Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Carolyn Lowe Consulting Inc. v. Aguilera-Ruiz (dba Wild Lemon Health)*, 2025 BCCRT 928

B E T W E E N :

CAROLYN LOWE CONSULTING INC.

APPLICANT

A N D :

ANTONELLA AGUILERA-RUIZ (Doing Business As WILD LEMON HEALTH)

RESPONDENT

A N D :

CAROLYN LOWE CONSULTING INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Peter Nyhuus

INTRODUCTION

1. These disputes are about social media consulting services. They are a claim and counterclaim between the same parties about related issues, so I have issued one decision for both disputes.

2. Antonella Aguilera-Ruiz hired Carolyn Lowe Consulting Inc. (CLC) to provide social media consulting services for her naturopathic health care business. CLC says Dr. Aguilera-Ruiz terminated its services without providing one month's notice, as required by the parties' contract. It claims $1,350 USD, which is the amount Dr. Aguilera-Ruiz paid to CLC each month as a retainer payment.

3. Dr. Aguilera-Ruiz denies owing CLC an extra month's payment. She says the retainer payments were prepayments for the following month's work. She also says she was justified in terminating CLC's services as CLC admitted the project was beyond its capabilities.

4. In her counterclaim, Dr. Aguilera-Ruiz says CLC performed less than half the services it was required to perform. She claims a refund of $1,775 USD for those unperformed services. CLC denies Dr. Aguilera-Ruiz's claim. It says it performed what it could and that Dr. Aguilera-Ruiz failed to provide it the required content to fully complete the services.

5. CLC is represented by its director, Carolyn Lowe. Dr. Aguilera-Ruiz represents herself.

6. For reasons I will explain, I dismiss both parties' claims.

JURISDICTION AND PROCEDURE

7. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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. These are the CRT's formal written reasons.

8. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The parties in this dispute each question the other's credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356,* 2023 BCCA 100, the court recognized that oral hearings are not necessarily required when credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, no party requested an oral hearing, and I find it unlikely that cross-examination would reveal inconsistencies in any party's evidence. For these reasons, I find the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions

9. 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 court.

10. Where permitted by CRTA section 118, 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.

Proper jurisdiction

11. Under CRTA section 10, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. While neither party raised this issue, I briefly considered whether the CRT has jurisdiction over this dispute given that (1) Dr. Aguilera-Ruiz's business is based in California, and (2) the parties' contract required them to settle any disputes through binding arbitration.

12. Regarding the first issue, the parties made an express choice in their contract to be governed by the laws of "Vancouver, BC". The court has found that it (and the CRT)

may not interfere where a choice of law is expressly made in a contract, except if that choice is unlawful or contrary to public policy (see: *Pope & Talbot Ltd. (Re)*, 2009 BCSC 1552, at paragraph 37). I find there is nothing to indicate that their choice was unlawful or contrary to public policy. CLC is based in BC, so there is a strong connection to this jurisdiction. So, I accept the parties' choice of law. Since the CRT has jurisdiction over small claims matters arising in BC (including Vancouver), I find Dr. Aguilera-Ruiz's location does not prevent me from resolving this claim.

13. The second issue is that the parties' contract contains a clause that says the parties agree to resolve disputes by binding arbitration, rather than court. The CRT is neither arbitration nor court. However, since neither party relied on this clause nor argued the CRT was not an appropriate forum to resolve this dispute, I find the parties have waived application of this forum clause.

ISSUES

14. The issues in this dispute are:

    a. Must Dr. Aguilera-Ruiz pay CLC $1,350 USD for failing to provide proper notice before cancelling the parties' contract?

    b. Must CLC refund Dr. Aguilera-Ruiz $1,775 USD for failing to perform services?

EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the parties must each prove their claims on a balance of probabilities. This means "more likely than not". I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.

Background

16. In 2022, Dr. Aguilera-Ruiz hired CLC to provide social media consulting services. The parties signed a consulting agreement dated July 25, 2022, with a term that was set to last until June 26, 2023.

17. The agreement says that Dr. Aguilera-Ruiz agreed to pay CLC $400 USD for upfront and administration work and then a monthly retainer of $1,375, due on the 1st of every month. Dr. Aguilera-Ruiz undisputedly paid CLC the $400 fee and the $1,375 retainer payment in each of August and September ($3,150 USD total).

