



Civil Resolution Tribunal

Date Issued: July 21, 2022

File: SC-2021-009748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gulban v. Estrada*, 2022 BCCRT 830

BETWEEN:

MOHAMMADE GULBAN

APPLICANT

AND:

LYNNE ESTRADA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about immigration consultant services. The applicant, Mohammade Gulban, hired the respondent, Lynne Estrada, to provide immigration services for Mr. Gulban's brother-in-law, EA. Ms. Estrada operates a sole proprietorship called Triple "E" Immigration Services & Consultancy (Triple "E"). Mr. Gulban says he paid a

\$5,300 deposit to Ms. Estrada and EA is still not in Canada, so seeks a refund of \$5,000.

2. Ms. Estrada says she did everything she could to help EA but that EA failed to complete necessary requirements to facilitate his immigration to Canada. Ms. Estrada says Mr. Gulban is not entitled to any refund.
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). 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.
5. 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.
6. 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.

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.

ISSUE

8. The issue in this dispute is whether Mr. Gulban is entitled to a \$5,000 refund for immigration services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Gulban must prove his 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. Mr. Gulban says he was introduced to Ms. Estrada through a mutual friend. Mr. Gulban sought Ms. Estrada’s assistance in bringing his brother-in-law, EA, to Canada from Afghanistan. There is no written agreement in evidence, though there is a signed receipt.
11. The October 2019 receipt says Mr. Gulban paid a total of \$5,300 to Ms. Estrada’s company, Triple “E”, which included a \$4,000 deposit, \$1,000 for a Labour Market Impact Assessment (LMIA), and \$300 for an Educational Credentials Assessment. The receipt further noted the “next payment” would be due when EA got his visa.
12. In any event, Mr. Gulban says it is now 2022 and EA is still not in Canada. Mr. Gulban says Ms. Estrada unreasonably caused delays in EA’s immigration and wants a refund of \$5,000 towards the amount he has paid Ms. Estrada to date.
13. Ms. Estrada says she was in constant contact with EA, but that EA failed to provide proper documentation in time, including proving he successfully took and passed an International English Language Testing System (IELTS) test. The evidence shows

that through 2019 to 2021, Ms. Estrada followed up with EA about various required documents, including transcripts, proof of work history, and proof of taking the IELTS.

14. Ms. Estrada provided a letter showing that on January 8, 2021, the Government of Canada approved a request for 4 international workers to come to Canada, including EA, following a positive LMIA. After receiving the approval from the Government of Canada in January 2021, Ms. Estrada took steps to help EA arrange to take the IELTS test, which she says is a mandatory requirement for immigration to Canada. It does not appear EA ever took this test.
15. On balance, I find there is no evidence Ms. Estrada caused any delay in EA's immigration to Canada. So, I find Ms. Estrada has not breached the parties' agreement.
16. Further, the receipt in evidence, which is signed by both Ms. Estrada and Mr. Gulban, states that the fees paid were "non-refundable". The signed document also states that if an applicant chooses to cancel or withdraw Triple "E"'s services, or if the applicant's application is refused or unsuccessful, any payments made to Triple "E" are forfeited, "regardless of work involved". I find by signing this receipt, Mr. Gulban agreed to those terms.
17. Given all of the above, I find Mr. Gulban has not shown he is entitled to any refund. I dismiss his claims.
18. 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. As Mr. Gulban was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. Ms. Estrada did not pay any fees or claim dispute-related expenses.

ORDER

19. I order Mr. Gulban's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair