



# Civil Resolution Tribunal

Date Issued: December 22, 2022

File: SC-2022-002767

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jung v. Three Step Fitness Inc.*, 2022 BCCRT 1364

BETWEEN:

ANIKA JUNG

**APPLICANT**

AND:

THREE STEP FITNESS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about personal training fees. The applicant, Anika Jung, claims a refund of \$89.25 from the respondent, Three Step Fitness Inc. (Three Step Fitness), for a personal training session Miss Jung did not use.
2. Three Step Fitness says Miss Jung is not entitled to any refund.

3. Miss Jung represents herself. Three Step Fitness is represented by its owner, Ella Park.

## **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 Miss Jung is entitled to an \$89.25 refund for unused personal training services.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Miss Jung must prove her 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. Some of the evidence included text messages written in Korean, with no English translation provided. CRT staff advised both parties they needed to provide their evidence in English or provide a translation. CRT rule 1.7(5) says all information and evidence must be in English or translated to English. In making my decision I have not relied on any evidence provided that was not in English and did not have an accompanying translation.
11. The background facts are largely undisputed. In March 2021 Miss Jung purchased a 24-session package of personal training from Three Step Fitness for a total of \$2,142 including tax. This works out to \$89.25 per session.
12. Miss Jung undisputedly used 23 out of the 24 sessions. Miss Jung says she then moved to Korea, where she says she currently resides. Miss Jung seeks an \$89.25 refund for the unused session.
13. Three Step Fitness says Miss Jung is not entitled to any refund. It says Miss Jung is not living in Korea, and if she was, it offered her a virtual training session in place of the last remaining in-person session.
14. Miss Jung relies on the *Business Practices and Consumer Protection Act* (BPCPA). The BPCPA applies to the parties’ contract because Three Step Fitness meets the definition of a “supplier”, because it, 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 Three Step Fitness was in the business of personal training.

15. The BPCPA says a “future performance contract” is a contract for the supply of goods and services between a supplier and 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. Here, it is undisputed 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.
16. The BPCPA also defines certain future performance contracts as “continuing service contracts”, as specifically set out in section 2 of the *Consumer Contracts Regulation* (CCR). A contract that provides for physical training is a “continuing service contract”, as described in BPCPA section 17. So, the parties’ personal training contract was also a continuing services contract.
17. 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. BPCPA section 25(3)(c) says a consumer’s material change includes if the consumer relocates for the remainder of the contract’s duration so the parties are more than 30 km apart than when they entered the contract.
18. Miss Jung says she moved to Korea, and so her circumstances materially changed and she wants a refund of the final, unused personal training session. Miss Jung says she first only intended to visit Korea temporarily, but ended up moving there more permanently. As noted, Three Step Fitness says Miss Jung has not proven she moved away permanently.
19. In support of her position, Miss Jung provided a Certificate of Entry & Departure from the Seoul Immigration Office. It shows that Miss Jung entered Korea on September 4, 2021 and exited the country on September 21, 2022. I find nothing in the evidence shows the personal training sessions expired before Miss Jung left Korea, or at all. So, I find Miss Jung has not proven her year long move to Korea was a material

change because there is no evidence the relocation was for the contract's remaining duration.

20. Further, in any event, BPCPA section 25 says that a consumer may cancel under that section if the supplier does not provide "reasonably comparable alternative facilities for the consumer's use not more than 30 km from the consumer's new location". Here, I find the online session Three Step Fitness offered was reasonably comparable. Although Miss Jung says she had "limited space" to perform an online workout at home, I find that is not a material change under section 25 of the BPCPA that entitled Miss Jung to cancel the contract.
21. Given the above, I find Miss Jung has not proven there was a material change in her circumstances as required by section 25 of the BPCPA. So, I find Miss Jung was not entitled to cancel the parties' contract and is therefore not entitled to a refund for the remaining unused session. I dismiss Miss Jung's claim.
22. 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 Miss Jung was not successful, I dismiss her claim for reimbursement of tribunal fees. Three Step Fitness did not pay any fees or claim any dispute-related expenses.

## **ORDER**

23. I dismiss Miss Jung's claims, and this dispute.

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Andrea Ritchie, Vice Chair