



# Civil Resolution Tribunal

Date Issued: October 16, 2023

File: SC-2022-005264

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jose v. Allon*, 2023 BCCRT 882

BETWEEN:

NIDHIN JOSE

**APPLICANT**

AND:

DAVID ALLON and MULTI DIMENSION CONSULTING LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. The applicant, Nidhin Jose, sought immigration services from one or both respondents, David Allon and Multi Dimension Consulting Ltd (MDC). Mr. Jose says

the respondents collected a \$1,719 fee but never provided any service. He claims a full refund. Mr. Jose represents himself.

2. MDC says it delivered the services according to its retainer agreement. It says Mr. Jose's refund claim should be dismissed. MDC is represented by its sole director, David Allon. David Allon did not file a Dispute Response for themselves. I address his default status below.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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.
5. 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.

## **ISSUES**

6. The issues in this dispute are:
  - a. Is the retainer agreement enforceable?
  - b. If so, to what extent is Mr. Jose entitled to his claimed \$1,719 refund?

## EVIDENCE AND ANALYSIS

7. As the applicant in this civil proceeding, Mr. Jose must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
8. I find that all the evidence MDC provided relates to services it provided for a different client, not Mr. Jose. MDC does not explain this and, after Mr. Jose raised the issue in his reply submissions, MDC did not contact the CRT asking to provide different evidence. MDC's written submissions refer to a client without using a name, and although they appear to be about a different client, I have considered MDC's submissions where they could apply to Mr. Jose.
9. MDC is in the business of providing immigration consulting services. Mr. Jose was considering immigrating to Canada. On December 15, 2020, Mr. Jose paid MDC \$19 USD to begin his immigration evaluation. The same day, he spoke at length with David Allon about his qualifications, experience and marital status. None of this is disputed.
10. On December 17, MDC employee LW emailed Mr. Jose 2 documents. The first was an assessment report that gave MDC's summary of Mr. Jose's work experience, English language proficiency, education, and other factors affecting his immigration eligibility. The second document was a retainer agreement. The covering email said that a Regulated Canadian Immigration Consultant (RCIC) had reviewed the assessment and recommended either the "Express Entry Program" for skilled workers, or the student visa program. The email said after Mr. Jose signed the agreement and paid the deposit, the RCIC would provide professional immigration services to start his immigration process. It is undisputed that on December 17, 2020, Mr. Jose signed the retainer agreement and paid \$1,700 USD.
11. On December 25, Mr. Jose emailed LW stating that he did not want to continue with MDC. He said the RCIC had misrepresented the facts in his assessment report, giving him a higher score so that he appeared to reach the minimum score to apply for

express entry. He said he felt pressured to apply for express entry. He said MDC was aware that he would not get an express entry invitation and cheated him out of the \$1,700 USD. Mr. Jose makes largely the same arguments here.

12. In a December 28 email, RC acknowledged Mr. Jose's cancellation request and said MDC would fully investigate his claim as it took the allegations very seriously. There is no evidence of an investigation before me.

***Is the retainer agreement enforceable?***

13. An agreement is generally enforceable so long as there is no unconscionability, fraud, duress, mistake, or other issue undermining the agreement's validity. Mr. Jose says when he spoke with LW on the phone on December 17, LW did not allow him to read and understand the assessment report and retainer agreement. I find that Mr. Jose asks me, without using these precise terms, to set aside the parties' agreement based on fraud, duress or unconscionability.
14. I first consider fraud. MDC's assessment gave Mr. Jose an estimated 68 points, just above the 67-point pass mark for the Express Entry Program. Mr. Jose says the 2 most glaring errors were that MDC gave him 5 points for his spouse's language level (he says he told David Allon that he was separated from his spouse and intended to immigrate alone), and 23 points for his university degree, which he says was only worth 21. I accept Mr. Jose's unchallenged assertions about the estimated points. I find that Mr. Jose was unlikely to qualify for the Express Entry Program. However, this does not mean that MDC had, as Mr. Jose puts it, a malicious intention to cheat and extract money from him. I find it more likely that MDC made errors in completing the assessment, whether as a result of miscommunication or carelessness. Either way, the errors were there for Mr. Jose to see before he signed the retainer agreement. I find Mr. Jose has not established fraud.
15. To establish unconscionability, Mr. Jose must prove that he was in a lesser position than MDC due to ignorance, need, or distress and that the agreement was substantially unfair to him (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012

BCCA 122 at paragraphs 29-31). I find Mr. Jose was not in a lesser position. He has a post-graduate degree and is fluent in English. He says he became aware of MDC when he decided to go online and check his eligibility to immigrate. He does not suggest there was any urgency to his immigration application. So, I find the agreement is not void for unconscionability.

