Civil Resolution Tribunal

Date Issued: August 11, 2022

File: SC-2022-001437

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moazami v. Wallace*, 2022 BCCRT 907

B E T W E E N :

ANAHITA MOAZAMI

APPLICANT

A N D :

CHRISTINE WALLACE

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Nav Shukla

INTRODUCTION

1. This is a small claims dispute about personal training fees. The applicant, Miss Moazami, claims a refund of $990 from the respondent, Christine Wallace, for personal training sessions she says that she did not receive.

2. Ms. Wallace says Miss Moazami is not entitled to a refund. She says that the time she spent training Miss Moazami, as well as the many hours she spent attending to Miss Moazami's phone calls and messages account for more than the $990 Miss Moazami claims.

3. Both parties are 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 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.

Preliminary Issues

8. Ms. Wallace did not submit any documentary evidence or argument in this dispute, despite having the opportunity to do so. CRT staff reminded Ms. Wallace of her evidence and argument submission deadlines and provided an extension when the submissions were overdue. Ms. Wallace advised CRT staff that she would not be participating in this dispute. So, my decision below is based on the evidence and argument submitted by Miss Moazami, along with the parties' respective Dispute Notice and Dispute Response.

9. Further, Miss Moazami submitted 2 documents as evidence in a file format that I could not open but resubmitted them at my request through CRT staff. Since Ms. Wallace has advised that she will not be participating in this dispute, I find that she was not prejudiced by the re-submission of these documents and I have considered this evidence in my decision below.

ISSUE

10. The issue in this dispute is whether Miss Moazami is entitled to a $990 refund for personal training sessions she says she did not receive.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant, Miss Moazami must prove her claims on a balance of probabilities (meaning "more likely than not"). I have read all of Miss Moazami's submitted evidence and argument but refer only to what I find relevant to provide context for my decision.

12. Miss Moazami says that in December 2021, Ms. Wallace agreed to provide her with 12 weeks of in-person personal training with 2 sessions a week for $1,320. She submits that a key term of their agreement was that the training would be provided in person. It is undisputed that the parties did not have a written contract setting out the terms of their agreement. However, the evidence before me includes text messages

exchanged between Miss Moazami and Ms. Wallace. In these text messages, the parties discussed how much Miss Moazami would pay and the services Ms. Wallace would provide in exchange for that amount.

13. In or around December 2021, after Miss Moazami sent Ms. Wallace an initial text message asking for her pricing for personal training, Ms. Wallace responded that she charged $90 a session or $800 if she wanted a package of 10 sessions. Ms. Wallace said this would include her working with Miss Moazami on her diet and nutrition, as well as putting together a plan for days they did not work out together. She continued and said that 2 good weight workouts along with Miss Moazami's diet and some home workouts "will be good". Miss Moazami responded that she preferred to get out to do her workouts.

14. In later text messages, Miss Moazami asked what the cost would be for 2 sessions a week. Ms. Wallace said for 2 times a week for 12 weeks, it would be $1,320. Ms. Moazami responded that she preferred to have sessions twice a week and asked if she had to pay upfront. Ms. Wallace said she usually asks for payment upfront when she offers a discount, and that if it was easier for Ms. Moazami, she could make 2 payments. Miss Moazami agreed.

15. Based on these text messages, I find that the parties' agreement was for 12 weeks of training for $1,320 with 2 in-person training sessions a week. No additional charges were agreed to for time that might be spent by Ms. Wallace providing Miss Moazami with a diet plan or other support via phone, email, or text message. Based on the above-mentioned text messages, I find the $1,320 price included the extra time Ms. Wallace would spend putting together a diet and home workout plan for Miss Moazami on the days they did not work out together.

16. The undisputed evidence shows that Miss Moazami made two payments of $660 to Ms. Wallace, the first in late December 2021 followed by a January 28, 2022 payment. It is undisputed that the parties had to delay their in-person training sessions due to COVID-19 related mandated gym closures that were in place between December 21, 2021 and January 20, 2022. However, it is also undisputed that Miss Moazami

received some in-person training from Ms. Wallace between January and February 2022. Miss Moazami did not set out in her Dispute Notice or written submissions how many sessions were completed. However, in a February 22, 2022 email to Ms. Wallace, Miss Moazami stated that she had completed 6 personal training sessions with Ms. Wallace. In her response email, Ms. Wallace did not dispute that the parties had completed 6 training sessions together. So, based on this undisputed evidence, I find that Miss Moazami received 6 personal training sessions from Ms. Wallace.

17. In her Dispute Response, Ms. Wallace does not deny that Miss Moazami did not receive all of the personal training sessions that she had agreed to provide to Miss Moazami. However, as mentioned above, Ms. Wallace says that Miss Moazami is not entitled to a refund because of extra hours she allegedly spent attending to Miss Moazami's phone calls and text messages. Ms. Wallace also says that the in-person sessions they did have were 1.5 hours instead of 1 hour. The evidence does not establish how long the parties agreed the in-person training sessions would be. However, Miss Moazami submits that Ms. Wallace first told her the sessions would be 50 minutes, and later told her they would be 1 hour long. In any event, there is no indication in the evidence that the training sessions went longer than intended.

18. As noted above, in the parties' text messages, there was no agreement between the parties for the additional time Ms. Wallace says she spent. So, I find that Ms. Wallace is not entitled to apply the balance of the $1,320 that was meant for the training sessions towards the alleged "extra time" spent by her training Miss Moazami and attending to Miss Moazami's phone calls and text messages.

19. On February 22, 2022, Ms. Wallace informed Ms. Moazami that she tried to do in-person training with Miss Moazami because that is what Miss Moazami wanted, but "it was not in the cards" for Ms. Wallace at the time. Miss Moazami then told Ms. Wallace that since she was now unable to do in-person or Facetime training, she did not think they could continue. Miss Moazami asked for a refund of $990 based on the fact that they had completed 6 sessions at $55 a session and 18 sessions remained

unused. Ms. Wallace responded that they could continue with online training or they could part ways.

20. Miss Moazami's response is not in evidence, however, on March 3, 2022, Ms. Wallace messaged Miss Moazami saying that she was no longer doing in-person training and that her one on one training business was over due to COVID-19. In the message, she said that Miss Moazami had refused her offer to switch her to online training. Ms. Wallace ended the message by saying she was not going to continue working with Miss Moazami.

Is Miss Moazami entitled to a refund?

21. Based on the evidence before me, I find the parties did not discuss a refund policy at the time the agreement was made. Though not specifically argued by the parties, I find the *Business Practices and Consumer Protection Act* (BPCPA) applies here. For the reasons that follow, I find Miss Moazami is entitled to a refund of $990 under the BPCPA.

22. The BPCPA applies to the parties' personal training contract because Ms. Wallace meets the definition of a "supplier" since she is a person who in the course of business participated in a consumer transaction by supplying, or offering to supply, goods or services to a consumer. It is undisputed that Ms. Wallace was in the business of personal training.

23. The BPCPA says a "future performance contract" is a contract for the supply of goods or services between a supplier and a consumer for which the supply or payment in full of the total price payable is not made at the time the contract is made or partly executed. As set out above, the personal training sessions and payment in full for same were not provided at the time the parties entered into their agreement. So, I find the parties' agreement was a "future performance contract" under the BPCPA.

24. The BPCPA also defines certain future performance contracts as "continuing services contracts", as specifically set out in section 2 of the *Consumer Contracts Regulation* (Regulation). A contract that provides for physical training is a "continuing services

contract", as described in BPCPA section 17. Thus, the parties' personal training contract was a continuing services contract.

25. BPCPA section 25 sets out the criteria for a consumer's cancellation of a continuing services contract. BPCPA section 25(2) says a consumer can cancel a continuing services contract "at any time" if there has been a "material change" in either the consumer's circumstances or in the supplier's services. I find that Ms. Wallace no longer being able to offer in-person training sessions amounted to a material change. This is consistent with section 25(4)(b) of the BPCPA, which describes a supplier's material change as including when the services are no longer substantially available as provided in the contract or a "substantial change in operation".

26. In other words, I find Miss Moazami was permitted to cancel the contract at any time after Ms. Wallace informed Miss Moazami that she would no longer be providing in-person training sessions.

27. Section 25(6) of the BPCPA sets out the terms for cancelling a continuing services contract under section 25(2). Together with section 3(1) of the Regulation, this section provides that the supplier, in this case Ms. Wallace, must refund for "unused services" based on this formula: portion of all cash payments = (unused services)/(total services). I have found above that Miss Moazami used 6 sessions and did not use 18 sessions. I have also found above that Miss Moazami made 2 payments of $660 to Ms. Wallace for the training sessions. So, based on the above formula, I find this means Miss Moazami is entitled to a refund of $990 from Ms. Wallace.

28. Although Miss Moazami did not claim interest, the *Court Order Interest Act* (COIA) applies to the CRT and says pre-judgment interest must be added in the absence of an agreement on interest. So, I find Miss Moazami is entitled to pre-judgment interest on the $990 from February 22, 2022, which I find is the date of the material change that allowed Miss Moazami to cancel the parties' agreement, to the date of this decision. This equals $3.51.

29. 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 find Miss Moazami is entitled to reimbursement of $125 in CRT fees. Miss Moazami also claims $14.28 in dispute-related expenses for registered mail. I decline to award this amount because Miss Moazami did not explain what the registered mail expense was for, and the claimed $14.28 was unsupported by any evidence such as a receipt.

ORDERS

30. Within 21 days of the date of this decision, I order Ms. Wallace to pay Miss Moazami a total of $1,118.51, broken down as follows:

    a. $990 as a refund for the unused training sessions,

    b. $3.51 in pre-judgment interest under the COIA, and

    c. $125 in CRT fees.

31. Miss Moazami is entitled to post-judgment interest, as applicable.

32. 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.

Nav Shukla, Tribunal Member