time. There is no evidence that she disputed the charges on that day. On balance, I find HBTS did not overcharge Ms. Fodor.

16. During her April 21, 2021 appointment, Ms. Fodor booked another appointment for April 22, 2021. She says her tattoo had not yet had any green colour added, although the scanned tattoo photo in evidence is black and white and it is difficult to discern the level of completion. Ms. Fodor says that she initially thought the green would be added during the April 22, 2021 appointment as a “free touch up” that had been promised. However, she admits that the tattoo artist told her on April 21, 2021 that adding the green colour was part of the original tattoo, and that free touch ups only applied to completed work. Ms. Fodor does not deny that she gave a deposit before each HBTS appointment, and says she gave a \$200 deposit on April 21, 2021 for the April 22, 2021 appointment. She also suggests that the receptionist saw how much money was in her wallet and so asked for that amount. I find that is speculative and unsupported by any evidence, so I place no weight on it.
17. After leaving HBTS on April 21, 2021, Ms. Fodor calculated that including the \$200 deposit that day, she had already paid \$1,205 towards her tattoo, which was over her budget. She says her friends told her it sounded like she was being taken advantage of. Ms. Fodor says she told her friends on April 21, 2021 that she needed to give 48 hours’ notice to cancel appointments. I find this shows that Ms. Fodor was aware of HBTS’s submitted deposit policy, which she does not directly deny. That policy was titled, in bold, underlined letters, “**NO REFUND ON ANY/ALL DEPOSITS**”. The policy said if you left a deposit you would not get it back for any reason, and that it would be forfeited when you cancelled an appointment for any reason, changed an appointment with less than 2 days’ notice, or did not show up for an appointment.
18. Ms. Fodor returned to HBTS on April 22, 2021, and asked for the \$200 deposit back. HBTS said that the deposit was non-refundable, but the tattoo artist said that he could complete the tattoo during the April 22, 2021 appointment for less than the \$200 deposit amount she had already paid.

19. Ms. Fodor says that the tattoo artist's completion offer was an attempt to take advantage of her and retain some of the deposit money rather than refund it. She also says that it did not make sense that HBTS had asked for more deposit money than was necessary to complete the tattoo, given its policy of no refunds. However, the evidence does not show that she shared these concerns with HBTS. Although not explicitly set out in its deposit policy, HBTS says that it would have refunded any leftover deposit money upon completion of the tattoo. In any event, Ms. Fodor chose to cancel her appointment and have no further tattoo work done, rather than complete the tattoo on April 22, 2021 with or without a partial refund of any unused deposit amounts.
20. On balance, I find that Ms. Fodor cancelled the appointment despite being aware of the HBTS deposit policy of no deposit refunds for cancelled appointments or for appointment changes with less than 2 days' notice. So, I dismiss her claim for a \$200 deposit refund. I also dismiss her claim for \$200 to have the tattoo completed elsewhere, because HBTS was prepared to complete the tattoo on April 22, 2021 at the agreed rate, and I find HBTS did not agree to complete it for no further fees. I also find that HBTS followed the parties' agreement about the tattoo work, including the deposit policy. I find the evidence does not show that HBTS tried to take advantage of Ms. Fodor. I also find that HBTS's actions and the parties' agreement were not unreasonable or unconscionable. So, I deny Ms. Fodor's \$2,300 claim for "intent to take advantage".
21. Ms. Fodor says that her experience with HBTS caused her stress, pain, and suffering, for which she claims \$2,300. She submitted a short letter from Dr. Gharedaghi, MD, dated October 4, 2021, who said that he knew Ms. Fodor. He said that she suffers from extreme anxiety and "dealing with arguments involved with her tattoo artist has caused significant pain and suffering for her and is not good for her mental health well being" (reproduced as written).
22. Dr. Gharedaghi did not provide a more specific diagnosis, and did not explain what information or testing he based his opinion on, or how he arrived at his conclusions.

It is unclear to me to what extent Dr. Gharedaghi's letter provided a professional medical opinion, or whether it simply relayed Ms. Fodor's reports about stress from dealing with the tattoo issue. Notably, I find that Dr. Gharedaghi did not say that the tattoo disagreement with HBTS caused Ms. Fodor's unspecified anxiety condition, only that she had experienced pain and suffering and that dealing with the disagreement was not good for her. Ms. Fodor says that she suffered from stress as early as 2003, and that her mental health deteriorated in 2018, long before she requested a tattoo from HBTS.

23. I acknowledge that Ms. Fodor found the tattoo disagreement with HBTS upsetting. However, I find the evidence before me does not show that HBTS treated Ms. Fodor unfairly or discourteously, or in any way that could reasonably be expected to significantly worsen a person's mental health. I find the evidence does not show that HBTS is responsible for Ms. Fodor's claimed pain, suffering, or stress over the tattoo disagreement, so I dismiss her claim for \$2,300.

## **CRT FEES AND EXPENSES**

24. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. In this dispute, neither party paid CRT fees or claims CRT dispute-related expenses. So, I order no reimbursements.

## **ORDER**

25. I dismiss Ms. Fodor's claims, and this dispute.

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Chad McCarthy, Tribunal Member