16. To establish duress, Mr. Jose must prove that MDC threatened him, the threats were made in a wrongful manner, and the wrongful threats overrode his will so that he had no choice but to sign the agreement (see *Coughlin v. Lopehandia*, 2022 BCSC 1873). While I accept that LW directed Mr. Jose to complete the payment and sign the retainer agreement to enter his name in the candidate pool for December 2020, I find LW did not threaten Mr. Jose. I do not accept Mr. Jose's argument that LW did not allow him to read the assessment report and retainer agreement. He had already been emailed both documents before he spoke with LW on the phone, so it is unclear how LW could have prevented Mr. Jose from reading them. When a person signs a contract, they are bound by it even if they may not have read or understood the contract. Based on the above, I find the retainer agreement was enforceable.

***Is Mr. Jose entitled to a refund under the retainer agreement?***

17. I turn to the retainer agreement's applicable terms. Under the section "payment terms," the agreement said the \$1,700 USD payment will be considered earned fees for starting work on Mr. Jose's file, providing reasonable ongoing immigration advice, building his profile, registering him to the express entry program, and assisting him with preparing and submitting an application. There is no evidence that MDC did any of those things beyond setting up his file.
18. The agreement also contains a refund policy. It says certain services described in numbered subsections will be considered rendered at the point Mr. Jose signs the agreement and will represent corresponding percentages of the fees paid. However, the agreement does not contain numbered subsections, and instead uses bullet points. I find the refund policy clause is unintelligible. Because of this, I find the parties

did not have an agreement that certain percentages were deemed non-refundable at certain milestones.

19. I instead rely on the payment terms described above. Since the \$1,700 USD payment is considered earned fees for a wide range of work, and since I found MDC only did the initial work of setting up Mr. Jose's file, I find on a judgment basis that MDC's earned fees amount to \$100 USD. I reject MDC's assertion that "the client" demanded a refund in the middle of the visa application process and that the client refused to provide necessary documentation. I find MDC is likely referring to a different client. Mr. Jose asked for a refund early, and there is no evidence the visa application process had begun. There is also no evidence that MDC asked Mr. Jose for any documentation. I find Mr. Jose is entitled to a \$1,600 USD refund. For clarity, I find Mr. Jose is not entitled to refund of the initial \$19 intake fee he paid.
20. As noted above, David Allon did not file a Dispute Response and is in default, so liability can be assumed. It is not necessary to do so here, because David Allon's liability clearly arises from the contract itself. I find David Allon was a party to the retainer agreement both in their personal capacity and as MDC's representative. David Allon signed the agreement at the bottom in their capacity as "RCIC member". The agreement imposes obligations on David Allon as the RCIC. On that basis, I find David Allon and MDC are jointly and severally liable to Mr. Jose. This means Mr. Jose may recover the monies owed from either MDC or David Allon.
21. The CRT can only order payment in Canadian dollars. I find it would be procedurally unfair to order more than the \$1,719 Mr. Jose claimed. As \$1,600 USD is well over \$1,719 CAD today, I order MDC to pay Mr. Jose \$1,719.
22. The *Court Order Interest Act* applies to the CRT. Mr. Jose entitled to pre-judgment interest on the \$1,719 from January 15, 2021, when I find MDC reasonably should have processed his refund request, to the date of this decision. This equals \$89.12.
23. Mr. Jose was successful but did not pay CRT fees. Neither party claims dispute-related expenses.

## ORDERS

24. Within 14 days of the date of this order, I order David Allon and MDC, jointly and severally, to pay Mr. Jose a total of \$1,808.12, broken down as \$1,719 in debt and \$89.12 in pre-judgment interest under the *Court Order Interest Act*.
25. Mr. Jose is entitled to post-judgment interest, as applicable.
26. 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.

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Micah Carmody, Tribunal Member