



Civil Resolution Tribunal

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File: CS-2022-002380

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Rahman v. Khan*, 2023 BCCRT 176

B E T W E E N :

MD MUJIBIR RAHMAN

APPLICANT

A N D :

ANISUR KHAN and NEW WESTMINSTER ISLAMIC SOCIETY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, MD Mujibir Rahman, is a member and director of the respondent society, the New Westminster Islamic Society (NWIS). The other respondent, Anisur Khan, is NWIS's secretary.

2. This dispute is about whether 2 people, ZL and AS, are members and directors of NWIS. Mr. Rahman says they are not, and have never been. Mr. Rahman says that the September 30, 2018 meeting where ZL and AS were “appointed” as members and directors did not comply with NWIS’s bylaws. Mr. Rahman asks for an order that NWIS follow its bylaws about adding and removing new members and directors. Mr. Rahman is self-represented.
3. NWIS says that ZL and AS were accepted as members and elected as directors at the September 30, 2018 meeting, which NWIS says complied with its bylaws. NWIS says that ZL and AS have been members and directors ever since. NWIS asks me to dismiss Mr. Rahman’s claim. NWIS is represented by a director.
4. Mr. Khan submitted a Dispute Response identical to NWIS and adopted its submissions. Mr. Khan is self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain society claims under section 129 of the Civil Resolution Tribunal Act (CRTA). CRTA section 2 says 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.
6. 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, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT’s mandate that includes

proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

7. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under CRTA section 131, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. Mr. Rahman filed a previous CRT dispute against NWIS. According to the Dispute Notice for that dispute, Mr. Rahman and another applicant made allegations about the accuracy of an annual report and NWIS's compliance with its bylaws about the number of directors. Mr. Rahman withdrew that dispute after the parties reached an agreement. Contrary to Mr. Rahman's submissions, I find that NWIS did not admit any "mistakes" as part of the settlement, based on the brief settlement agreement in evidence. In any event, while there is some overlap between that dispute and this one, I find that the issues in the disputes are different. So, I find nothing turns on the settlement and withdrawal of the previous dispute.

ISSUES

10. The issues in this dispute are:
 - a. Are ZL and AS members of NWIS?
 - b. Are ZL and AS directors of NWIS?
 - c. What remedy, if any, is appropriate?
 - d. Is Mr. Khan an appropriate respondent?

EVIDENCE AND ANALYSIS

Membership

11. NWIS's bylaw 2.4 governs applications for membership. Under bylaw 2.4(3), an application for membership must be "accepted by an affirmative vote of one hundred (100) percent of the votes of the Directors at a meeting of the Board of Directors". The bylaw says that this must be at a meeting called for the sole purpose of considering new members. Bylaw 6.6(a) says that quorum for a directors' meeting for the purpose of considering applications for membership is all directors. In other words, every director must attend a meeting to consider a new applicant and the decision must be unanimous.
12. In September 2018, the NWIS's president at the time emailed the other directors notice for a "special meeting" that all directors were asked to attend. The email did not state the purpose of the meeting, and it is undisputed that no agenda was circulated in advance. ZL and AS were undisputedly not NWIS members at that time.
13. The meeting took place on September 30, 2018. The minutes indicate that the directors present unanimously "selected" AS and ZL as new directors. I note here that the NWIS's conventional practice is that every member is also a director. The parties do not dispute this, and it is consistent with the various meeting minutes in evidence and the parties' submissions. This practice likely explains why the September 30, 2018 minutes refer to AS and ZL being approved as directors, not members. I say this because under NWIS's bylaws, discussed below, directors can only be elected at an annual general meeting (AGM) and must already be members. It is undisputed that September 30, 2018 meeting was not an AGM and that ZL and AS were not NWIS members before this. Given this, I find that the purpose of the September 30, 2018 meeting was to approve ZL and AS as members, despite the use of the word "directors" in the minutes.
14. As Mr. Rahman points out, the meeting's minutes indicate that the directors considered other business, not just ZL and AS's memberships. I therefore find that it was not a special meeting for the sole purpose of considering ZL and AS's

membership applications. On that basis alone, I find that NWIS did not comply with its bylaws when it considered ZL and AS's membership applications.

15. Also, according to the meeting minutes, only 7 of NWIS's directors attended the September 30, 2018 meeting. It is undisputed, and statements in evidence confirm, that Mr. Rahman and at least 2 other directors were not present. So, I find that the September 30, 2018 meeting did not have the required quorum to consider applications for new members.
16. I therefore find that NWIS did not comply with its bylaws in how it purported to accept ZL and AS as new members. I further find that as a result, ZL and AS did not become members on September 30, 2018. There is no suggestion in the evidence or the parties' submissions that NWIS considered fresh membership applications after September 30, 2018, and I find it clear from context that it did not. Since that meeting was the only time NWIS considered their membership applications, I find that ZL and AS have never been NWIS members.

Directorship

17. Bylaw 4.1(2) says that a director must be an NWIS member. Bylaw 4.3 says that directors must be elected at an AGM. Based on these 2 bylaws, I find that ZL and AS are not, and never have been, directors. They have never been members. Based on the AGM minutes before me, they have also never been elected as directors at an AGM. NWIS does not dispute this.
18. The parties' submissions focus largely on what happened after the September 30, 2018 meeting. Briefly put, there were changes in NWIS's leadership, and different directors had different opinions about whether ZL and AS were directors. As such, NWIS filed changes to its list of directors between 2019 and 2022 that added, then removed, then re-added ZL and AS. NWIS also held several meetings where the directors present purported to confirm whether (or not) ZL and AS were directors.
19. I find it unnecessary to address the parties' arguments about what happened after September 30, 2018. I say this because I find the evidence is clear that ZL and AS

were never approved as members and never elected as directors, according to the requirements of NIWS's bylaws. I find that NWIS's various filings and meetings over the years do nothing to change that fact.

Remedy

20. I turn then to Mr. Rahman's requested order. He does not ask for an order that NWIS update the filed list of directors to remove ZL and AS. Instead, he asks for a general order that NWIS follow its bylaws about membership and directorship.
21. The CRT will generally not order societies to comply with its bylaws. This is because a society must comply with its bylaws whether the CRT orders it to or not. This makes a CRT order to comply with bylaws unenforceable and effectively meaningless. I see no reason to depart from this general approach here. I find that ordering NWIS to comply with its bylaws would serve no useful purpose. I therefore decline to do so.
22. With that, while I agree with Mr. Rahman that ZL and AS are not NWIS members or directors, I dismiss his claims.
23. Given my conclusion, I find it unnecessary to consider whether Mr. Khan is an appropriate respondent.
24. Nothing in this decision prevents NWIS's members from considering a new membership application by ZL and AS or from electing them as directors if they are accepted as member, so long as NWIS follows its bylaws in doing so.

CRT FEES AND EXPENSES

25. 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. While I agreed with Mr. Rahman on the parties' main factual dispute, I find that he was the unsuccessful party in this dispute. I therefore dismiss his claim for CRT fees and dispute-related expenses. Neither respondent claimed any dispute-related expenses.

ORDER

26. I dismiss Mr. Rahman's claims, and this dispute.

Eric Regehr, Tribunal Member