18. The agreement included an exhibit with a scope of work (SOW). The SOW said that CLC would perform various services each month relating to public relations and relationship building, social media, and administration.

19. The parties' relationship deteriorated in September 2022. On September 20, Dr. Aguilera-Ruiz and Ms. Lowe held a meeting to discuss CLC's performance, the SOW, and the parties' working relationship. Dr. Aguilera-Ruiz says that by the end of the meeting, she no longer had confidence in CLC's ability to effectively perform the services.

20. On September 26, Dr. Aguilera-Ruiz emailed Ms. Lowe about their September 20 conversation. She said that she considered CLC's work to be "under delivered" and that she did not feel the parties could move forward. She informed Ms. Lowe that she would not be renewing the contract and that she considered the SOW to be terminated. She also said she believed that her payments to CLC were up to date. Around this time, Dr. Aguilera-Ruiz updated her passwords, removing CLC's access to her social media accounts.

21. On September 27, Ms. Lowe emailed Dr. Aguilera-Ruiz to summarize her understanding of the parties' call and her understanding of the project and its deliverables. Ms. Lowe wrote that Dr. Aguilera-Ruiz's goals and expectations kept changing in a way that was challenging and unrealistic. Ms. Lowe stated:

> Ultimately, I don't believe that I am a good fit for your needs, as your needs and expectations keep changing without clear communication to agree and confirm your changing needs. Both parties have to agree to your changing needs, which did not happen. I do not have the capacity to take on your project per the aforementioned points that I've raised in this email. We had agreed to a SOW and you are, as you said in last week's call (week of Sept. 19th), "expecting something different."
>
> …
>
> I don't have the capacity to keep explaining what is in the SOW and what is not, as this is not in our SOW or terms of engagement.
>
> …
>
> I believe that the work that is required exceeds my capacity. I also believe that the additional work that you expected (and is not in the SOW), is something that you don't want to invest in, as evidenced by your additional requests that have not been agreed to or paid for in the current SOW and from our discussion in last week's call. Therefore, I will decline your request to propose another scope of work.

22. In this email, Ms. Lowe also wrote that the October retainer is immediately due. On September 28, CLC issued an invoice to Dr. Aguilera-Ruiz for $1,375 USD with the line item, "Marketing Consulting – Oct. Retainer 2022". The invoice included a note that says: "Invoice due – per the terms in the scope of work… If you would like the work to be completed for Oct. 2022, then please give me access to the Google Drive docs and boards to complete the work (as you removed my permissions this week). If you do not want me to do the work, I thank you for the time. I will give you 2 business days to respond which way you would like to go."

23. CLC's claim is for payment of this invoice, which Dr. Aguilera-Ruiz refuses to pay.

Must Dr. Aguilera-Ruiz pay CLC $1,350 USD for failing to provide proper notice before cancelling the parties' contract?

24. It is undisputed that CLC performed no work for Dr. Aguilera-Ruiz in the month of October 2022. Nevertheless, CLC claims that Dr. Aguilera-Ruiz must pay the $1,375 October retainer because she terminated the contract without proper notice.

25. The agreement included 2 clauses that could be used in different circumstances to terminate the contract earlier than its stated term. The parties dispute which of these 2 clauses applied to their circumstances. So, I will review each in turn.

26. The first clause, which I refer to as Clause 1, allowed Dr. Aguilera-Ruiz to cancel the services for any reason by providing at least 30 days' notice to CLC. I note that in the agreement Dr. Aguilera-Ruiz is defined as the "Company" and CLC is defined as the "Consultant". Clause 1 stated:

> If the Company desires to cancel Services of Consultant for any reason at any time, then Company shall provide at least 30 days Notice to Consultant via email in order to cancel this contract. Providing Notice will not relieve the Company of any currently outstanding payment obligations. Consultant will not be obligated to refund any portion of monies Company has previously paid to Consultant. In the event of termination, Consultant shall be paid for any portion of the Services that have been performed prior to the termination.

