



# Civil Resolution Tribunal

Date Issued: March 15, 2023

File: SC-2022-005881

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mohseni v. 10414441 Canada Ltd.*, 2023 BCCRT 215

BETWEEN:

SABA MOHSENI

**APPLICANT**

AND:

10414441 CANADA LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about commission payments. The applicant, Saba Mohseni, says her former talent agency, the respondent, 10414441 Canada Ltd., improperly withheld commission from Ms. Mohseni's compensation. She claims \$757.97.

2. The respondent does business as “The Human Group” (THG). THG says Ms. Mohseni was properly paid everything she was owed under the parties’ contract. THG denies owing Ms. Mohseni any money.
3. Ms. Mohseni, who in her evidence refers to herself as a law student, represents herself. THG is represented by Enisa Hot, its Managing Director.

## **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. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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 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 THG overcharged its commission on Ms. Mohseni's earnings and, if so, whether Ms. Mohseni is entitled to the claimed \$757.97.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant Ms. Mohseni 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. The background facts are not significantly in dispute. In September 2019, the parties entered an agency agreement, where THG would represent Ms. Mohseni for a percentage-based commission. Details of the agreement's terms are discussed below.
11. In December 2019, Ms. Mohseni signed a performance agreement with a third party. The performance agreement said Ms. Mohseni was entitled to a \$3,750 "buyout fee", plus session fees, for a 2-year contract. The performance agreement could be renewed by the third party, without Ms. Mohseni's consent, for up to 4 additional years. The third party undisputedly renewed the contract for 1 additional year, which entitled Ms. Mohseni to a further \$2,062.50 buyout fee.
12. Ms. Mohseni says THG told her there was no buyout fee for the work. She says THG therefore fraudulently withheld the \$3,750 buyout fee from her, and she did not learn about it until the performance agreement was renewed 2 years later. THG denies this, and says it sent Ms. Mohseni a cheque for the initial buyout fee, minus THG's commission, but it did not know the cheque was never cashed until Ms. Mohseni contacted it after the performance agreement's renewal.
13. I do not accept Ms. Mohseni's argument that THG lied to her about the existence of the initial buyout fee. The buyout fee is clearly stated on the relatively short

performance agreement that Ms. Mohseni undisputedly signed. So, I do not accept that THG somehow hid the buyout fee's existence. In any event, I find nothing turns on this, as THG admittedly acknowledged the initial cheque was never cashed, and that Ms. Mohseni was entitled to her share of the initial buyout fee.

14. The parties undisputedly terminated their agency agreement sometime between when Ms. Mohseni performed the initial work, and when the third party renewed the performance agreement. The details of the termination are not before me. In any event, Ms. Mohseni received payment for the performance agreement's renewal directly. She says when she was paid the renewal buyout fee, she paid commission on it to her current talent agency.
15. As noted above, Ms. Mohseni claims THG underpaid her \$757.97. Ms. Mohseni does not explain how she arrived at that number, but says THG improperly paid itself commission on both the initial buyout and the renewal buyout, and deducted that from the \$3,750 THG owed her. Ms. Mohseni also argues THG is not entitled to commission on the renewal buyout fee because she has already paid that to her current talent agency. THG says it deducted commission from both buyout fees as provided under the parties' agency agreement.
16. Clause 4.1(b) of the agency agreement says 15% of Ms. Mohseni's "gross compensation", plus GST, is payable as commission to THG, for any and all work contracted for during the agreement's term.
17. Clause 7.3 says following the agreement's termination, Ms. Mohseni is still obligated to pay THG's commission in perpetuity on all "gross compensation" from work obtained during the agreement's term, plus any work that was under consideration at the time of termination, that Ms. Mohseni had been submitted to prior to termination, that THG had answered inquiries about availability prior to termination, or that had been the subject of an offer of engagement prior to the agreement's termination.
18. Clause 8.2 says "gross compensation" includes, among other things, fees and buyouts, and includes any renewals or extensions of contracts that were entered into

during the agency agreement's term, whether the renewal or extension occurs during the agreement's term or after termination.

19. Based on the parties' agreement, I find THG was entitled to its 15% commission on both the initial buyout fee, and the renewal buyout fee, as it is gross compensation for a contract that was started under the agency agreement, and subsequently renewed. This amounts to \$915.47 (15% of \$5,812.50 total buyout fees, plus GST).
20. Neither party provided a breakdown of the fees or commission paid. As noted above, the burden is on Ms. Mohseni to prove her claim. I find she has not proven THG improperly withheld any funds from her.
21. Although I find THG was entitled to a higher commission than was allegedly deducted from Ms. Mohseni's gross compensation, THG did not file a counterclaim. So, I make no order for any payment of outstanding commission fees.
22. Given all the above, I dismiss Ms. Mohseni's claims.
23. 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. THG was successful but did not pay any tribunal fees.
24. Ms. Mohseni was unsuccessful so would not have been entitled to reimbursement of paid tribunal fees, though she did not pay any. However, even if Ms. Mohseni had been successful and paid CRT fees, I would not have awarded reimbursement in any event.
25. CRT Rule 1.3(4) requires all parties to comply with the *Code of Conduct for CRT Parties, Representatives and Helpers*. The *Code of Conduct* says, in part, that dispute participants must behave courteously and respectfully, and must not behave abusively towards other participants, CRT staff, tribunal members, or other third parties. The *Code of Conduct* says abusive behaviour includes inappropriate behaviour or comments that a person knows or reasonably should know will cause another person to be humiliated, offended, or intimidated.

26. In text messages submitted by THG that occurred after the CRT dispute began, Ms. Mohseni became hostile towards Ms. Hot, THG's representative. When Ms. Hot asked Ms. Mohseni to only communicate with her through the CRT's online portal, Ms. Mohseni replied "I hope you get caught and that you and your kids burn in hell", and encouraged Ms. Hot to include that message as evidence in this dispute, which she did.
27. In response Ms. Mohseni submits her text messages should be "disregarded" as they do not change the "facts of this matter".
28. I find Ms. Mohseni's conduct in the course of this dispute breached the CRT's *Code of Conduct*. I find Ms. Mohseni's statement is intimidating, abusive, and unnecessary, and that Ms. Mohseni should reasonably have known that a person would be offended or intimidated by her words.
29. The *Code of Conduct* sets out a list of actions that may occur in the event of a breach. These include education by the CRT, which these reasons provide, or any other actions the CRT determines appropriate and consistent with its Rules, including refusing to resolve or dismissing a dispute if a party is non-compliant. Given I have dismissed Ms. Mohseni's dispute on the merits, I make no order about Ms. Mohseni's breach of the *Code of Conduct* in this dispute.

## **ORDER**

30. Ms. Mohseni's claims, and this dispute, are dismissed.

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Andrea Ritchie, Vice Chair