



# Civil Resolution Tribunal

Date Issued: August 4, 2022

File: SC-2021-006716

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moniri v. Deserving Health International Corp.*, 2022 BCCRT 883

BETWEEN:

MONA MONIRI

**APPLICANT**

AND:

DESERVING HEALTH INTERNATIONAL CORP.

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This small claims dispute is about compensation under a consulting agreement. The applicant, Mona Moniri, is a former consultant for the respondent, Deserving Health International Corp. (Deserving Health). Under the parties' consulting agreement, Deserving Health compensated Ms. Moniri for her services partly with company

shares. Ms. Moniri says Deserving Health terminated her contract after 2 months but failed to issue her the 2 months of earned company shares. Ms. Moniri claims \$4,180 for the value of the 7,600 shares she says she is owed.

2. Deserving Health admits that it has not issued Ms. Moniri company shares as set out in the parties' agreement. It says that it has been unable to issue the shares because it is under a cease trade order. Deserving Health also says Ms. Moniri only invoiced it for 6,909 shares and that their contract does not provide for her to be compensated by the shares' cash value. Deserving Health says it will issue Ms. Moniri 6,909 in company shares when the cease trade order is lifted.
3. Ms. Moniri is self-represented. Deserving Health is represented by an employee or principal, SC.

## **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. I note that this dispute comes before me for a decision on its merits after Deserving Health successfully applied to cancel an earlier default decision, on the basis that it did not receive notice of Ms. Moniri's dispute.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Deserving Health fraudulently misrepresent Ms. Moniri's compensation under the parties' consulting agreement?
  - b. If so, what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant Ms. Moniri must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. Ms. Moniri is a biomedical professional, and Deserving Health hired her to perform scientific research. The evidence shows that Ms. Moniri initially signed a September 30, 2020 employment agreement with Deserving Health, which provided that she would receive a salary of \$2,500 per month. The evidence suggests that Deserving Health paid Ms. Moniri according to that contract's terms for the month of October 2020, and she makes no allegations of non-payment under this contract.

12. Ms. Moniri says that Deserving Health's CEO, BA, then asked her to sign a second contract, which changed her compensation arrangement. The signed November 1, 2020 "Consulting Agreement" in evidence stated that Ms. Moniri would provide Deserving Health with biomedical research consulting services at the rate of \$57,600 per year, to be invoiced as follows:
  - a. \$1,000 in cash on a monthly basis, and
  - b. \$45,600 in Deserving Health shares on a yearly basis.
13. The consulting agreement provided that the shares would be paid to Ms. Moniri annually by issuing an equivalent number of common shares at the fair market value or closing trading price of each year-end. It also stated that Ms. Moniri could freely trade the shares once issued.
14. Ms. Moniri says she agreed to this new compensation structure because she could not afford to lose her job. She also says BA assured her that she could exchange the shares for money at any time, which Deserving Health denies. However, given the contract explicitly stated that Ms. Moniri would be able to freely trade the shares once issued to her, I find that BA likely told her she could sell her shares for cash.
15. It is undisputed that Deserving Health terminated Ms. Moniri's consulting agreement sometime in December 2020. The exact date is not before me, and Ms. Moniri did not provide a copy of her termination letter. However, it is undisputed that Deserving Health agreed to pay Ms. Moniri until the end of December. Ms. Moniri does not claim that Deserving Health wrongfully terminated her or failed to pay the cash portion of her compensation. She claims only that Deserving Health failed to issue her 2 months' worth of Deserving Health shares for November and December 2020.
16. In a January 4, 2021 email to SC, Ms. Moniri asked if Deserving Health would convert the shares it owed her and pay her cash instead, given she was no longer employed by the company. SC responded that Deserving Health would be following the contract's terms and asked Ms. Moniri to send an invoice so they could issue her the shares at the end of the quarter.

17. After Ms. Moniri followed up on the shares several times, SC advised Ms. Moniri in a May 28, 2021 email that there was a hold on issuing her a share certificate because Deserving Health was under a cease trade order. SC stated the order would be revoked within 90 days and Deserving Health would then re-start the paperwork for her shares. I accept Ms. Moniri's submission that this was the first time she learned about the cease trade order.
18. Deserving Health says it still intends to issue Ms. Moniri the company shares once the cease trade order is lifted. Deserving Health admits the cease trade order remains in place as of the date the parties completed their submissions for this CRT dispute.
19. Ms. Moniri argues that the consulting agreement was "fraudulent". She says that because the shares have not been tradable for almost 2 years, Deserving Health should pay her the shares' monetary value.
20. A party who signs a contract is generally bound by its terms. However, one exception to this is when there has been a fraud, also known as fraudulent misrepresentation.
21. The standard of proof for allegations of fraud is the same for any other civil matter, namely proof on a balance of probabilities: see *F.H. v. McDougall*, 2008 SCC 53 at paragraph 49. The 4 elements of civil fraud were set out by the Supreme Court of Canada in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at paragraph 21. To be successful, Ms. Moniri must establish:
  - a. Deserving Health made a false representation,
  - b. Deserving Health had some level of knowledge that the representation was false (whether actual knowledge or recklessness),
  - c. The false representation caused Ms. Moniri to act, and
  - d. Ms. Moniri's actions resulted in a loss.
22. Under the parties' consulting agreement, Deserving Health agreed to compensate Ms. Moniri for full-time work as a biomedical researcher, largely in company shares.

As set out above, I find BA assured Ms. Moniri that Deserving Health would issue her the shares, and that she would be able to sell them for their cash value. For the following reasons, I find Deserving Health's representation that Ms. Moniri would be compensated with tradable company shares was a fraudulent misrepresentation.

23. Deserving Health provided a copy of the cease trade order made by the regulator of the British Columbia Securities Commission, for Deserving Health's apparent failure to file required documents. The order is dated October 19, 2020. In other words, the order was already in place when the parties entered into the November 1, 2020 consulting agreement.
24. Deserving Health does not deny that it knew about the cease trade order when it decided to change Ms. Moniri's compensation structure to pay her primarily with company shares rather than a monetary salary. Notably, Deserving Health did not provide any explanation for its decision to re-negotiate Ms. Moniri's contract only one month after she started working for the company.
25. I find that failing to disclose the cease trade order to Ms. Moniri before she signed the consulting agreement amounted to a false representation by omission. In other words, I find that by failing to disclose the cease trade order, Deserving Health essentially represented to Ms. Moniri that there was nothing preventing it from issuing shares to her as compensation, which was false. I find Deserving Health knew the information it provided to Ms. Moniri about the shares was false. I find that this false representation was intended to and did convince Ms. Moniri to enter into the consulting agreement. Given that Ms. Moniri has not yet received any shares, I find she has suffered a loss. For these reasons, I find Ms. Moniri has established fraudulent misrepresentation.
26. Where fraudulent misrepresentation has been proven, the court (or the CRT) can order rescission of the contract or damages or both. Rescission is where the contract is set aside, and the parties are restored to their original positions, as if the contract never existed. Ms. Moniri does not seek rescission, and given she completed her obligations under the consulting agreement, I find rescission is not available.

27. Damages for fraudulent misrepresentation are based on the principle of putting the injured party in the position they would have been in had the fraud not occurred: see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308. I accept Ms. Moniri's submission that had Deserving Health disclosed the cease trade order's existence, she would not have signed the consulting agreement or agreed to be compensated with company shares.
28. I find the most appropriate measure of damages is not based on the value of the shares Deserving Health said it would issue to her, but on the monetary value of the work Ms. Moniri performed for Deserving Health. Under the parties' initial employment agreement, Deserving Health had agreed to pay Ms. Moniri \$2,500 per month. I find this represents a fair monetary value for Ms. Moniri's same work in November and December 2020. Given that Deserving Health paid Ms. Moniri \$2,000 cash under the consulting agreement for those months, this leaves \$3,000 outstanding ( $\$2,500 \times 2$  months, minus  $\$2,000$ ). So, I order Deserving Health to pay Ms. Moniri \$3,000.

***Interest, CRT fees, and dispute-related expenses***

29. The *Court Order Interest Act* applies to the CRT. Ms. Moniri is entitled to pre-judgment interest on the \$3,000 from January 30, 2021, a date I find is reasonable given her December termination, to the date of this decision. This equals \$24.01.
30. 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 find Ms. Moniri is entitled to reimbursement of \$200 for CRT fees and \$21.00 for dispute-related expenses associated with opening a Provincial Court file to enforce the initial default order in this matter. I find Ms. Moniri did not sufficiently explain the remaining \$9 she claimed as dispute-related expenses, so I decline to order it.
31. As Deserving Health was unsuccessful, I find it is not entitled to reimbursement of CRT fees or dispute-related expenses. I note that Deserving Health's claim for dispute-related expenses was for time spent on this dispute, which the CRT does not generally order in any event.

## ORDERS

32. Within 21 days of the date of this decision, I order Deserving Health to pay Ms. Moniri a total of \$3,245.01, broken down as follows:
- a. \$3,000 in damages for fraudulent misrepresentation,
  - b. \$24.01 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$221, for \$200 in CRT fees and \$21 for dispute-related expenses.
33. Ms. Moniri is entitled to post-judgment interest, as applicable.
34. 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.

---

Kristin Gardner, Tribunal Member