27. The other early termination option, Clause 2, was for a situation in which CLC was not able or willing to perform its obligations. Clause 2 stated:

> In the event Consultant cannot or will not perform her obligations in any or all parts of this Agreement, she (or a responsible party) will immediately give Notice to Company via email, and either attempt to find a reasonable substitute to fulfill the terms of this Agreement or issue a refund or credit based on a reasonably accurate percentage of Services rendered. In the case of a refund where, at the discretion of the Consultant, no reasonable substitute is

found, Company shall excuse Consultant of further performance obligations in this Agreement.

28. The agreement also included a related clause that I find applied to both Clauses:

> Upon termination of this Agreement, all rights and duties of the parties hereunder shall cease except:
>
> (i) Company shall be obliged to pay, within thirty (30) days after receipt of Consultant's final statement/invoice, all amounts owing to Consultant for unpaid Services completed by Consultant and related expenses, if any, in accordance with the provisions of this Agreement.

29. CLC argues that Clause 1 applied. It says that Dr. Aguilera-Ruiz decided to terminate the contract but failed to provide 30 days' notice. It says this entitled CLC to charge Dr. Aguilera-Ruiz $1,375 for October's retainer payment regardless of whether it conducted any work that month.

30. Dr. Aguilera-Ruiz, on the other hand, argues that Clause 2 is applicable. She says that, by Ms. Lowe's own admission, CLC was unable or unwilling to perform its obligations and that it should have instead provided her a reasonable refund for unperformed services from August and September. Dr. Aguilera-Ruiz's counterclaim, which I discuss further below, is based on the refund requirement set out in Clause 2.

31. The modern approach to contract interpretation involves reading the contract as a whole and giving the words their normal and ordinary meaning in line with the surrounding circumstances when the parties made the contract (see: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 and *Synergraze Inc. v. Royal Canadian Marine Search and Rescue Inc.,* 2025 BCSC 1213).

32. I find that CLC is not entitled to the October retainer payment for 2 primary reasons. First, I find that Clause 2 applied to the parties' circumstances. Second, I find that

even if Clause 1 applied, it did not entitle CLC to payment for work it did not perform. My reasons follow.

Why Clause 2 applied

33. Based on the parties' correspondence after their September 20 meeting, I find it clear that the parties' relationship had broken down and that both parties wished to terminate the agreement. So, to some extent, both termination clauses applied. However, since Clause 2 provides Dr. Aguilera-Ruiz a defence to CLC's claim, I explain why I find that it applied.

34. In her September 27 email, Ms. Lowe complained about Dr. Aguilera-Ruiz's changing expectations about the SOW. She said that the parties had agreed upon a SOW and accused Dr. Aguilera-Ruiz of trying to change it. She said that she did not have capacity to keep explaining what the SOW includes and excludes.

35. However, the agreement expressly required the parties to review the contract every month and to align or amend the SOW as necessary. The SOW itself contained multiple items that were to be confirmed after the term's start. So, I find that reviewing, revising, and amending the SOW on an ongoing basis was part of performing the contract. By refusing to engage in this exercise, I find that CLC demonstrated its unwillingness to perform part of its obligations. So, I find that Clause 2 applied and that Dr. Aguilera-Ruiz was entitled to consider the contract terminated. It follows that she was not required to pay CLC for any further services.

Why Clause 1 did not entitle CLC to further payment

36. Even if Clause 1 applied instead of Clause 2, I would have still found that Dr. Aguilera-Ruiz's failure to provide 30 days' notice did not entitle CLC to payment for future services.

37. First, I note that a "retainer" is commonly understood as an advance payment for services that have not yet been performed. This is how Dr. Aguilera-Ruiz says she understood the clause. She says the retainer payments were prepayments for the

following month's work. I agree that this is a reasonable interpretation of the contract. I find this interpretation is consistent with the agreement's words which only required Dr. Aguilera-Ruiz to pay for "currently outstanding payment obligations" and for "unpaid services" upon termination. So, I find it would be inconsistent with the contract's actual words and Dr. Aguilera-Ruiz's legitimate and reasonable expectations to interpret the contract as requiring that she make a retainer payment for work that both parties acknowledged would never be completed.

38. I find there is nothing in the contract to suggest that Dr. Aguilera-Ruiz would be required to pay for services that CLC did not perform or that she must provide compensation to buy herself out of the contract. But if this is the case, then what was the purpose of requiring 30 days' notice of termination?

