



Civil Resolution Tribunal

Date Issued: July 31, 2023

File: CS-2022-002991

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Sobral v. North Burnaby Boxing Club*, 2023 BCCRT 640

B E T W E E N :

MANUEL SOBRAL

APPLICANT

A N D :

NORTH BURNABY BOXING CLUB

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicant, Manuel Sobral, seeks several orders against the respondent society, North Burnaby Boxing Club (NBBC). Mr. Sobral seeks the following orders:
 - a. that NBBC's bylaw changes of September 18, 2020 are of no force or effect as they were not authorized by a special resolution,

- b. that NBBC's original incorporators who have not ceased to be members are still members,
 - c. that other individuals who became members of NBBC and have not ceased to be members prior to the NBBC's September 18, 2020 bylaw changes are still members,
 - d. for NBBC to send Mr. Sobral all of the information it must keep under sections 20(1) (a) through (k) and 20(2) (a) through (c) of the *Societies Act* (SA) within 30 days of the date of this decision, and
 - e. for NBBC to hold a general meeting within 60 days.
2. NBBC disagrees. It says the September 2020 bylaw changes were done properly on the advice of its lawyer. NBBC says its bylaws show that NBBC's only members are its current directors. It also says Mr. Sobral requests documents he is not entitled to. Finally, NBBC denies any need to hold a general meeting, in part because NBBC says it ceased operations in February 2020.
 3. Mr. Sobral represents himself. A director, RC, represents NBBC.
 4. For the reasons that follow, I find Mr. Sobral and proven some of his claims.

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. CRTA section 39 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 and fairness.

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.

Settlement Discussions

9. NBBC provided as evidence an October 6, 2021 letter from Mr. Sobral's lawyer. In reply submissions, Mr. Sobral objects to the letter on the basis that it was sent as part of settlement discussions. NBBC did not have a chance to respond to this submission.
10. Settlement privilege normally protects documents and communications created for the purpose of settlement from production to other parties to the negotiations and to strangers. See *Middlekamp et al v. Fraser Valley Real Estate Board et al* (1992), 1992 CanLII 4039 (BCCA) at paragraphs 18 to 20.
11. I find the letter was clearly created for settlement purposes given its language. For example, it is clearly marked "WITHOUT PREJUDICE" and contains wording about settling claims. Given how clear the evidence is, I found it unnecessary to seek submissions on NBBC to respond on this matter. So, I have decided not to rely on the letter as evidence. Even if it were admissible, I find it would not decide the issues in this dispute.
12. For similar reasons, I have not considered the letters dated the month of September 2021 from NBBC's lawyer, and September 8, 2021 from Mr. Sobral's lawyer. These

letters are clearly about settlement negotiations and in any event, I find they have little evidentiary value in this dispute.

ISSUES

13. The issues in this dispute are as follows:

- a. Are the bylaw amendments dated September 18, 2020 valid?
- b. Who are the members of NBBC, and are any remedies appropriate?
- c. Must NBBC produce copies of the requested records to Mr. Sobral?
- d. Must I order NBBC to hold a general meeting within 60 days of the date of this decision?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, Mr. Sobral as the applicant must prove his 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 provide context for my decision.
15. A registry search shows that NBBC is a BC society originally incorporated in December 2003. Its constitution, filed on August 31, 2018, shows that NBBC's purposes are to advance and provide outlets for the sport of amateur boxing.
16. There are 2 copies of the bylaws in evidence. The first was filed on December 20, 2019. The second was filed on September 18, 2020. Mr. Sobral questions the validity of the September 2020 bylaws. I will discuss both sets of bylaws below.
17. A December 24, 2003 certificate of incorporation shows that Mr. Sobral was a founding member and one of the first directors of NBBC. More recently, a September 26, 2019 statement of directors shows Mr. Sobral as a director at that time. A November 5, 2019 statement shows that Mr. Sobral later ceased being a director by then.

