



Civil Resolution Tribunal

Date Issued: June 3, 2022

File: SC-2021-009297

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Downs v. Middleton*, 2022 BCCRT 657

BETWEEN:

NICOLE DOWNS

APPLICANT

AND:

CLAIRE MIDDLETON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about personal coaching sessions. The applicant, Nicole Downs, says she hired the respondent, Claire Middleton, to provide somatic sex education sessions. Ms. Downs says she attended one session but was unable to complete the remainder, so seeks a refund of the \$700 she paid. Ms. Middleton says they remained willing and able to provide the sessions to Ms. Downs, but that Ms. Downs elected

not to continue for personal reasons. Mx. Middleton says Ms. Downs is not entitled to any refund.

2. The parties are each self-represented.

JURISDICTION AND PROCEDURE

3. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
4. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that 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.
6. 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.

Late evidence

7. Mx. Middleton provided late evidence. It appears Ms. Downs initially did not object to its admission, but in her reply submissions asked that the evidence's admission be "re-evaluated". I find Ms. Downs had an opportunity to comment on the late evidence and provide submissions about it, so was not prejudiced by it. I allow the evidence. However, I note the late evidence was not particularly helpful, and refusing to allow it would not have changed the outcome of my decision.

ISSUE

8. The issue in this dispute is whether Ms. Downs is entitled to a \$700 refund for unused personal coaching sessions.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Ms. Downs must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' submitted evidence and arguments, I have only addressed those necessary to explain my decision.
10. It is undisputed the parties agreed in May 2021 that Mx. Middleton would provide 6 somatic sex education sessions to Ms. Downs for a total of \$945. The parties' agreement is that a 7th "complimentary" session would be included. It is also undisputed that Ms. Downs paid \$400 on May 19, and a further \$300 on May 23. The remaining \$245 was never paid.
11. Ms. Downs says she attended one session, which should be counted as the complimentary session, and had to postpone the rest due to a personal issue. Ultimately Ms. Downs decided not to continue with the sessions and seeks a refund of her \$700. Ms. Downs also says she later found out Mx. Middleton fraudulently held themselves out to be certified when they were not.

12. Mx. Middleton says they are fully certified and provided a copy of a completion certificate from the Institute for the Study of Somatic Sex Education. Mx. Middleton further says Ms. Downs attended 3 sessions, not 1, and that the 7th “complimentary” session is the last session, and only for participants that have fully paid.
13. First, I find there is no merit to Ms. Downs’ allegation that Mx. Middleton misrepresented her qualifications. Although there is some conflicting evidence about whether Mx. Middleton is a certified member of the International Coaching Federation, I find nothing turns on this because Ms. Downs specifically signed up for “somatic sex education” sessions, which Mx. Middleton has a certificate for. I find Mx. Middleton did not misrepresent themselves or their credentials to Ms. Downs.
14. So, is Ms. Downs entitled to a refund? First, Mx. Middleton says the parties’ contract provides that all payments are non-refundable. Ms. Downs says she specifically did not agree to that term of the contract. The online contract in evidence has several “tick boxes”, one of which stated that all transactions were non-refundable. This box is not ticked.
15. Mx. Middleton says that although the box is not ticked on the contract, they discussed the terms with Ms. Downs in person and over the phone. Ms. Downs does not deny these conversations took place. On balance, I find that although Ms. Downs did not initially tick the above-noted box, I find she was aware of the contract’s terms and agreed to them by continuing to attend sessions.
16. Further, there were 9 tick boxes, and only the first was ticked by Ms. Downs. In one of Ms. Down’s text messages to Mx. Middleton, she advised she was having difficulty viewing and filling out documents from Mx. Middleton on her computer, so it is not clear to me whether Ms. Downs did in fact intend to refuse the term about refunds or whether it was a technical complication that prevented her from ticking it.
17. Additionally, after the tick boxes, the agreement stated “I have read, understand and agree to each of the above statements” which was signed and dated by Ms. Downs.

Given the above, on balance, I find Ms. Downs agreed any payments would be non-refundable. On that basis alone, I find that Ms. Downs is not entitled to a refund.

18. Additionally, although Ms. Downs says the one session she attended should count as her “complimentary” session, this is not what the evidence shows. First, an invoice shows that the complimentary session is on top of the 6 paid sessions, and only available when the sessions are paid in full, which Ms. Downs did not do. I also find Mx. Middleton’s submissions reasonable that the complimentary session is generally a course “wrap-up” after the paid sessions are completed.
19. Next, text messages submitted by Mx. Middleton show Ms. Downs had two in person sessions, on May 19 and 24, and one Zoom session, on May 31. Ms. Downs also cancelled two sessions, on May 29 and June 12, with short notice. Mx. Middleton says they also explained to Ms. Downs that if a session is cancelled within 24 hours, the customer is charged for that session. Again, Ms. Downs does not deny having this conversation. So, I find Ms. Downs used 5 sessions of the 6 she purchased.
20. As noted, the total for the 6 sessions was \$945, which works out to \$157.50 per session. Ms. Downs only paid \$700 towards the sessions, and I have found she used 5 of them. So, I find Ms. Downs used \$787.50 worth of sessions, but only paid \$700. Therefore, I find Ms. Downs would not be entitled to a refund regardless of Mx. Middleton’s no refund policy.
21. Given the above, I dismiss Ms. Downs’ claims.
22. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Downs was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. Mx. Middleton did not pay any tribunal fees or claim dispute-related expenses.

ORDER

23. I order Ms. Downs' claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair