



# Civil Resolution Tribunal

Date Issued: November 8, 2022

File: SC-2022-002267

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cereghini v. Head Canada Inc.*, 2022 BCCRT 1225

BETWEEN:

MITCHELL CEREGHINI

**APPLICANT**

AND:

HEAD CANADA INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a refund for ski equipment. The applicant, Mitchell Cereghini, bought Nexo 100 ski boots from an unspecified seller, which were manufactured by

the respondent, Head Canada Inc. (Head). As a goodwill gesture, Head agreed to accept the boots' return (because Mr. Cereghini said they were defective). Before Head received the boots back it then sent him Oblivion skis as a replacement item, at Mr. Cereghini's request. Mr. Cereghini changed his mind and wanted Kore skis but Head had already shipped the Oblivion skis. Mr. Cereghini says Head should refund him for the Oblivion skis that he does not want and says he cannot sell. Mr. Cereghini claims \$1,400, based on \$750 for the skis and the balance for his time and gas spent picking up the Oblivion skis.

2. Head says on receiving the boots it found they were well-worn and not defective. Head also says it shipped Mr. Cereghini the skis he requested and notes he never provided any proof of purchase for the boots. So, Head says it owes Mr. Cereghini nothing. However, Head also says if Mr. Cereghini provides a valid proof of purchase for the boots it will refund him the boots' cost and pay for the Oblivion skis' shipping back to Head.
3. Mr. Cereghini is self-represented. Head is represented by its general manager, RM.

## **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). CRTA section 2 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. CRTA section 39 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. 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. CRTA section 42 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. As noted above, Head offers to pay for the Oblivion skis' return shipping and refund Mr. Cereghini for the boots, if he provides a valid proof of purchase for the boots. Mr. Cereghini did not provide any proof of purchase for the boots. Mr. Cereghini also sought compensation for the skis, not the boots. I have limited jurisdiction under the CRTA section 118 and Head did not make any claim for the skis' return. Nothing turns on this however, given my decision below dismissing Mr. Cereghini's claim.

## **ISSUE**

9. The issue is to what extent, if any, Head must pay Mr. Cereghini \$1,400, as a refund for the Oblivion skis and compensation for his time and gas spent.

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, as the applicant Mr. Cereghini must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision. I note that apart from its detailed arguments, Head did not submit any documentary evidence, despite having the opportunity to do so.
11. Mr. Cereghini's only submitted documentary evidence is copies of messages he had with Head after he sought to return the boots on February 22, 2022. Mr. Cereghini

does not say who sold him the Head ski boots or when. It is undisputed he did not buy them directly from Head. Mr. Cereghini submitted no receipt for the boots' purchase. It is also undisputed Mr. Cereghini had worn the boots on several occasions before he contacted Head to allege they were defective and to ask Head to accept their return. The further relevant chronology can be summarized as follows.

12. On February 22, 2022, Head sent Mr. Cereghini a shipping label for the boots' return and a courier picked them up that day for shipping to Head. At the same time, Mr. Cereghini had asked for Oblivion skis as a replacement item, which Head says it agreed to as a goodwill gesture. I accept Head's undisputed evidence that it shipped Mr. Cereghini the Oblivion skis on February 25. On February 28, Mr. Cereghini wrote, "I'm not sure I want the oblivion please do not send yet" (quote reproduced as written). Mr. Cereghini asked for Kore skis instead. On March 2, Mr. Cereghini wrote, "Hello?". On March 3, Head responded that it had received the boots and found them worn and could not put them back into stock. Head also wrote that it had already shipped the Oblivion skis. On March 5, FedEx attempted to deliver the Oblivion skis but no one was at Mr. Cereghini's residence to receive them. A few days later, Mr. Cereghini collected them from FedEx, which is why he claims for time spent and gas.
13. First, as the applicant, I find Mr. Cereghini has the burden of proving the boots were defective. I find he has not done so. He submitted no photos of the boots and no explanation of what was wrong with them. He also submitted no evidence that Head was contractually required to refund Mr. Cereghini for the boots, under a warranty or otherwise. As noted, Head did not sell Mr. Cereghini the boots.
14. In the absence of any evidence showing the boots were in fact defective or any evidence that Head was contractually required to accept the boots' return, I find Head had no such obligation. So, I find Head had no obligation to refund Mr. Cereghini for the boots or provide a replacement item. Here, Head did accept the boots' return and sent the Oblivion skis as replacement because that is what Mr. Cereghini had asked for. I find no basis to conclude Head owes Mr. Cereghini anything more as replacement for the boots.

15. Second, Mr. Cereghini submits Head “sent the wrong product”, referring to the Oblivion skis and the fact he later decided he wanted Kore skis instead. Mr. Cereghini complains that Head had not notified him it was shipping the Oblivion skis. I find no basis to conclude Head had any obligation to double check with Mr. Cereghini that he did in fact want the Oblivion skis before it shipped them. Head sent what Mr. Cereghini had asked for only days before. So, I do not agree Head “sent the wrong product”. The fact that Mr. Cereghini later wanted Kore skis instead does not mean Head had erred in shipping the Oblivion skis.
16. With that, I find Head has no obligation to compensate Mr. Cereghini for the Oblivion skis he has in his possession and no obligation to provide him with the Kore skis instead. I also find Mr. Cereghini is also not entitled to compensation for the time and gas he spent collecting the Oblivion skis. While Mr. Cereghini says Head used the wrong phone number on the skis’ package, there is no evidence of this. In any event, I find it unproven that Head is responsible for Mr. Cereghini’s not being home to receive the FedEx delivery of the Oblivion skis. Mr. Cereghini also submitted no supporting evidence to support the significant amount claimed for time and gas, bearing in mind he says the Oblivion skis are worth around \$750 and his total claim is \$1,400. Given my conclusions above, I dismiss Mr. Cereghini’s claims.
17. Under section 49 of the CRTA and the CRT’s rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Neither party paid any CRT fees nor claimed dispute-related expenses.

## **ORDER**

18. I dismiss Mr. Cereghini’s claims and this dispute.

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Shelley Lopez, Vice Chair