18. Mr. Sobral explains what happened as follows. In fall 2019, Mr. Sobral disagreed with the other directors, RB and JF, about the management of NBBC. At the October 20, 2019 annual general meeting (AGM), the 3 agreed that they would not seek reelection and allow 7 other directors to take over. Approximately 2 weeks after this, the 3 directors resigned. JF later became a director again. NBBC does not dispute this summary.
19. On February 23, 2020, the board of directors sent Mr. Sobral a letter. It said that NBBC terminated Mr. Sobral from his position as head coach at NBBC effective immediately. The board also prohibited Mr. Sobral from being a coach, volunteer, or member of NBBC, visiting its facility, or contacting any board members, club members, volunteers, or coaches. The board said this was due to Mr. Sobral's "aggressive behaviour, series of events, lack of respect of the new board and the facility". The series of events are not explained in detail in the letter, though there are references elsewhere to conflict between Mr. Sobral and others in the evidence.
20. On September 18, 2020, NBBC filed a bylaw alteration application. It attached a special resolution dated September 18, 2020, and signed by 5 directors: RC, JF, GS, DB, and JA. The resolution said that the bylaws of December 20, 2019 were cancelled. Further, the attached bylaws would be the existing bylaws effective as of the filing date.
21. I will briefly compare the December 2019 and September 2020 bylaws. For the December 2019 bylaws, bylaw 3 said that "members" include the applicants for incorporation of NBBC, and those persons who subsequently become members in accordance with the bylaws and have not ceased to be member. Bylaw 4 said that a person may apply to the directors for membership and on acceptance by the directors was a member.
22. In contrast, the September 2020 bylaws rewrote and renumbered the bylaws, and were much more restrictive about membership. Bylaw 2.1 said that NBBC's members were the elected or appointed directors of NBBC. Further, a person that ceased to be a director automatically ceased to be a member. Bylaw 1.1 defined members to mean

members at the date the September 2020 bylaws were adopted and those persons who became members in accordance with the bylaws and have not ceased to be members.

Issue #1. Are the bylaw amendments dated September 18, 2020 valid?

23. Bylaw alterations must be authorized by special resolution under SA section 17(2) and filed with the registrar under SA section 17(3). Under the SA, a special resolution is defined to include a resolution passed at a general meeting by at least 2/3 of the votes cast by the voting members.
24. SA section 77(1) says that a society must provide at least 14 days' notice before a general meeting unless the society's bylaws provide a different amount of notice. I find the bylaws in operation at the time did not provide any different amount of notice. SA section 78 says that notice of a general meeting must include the text of any special resolution to be submitted to the meeting.
25. The December 2019 bylaws state the procedures in place at the time NBBC introduced the September 2020 amendments. Bylaw 10 said that NBBC's general meeting must be held at a time and place in accordance with the SA that the directors decide. Bylaw 13(1) said the notice of a general meeting must specify the place, day and hour of the meeting.
26. Mr. Sobral says that NBBC failed to provide any notice of the general meeting to vote on the special resolution of September 2020. NBBC said it changed the bylaws by following the advice of its lawyer, and so the amendments are valid.
27. Notably, NBBC did not say it ever provided notice of a general meeting to vote on the September 2020 special resolution. Likewise, there is no evidence to support a finding that NBBC complied with the SA section 77 or 78. I find that NBBC's submission that it followed its lawyer's advice does not mean it necessarily complied with the SA.

28. Given the above, I find NBBC breached those section of the SA. I also find it breached bylaw 10, as it did not hold a general meeting at a time and place in accordance with the SA. It follows that I find that the bylaw amendments of September 2020 are invalid.
29. I next consider if a remedy is warranted. As a general principle, courts and by extension the CRT, should be reluctant to intrude into a society's affairs and impose resolution. In general, society members should control their own affairs. See *Hong and Jung v. Young Kwang Presbyterian Church*, 2006 BCSC 376. However, I find it appropriate to order a remedy because 1) this situation involves a complete lack of notice, as opposed to merely late notice, and 2) the bylaws drastically change NBBC's membership.
30. For that reason, I order NBBC to immediately stop applying the bylaw amendments filed on September 18, 2020.

Issue #2. Who are the members of NBBC, and are any remedies appropriate?

