



Civil Resolution Tribunal

Date Issued: July 26, 2022

File: SC-2021-007847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rodriguez v. Gobew Interactive Solutions Inc.*, 2022 BCCRT 849

B E T W E E N :

MATILDE CERVANTES RODRIGUEZ

APPLICANT

A N D :

GOBEW INTERACTIVE SOLUTIONS INC., CLOUD NINE COLLEGE LTD., and KARLA MENDEZ

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about school tuition. The applicant, Matilde Cervantes Rodriguez, hired the respondent, Gobew Interactive Solutions Inc. (Gobew), to enrol her at the respondent school, Cloud Nine College Ltd. (Cloud 9). Miss Rodriguez says she paid

Gobew \$3,000, to send on her behalf to Cloud 9 for tuition. Miss Rodriguez's classes never started and she claims a \$3,000 tuition refund from the respondents.

2. Gobew says it fully performed its responsibilities to Miss Rodriguez by submitting her tuition payment and enrolling her at Cloud 9. Cloud 9 says that it does not owe Miss Rodriguez a refund because it did not receive any tuition payments from Miss Rodriguez or Gobew.
3. The respondent, Karla Mendez, has not been served with the Dispute Notice. During case management facilitation, CRT staff notified Miss Rodriguez that Karla Mendez must be served with the Dispute Notice to proceed with the claim against them. Miss Rodriguez told the CRT that she wanted to proceed with this dispute against the other respondents without serving Karla Mendez with the Dispute Notice. In doing so, I find that Miss Rodriguez voluntarily asked the CRT to withdraw her claim against Karla Mendez under CRT rule 6.1. Based on this, I find that Miss Rodriguez's claim against Karla Mendez is withdrawn and I make no findings relating to her claim against Karla Mendez.
4. Miss Rodriguez is self-represented. Gobew and Cloud 9 are represented by principals or employees.

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.

Resubmitted and additional evidence

9. Miss Rodriguez submitted evidence that I was unable to view. Miss Rodriguez was given an opportunity to resubmit the document and she did so. The respondents were given an opportunity to respond to the resubmitted evidence. Gobew provided additional submissions and it also submitted new evidence consisting of Cloud 9's November 9, 2020 letter of acceptance. Miss Rodriguez and Cloud 9 were given the opportunity to respond to Gobew's new evidence and they did so. Since all of the parties had an opportunity to respond to the resubmitted and additional evidence, I find that no parties have been prejudiced and I have considered Miss Rodriguez's resubmitted evidence and Gobew's additional evidence in my decision.

ISSUE

10. The issue in this dispute is whether either Gobew or Cloud 9 owe Miss Rodriguez a \$3,000 tuition refund.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Miss Rodriguez, as the applicant, must prove her claims on a balance of probabilities, which means “more likely than not.” I have read all the parties’ submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. Miss Rodriguez says she hired a study agent, doing business under the name “Estudia en Canada”, to arrange an English language course for her. Based on Gobew’s undisputed submissions, I find that Gobew was the corporate entity operating as this business. So, I find that Gobew acted as Miss Rodriguez’s study agent.
13. MG, a Gobew employee, says they advised Miss Rodriguez to take an English course at Cloud 9. Miss Rodriguez agreed and she paid Gobew \$3,000 on August 19 and August 20, 2020 for her Cloud 9 tuition. It is undisputed that Gobew received \$3,000 from Miss Rodriguez. However, Cloud 9 says that it has not received any funds from Gobew for Miss Rodriguez’s tuition.
14. Gobew says that Cloud 9 owed it a debt for unpaid commission payments when it received Miss Rodriguez’s \$3,000 tuition payment. Gobew says that Karla Mendez, Cloud 9’s director at the time, deducted Miss Rodriguez’s \$3,000 tuition fees from the commission debt that Cloud 9 owed Gobew. So, rather than sending Miss Rodriguez’s \$3,000 tuition payment to Cloud 9, Gobew says it kept these funds and Cloud 9 deducted this amount from its debt to Gobew. Karla Mendez sent Cloud 9 a July 9, 2021 email confirming this arrangement.
15. Further, Cloud 9 issued an August 19, 2020 letter of acceptance, signed by Karla Mendez as school director. This letter of acceptance says that Cloud 9 accepted Miss Rodriguez as a student for studies from November 2020 to April 2021. This letter of acceptance also says that Miss Rodriguez’s tuition had been paid in full. Cloud 9 also issued additional letters of acceptance dated November 9, 2020 and December 11, 2020, with January 2021 and March 2021 start dates. Each of Cloud 9’s letters of

acceptance said that Miss Rodriguez was a Cloud 9 student and her tuition had been paid in full.

16. Cloud 9 says that it did not receive any tuition payments from Miss Rodriguez or Gobew. PL, Cloud 9's current director, argues that its letters of acceptance are not proof of payment. Rather, PL says Cloud 9 only provides this document to help students obtain immigration study permits. However, Cloud 9 does not dispute Karla Mendez's statement that it had deducted Miss Rodriguez's tuition payment from its debt to Gobew. Further, Cloud 9 does not explain why its letters of acceptance said that Miss Rodriguez's tuition had been paid if it was not. Further, I find that nothing turns on whether the letters of acceptance were issued for immigration study permit purposes.
17. Based on Gobew's submissions, Karla Mendez's July 9, 2021 email, and Cloud 9's letters of acceptance, I find that Cloud 9 fully received Miss Rodriguez's \$3,000 tuition payment in the form of a debt reduction and that Miss Rodriguez was enrolled as a Cloud 9 student. Based on this, I find that Miss Rodriguez entered an education contract with Cloud 9 and it had a contractual obligation to provide Miss Rodriguez with English classes.
18. Based on the above, I find that Gobew successfully enrolled Miss Rodriguez at Cloud 9 and it delivered her tuition payment to Cloud 9 by accepting a debt reduction. In doing so, I find that Gobew has complied with its study agent contract. So, I dismiss Miss Rodriguez's claims against Gobew.
19. It is undisputed that Miss Rodriguez's classes did not start in March 2021, as scheduled in the third letter of acceptance. Miss Rodriguez says that MG told her in early April 2021 that Cloud 9 had closed permanently as a result of bankruptcy related to the COVID-19 pandemic. Based on this submission, I have considered section 69 of the *Bankruptcy and Insolvency Act (BIA)* that says that on filing a notice of intention, no remedy or action may be taken against a bankrupt without leave of the court in bankruptcy. However, I find Miss Rodriguez's general submission that Cloud 9 was bankrupt does not establish that Cloud 9 filed an assignment into bankruptcy.

Further, Cloud 9 did not ask to pause this dispute under *BIA* section 69. So, I find the *BIA* does not apply to this dispute. Further, since none of the parties raised an issue as to whether Miss Rodriguez's school contract was frustrated by the COVID-19 pandemic, I do not make any findings about that issue.

20. On April 30, 2021, Miss Rodriguez cancelled her enrollment and demanded a refund. Since Cloud 9 has not provided any of the agreed educational services, I find that it has breached its contract with Miss Rodriguez and it must refund her \$3,000 tuition payment.

CRT fees, expenses and interest

21. The *Court Order Interest Act* (COIA) applies to the CRT. I find that Miss Rodriguez is entitled to pre-judgment interest from Cloud 9 on the \$3,000 tuition refund from April 30, 2021, the date she requested a refund, to the date of this decision. This equals \$16.71.
22. 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. Since Miss Rodriguez was successful, I find that she is entitled to reimbursement of her CRT fees from Cloud 9, being \$125. None of the parties claimed reimbursement of dispute-related expenses, so none are ordered.

ORDERS

23. Within 30 days of the date of this order, I order Cloud 9 to pay Miss Rodriguez a total of \$3,141.71, broken down as follows:
 - a. \$3,000 in tuition refund,
 - b. \$16.71 in pre-judgment COIA interest, and
 - c. \$125 in CRT fees.

24. Miss Rodriguez is entitled to post-judgment interest from Cloud 9, as applicable.

25. Miss Rodriguez's claim against Gobew is dismissed.

26. Miss Rodriguez's claim against Karla Mendez is withdrawn.

27. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member