



Civil Resolution Tribunal

Date Issued: June 7, 2022

File: SC-2021-009305

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kadioglu v. City Realty Ltd.*, 2022 BCCRT 670

BETWEEN:

AHMET KADIOGLU

APPLICANT

AND:

CITY REALTY LTD. and RE/MAX OF WESTERN CANADA (1998),
LLC

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about real estate commission. The applicant, Ahmet Kadioglu, says the respondents, City Realty Ltd. (City) and RE/MAX of Western Canada (1998), LLC (RE/MAX), withheld 30% of his commission without justification for a sale occurring on November 4, 2017. He claims for \$1,740.42 as payment.

2. City denies liability. It says it is entitled to the withheld amount as fees under its contract with Mr. Kadioglu. It also says that I should refuse to resolve this dispute because its contract with Mr. Kadioglu has a mandatory mediation and arbitration clause, and Mr. Kadioglu has commenced this dispute in breach of that clause. RE/MAX denies liability and says it has no contractual relationship with Mr. Kadioglu.
3. Mr. Kadioglu represents himself. City's director, Glenn Warren, represents it. RE/MAX's executive vice president, Elton Ash, represents it.
4. For the reasons that follow, I refuse to resolve Mr. Kadioglu's claims against City and dismiss his claims against RE/MAX.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.

The February 9, 2022 Preliminary Decision

9. In a February 9, 2022 preliminary decision, a CRT member denied RE/MAX's request to be represented by a lawyer. I agree with the CRT member's decision and reasoning and find it unnecessary to summarize it here. In any event, I have dismissed Mr. Kadioglu's claims against RE/MAX, as detailed below.

ISSUES

10. The issues in this dispute are as follows:
 - a. Should I refuse to resolve to this dispute because of a mediation and arbitration clause?
 - b. If not, should I order any respondents to pay Mr. Kadioglu \$1,740.42 in owed commission?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Mr. Kadioglu as the applicant must prove his claims on a balance of probabilities. This means more likely than not. I have read all the parties' evidence and submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. The following background facts are undisputed. Mr. Kadioglu worked as a realtor for City from 2016 to 2020. In December 2017, Mr. Kadioglu acted for the buyer in the sale of a presale condominium. City initially held part of the sales commission from the sale in trust. Documents indicate that City paid the remaining commission to Mr. Kadioglu in March 2021, less 30%. It is unclear why City delayed releasing the

remaining commission to Mr. Kadioglu, but I find nothing turns on this for the reasons that follow.

Issue #1. Should I refuse to resolve to this dispute because of the mediation and arbitration clause?

13. City provided a copy of its independent contractor agreement dated October 9, 2020 and signed by both City and Mr. Kadioglu. Mr. Kadioglu made claims in connection with a sale occurring in December 2017. So, I asked the parties to provide copies of any applicable agreements between itself and Mr. Kadioglu at the time.
14. City provided a July 6, 2016 independent contractor agreement signed by City and Mr. Kadioglu. Under section 10 it had a term of 1 year, though it automatically renewed yearly if Mr. Kadioglu continued to work for City. I find it likely that it renewed and applied at the time of the December 2017 sale as no party suggested otherwise. In any event, the relevant contract terms use the same numbering and are essentially identical to those in the October 9, 2020 agreement. So, I find nothing turns on the fact that Mr. Kadioglu signed an updated version of the July 2016 independent contractor agreement in October 2020.
15. I turn to the terms of the contract. Section 3b of the contract discussed City's obligation to pay Mr. Kadioglu commissions, fees, and other compensation. Similarly, section 4e discussed Mr. Kadioglu's obligation to pay fees, commissions, and other compensation to City.
16. City says that the CRT should refuse to resolve this dispute because of a mediation and arbitration clause. Section 9b of the contract said that Mr. Kadioglu agreed to attempt to resolve disputes by mediation. This includes disputes arising from the agreement, from Mr. Kadioglu's conduct, activities, or services as a real estate licensee, or any transaction in which he was involved. Further, if such disputes were not successfully resolved, then the parties agreed to submit to binding arbitration under section 9c of the contract. Section 9c said that the parties would mutually agree

on the arbitration system or submit their dispute to the Alternative Dispute Resolution Institute of Canada.

17. I find this dispute falls within the subject matter of section 9b. This is because Mr. Kadioglu claims for commission owing, which I find is both a dispute arising from the agreement and a transaction in which Mr. Kadioglu was involved.
18. Sections 9b and 9d together state that the only exceptions to mediation and arbitration relate to disputes about certain forms of intellectual property. These include trademarks and copyrights. So, I find these exceptions are not applicable in this dispute.
19. In a December 14, 2021 email, City's representative, Glenn Warren, referred to section 9 and asked Mr. Kadioglu to withdraw his complaint and go to mediation. So, I find that City did not waive or agree to have the CRT resolve this dispute.
20. Given the above, I find that the mediation and arbitration clause of section 9b applies and that the parties agreed to resolve this dispute by first attempting mediation, and then binding arbitration under the terms of the contract. The CRT is not a form of arbitration specified by the contract. CRTA section 11(1)(a)(i) says that the CRT may refuse to resolve a claim or dispute within its jurisdiction if the claim or dispute would be more appropriate for another dispute resolution process. Given this, I find it appropriate to refuse to resolve Mr. Kadioglu's claims against City under CRTA section 11.
21. This leaves Mr. Kadioglu's claims against RE/MAX. Mr. Kadioglu says he included RE/MAX as a party because RE/MAX allegedly takes 1% of the commission for "the purpose of maintaining the franchise name". However, there is no evidence before me to prove this assertion or that RE/MAX was responsible for holding back the claimed commission. I also note that Mr. Kadioglu's claim is for 30% of the commission, rather than the 1% allegedly held back by RE/MAX.
22. Further, there is nothing in the contract that establishes a contractual relationship between Mr. Kadioglu and RE/MAX. Consistent with my finding, section 2c expressly

stated that the contract was solely between Mr. Kadioglu and City, and that there was no contractual relationship between Mr. Kadioglu and RE/MAX.

23. Given the lack of a contractual obligation or other evidence, I find it unproven that RE/MAX was responsible to Mr. Kadioglu for the held back commission. As a result, I dismiss Mr. Kadioglu's claims against RE/MAX as.

24. 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 dismiss Mr. Kadioglu's claims for reimbursement for CRT fees and dispute-related expenses. Neither City nor RE/MAX paid tribunal fees or claimed any dispute-related expenses.

ORDERS

25. I refuse to resolve Mr. Kadioglu's claims against City under CRTA section 11.

26. I dismiss Mr. Kadioglu's remaining claims, including all claims against RE/MAX.

David Jiang, Tribunal Member