39. Given that the parties agreed that Dr. Aguilera-Ruiz would prepay at the start of the month for that month's services, I find that the reference to 30 days was likely intended to allow CLC to wind up any work it was already undertaking that month, and that CLC would not be required to refund Dr. Aguilera-Ruiz that month's retainer payment. So, if Clause 1 applied, then the notice requirement would have entitled CLC to complete its services for the month of September, without providing a refund of September's retainer payment.

40. I note that this interpretation strays somewhat from the actual words "30 days' notice". However, I find that it is consistent with the remainder of the contract's language and the parties' objective intentions.

41. Further, to the extent the notice provision is ambiguous, I find that the principle of c*ontra proferentum* applies. This means that any doubt as to the meaning of the ambiguous provision is to be resolved against the party who drafted the contract. Here, it is undisputed that CLC drafted and proposed the contract. Applying that principle would favour this interpretation. Since the agreement is silent about the consequences of failing to provide 30 days' notice and only references repayment

of services actually performed, I find any ambiguity must be resolved in a way that does not require Dr. Aguilera-Ruiz to pay CLC for following month's retainer.

42. In summary, I find that under either termination clause, Dr. Aguilera-Ruiz was not required to pay CLC the October retainer payment. So, I dismiss CLC's claims.

Must CLC refund Dr. Aguilera-Ruiz $1,775 USD for failing to perform services?

43. Dr. Aguilera-Ruiz says that CLC breached their agreement by failing to perform certain aspects of the SOW. For instance, she says that in the contract's first 2 months, CLC only posted 7 social media posts while the contract required it to post 18. She says CLC did not perform other tasks such as following industry leaders or public relations contacts, and monitoring competitors. She says she is entitled to a refund pursuant to Clause 2.

44. As I discussed above, Clause 2 applies to circumstances in which CLC cannot, or will not, perform its obligations under the agreement. In that case, CLC must either attempt to find a reasonable substitute to fulfill the agreement's terms or issue a refund or credit based on a reasonably accurate percentage of services rendered.

45. I find that Dr. Aguilera-Ruiz waived the requirement for CLC to find a suitable replacement for her. She never asked for this, and I find that she simply wished for both the contract and the parties' relationship to end. So, the only issue is whether she is entitled to a refund based on a reasonably accurate percentage of the services CLC did not perform in August and September.

46. CLC denies it failed to perform the contract's SOW. It provided various examples of its work product and efforts, and its communications with Dr. Aguilera-Ruiz. CLC says that it takes times to ramp up and understand a business and that a significant portion of its time was spent developing a system for effectively communicating with Dr. Aguilera-Ruiz to approve social media posts.

47. I find the evidence supports CLC's assertion that Ms. Lowe put considerable time and effort into the performance of the SOW. Given the early stages of the parties' working relationship, I find CLC's failure to reach the SOW's quota for social media posts does not indicate a failure to perform the SOW. I find it was reasonable for her to prioritize building effective communication systems between the parties before reaching the SOW's envisioned volume of social media posts.

48. I find that the agreement acknowledged that there would be a ramping-up period in which the parties learned to effectively communicate and work together to deliver the social media strategy. While the parties could not find an effective way of communicating or working together, I find this failure was not for any one party's lack of effort.

49. Given that the parties terminated the contract towards the end of September and that CLC has proved it performed work under the SOW in September, I find that Dr. Aguilera-Ruiz is not entitled to a refund. While CLC undisputedly did not perform work for Dr. Aguilera-Ruiz over the last few days of September, I find this is because she had removed CLC's access to her accounts. So, I find Dr. Aguilera-Ruiz implicitly excused CLC from further performance of the SOW for the remainder of September.

50. In conclusion, I find that neither party breached the contract, so neither party is liable to the other. So, I dismiss both parties' claims.

51. 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. Since neither party was successful in their claims or counterclaims, I find that neither party is entitled to reimbursement of their CRT fees or dispute-related expenses.

ORDER

52. I dismiss CLC's claims, Dr. Aguilera-Ruiz's counterclaims, and this dispute.

Peter Nyhuus, Tribunal Member