31. The parties disagree on whether anyone else aside from NBBC's current directors are members of NBBC. As noted above, Mr. Sobral seeks an order or declaration that NBBC's members include its incorporators, such as himself, and other individuals that were members prior to the adoption of the September 2020 bylaws.
32. NBBC says Mr. Sobral ceased being a member when he stopped being a director in October 2019, and says there are no other members aside from the current directors. Given this submissions, I find it relies on the wording of bylaw 2.1 of the September 2020 bylaws to apply retroactively to the resignation of October 2019.
33. CRTA section 130(2) says that the CRT lacks jurisdiction over matters relating to the termination of membership in a society. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction.
34. I find that Mr. Sobral's claim is essentially that NBBC improperly terminated all non-director persons as members of NBBC in September 2020, through the above-

mentioned bylaws. I also find that he says NBBC improperly terminated his membership specifically through the February 23, 2020 letter, also mentioned above.

35. I acknowledge Mr. Sobral's submissions that address CRTA section 130(2) and characterize the issues differently. He says that there was "simply no, even alleged, termination of membership by valid mechanism". However, I find that NBBC's change in bylaws is properly characterized as a mass termination of membership, or at least an attempt to do so. I find the February 23, 2020 letter also purports to terminate his membership as well.
36. I also find that Mr. Sobral's claimed remedies, which are essentially about who the members are, cannot be determined without also considering whether NBBC properly terminated the membership of Mr. Sobral or others at NBBC.
37. I have decided that NBBC must stop applying the amendments filed on September 18, 2020. So, on the face things, it may be the case that NBBC's membership will be impacted by my order. However, given the clear wording of CRTA section 130(2), I must conclude that I have no authority to make any orders about who the current members are.
38. CRTA section 10(1) says the CRT must refuse to resolve a claim it considers is not within the CRT's jurisdiction. For all the reasons stated above, I must refuse to resolve this claim.

Issue #3. Must NBBC produce copies of the requested records to Mr. Sobral?

39. Mr. Sobral requests all of the information NBBC must keep under sections 20(1) (a) through (k) and 20(2) (a) through (c) of the SA within 30 days. NBBC says it is not entitled to these documents for the reasons stated in a June 18, 2020 letter from its lawyer to Mr. Sobral.
40. Section 24(1) says a member may inspect a record kept under section 20(1). Section 24(2) says a member may inspect a records kept under section 20(2)(a) or 20(2)(b)

that discloses a director's or senior manager's interest, or any record kept under section 20(2) unless the society's bylaws provide otherwise.

41. The September 2020 bylaws expressly allow members that are not directors to inspect records that must be kept under the SA, with some exceptions under bylaw 10.5. These include a) board meeting minutes, 2) copies of directors' consent resolutions and the individuals consents to those resolutions, and 3) NBBC's accounting records, unless such records evidence a disclosure of a directors' interest and is required under the SA to be disclosed to a member. In contrast, the previous version of the bylaws does not limit any members' ability to inspect records.
42. I turn to Mr. Sobral's document request. Around June 2020, Mr. Sobral asked NBBC for records NBBC must keep under SA sections 20(1) (a) through (k) and 20(2) (a) through (c). Mr. Sobral also asked for information on how to pay any required fees for the documents.
43. NBBC's lawyer responded in a June 18, 2020 letter. They enclosed a copy of NBBC's bylaws and constitution. They said that they would not provide the other requested documents. They said the fee was \$10.50 for a total of 5 pages. The lawyer said they would not provide further documents because 1) Mr. Sobral was not a member or director, and 2) the directors were of the view that allowing inspection or distribution of copies of the register of members to Mr. Sobral would be harmful to NBBC's interests or the interests of its members. The lawyer also said that the directors passed a director's resolution confirming that non-members have no right to inspect or obtain a copy of the register of members and restricting the rights of members to inspect or obtain a copy of the register of members. This resolution is not in evidence, so I find its existence unproven.
44. The chronology shows that Mr. Sobral made his request after the February 2020 letter that purportedly terminated his membership. I have already held that I lack jurisdiction to decide the issue of his membership termination. I find I must refuse to resolve this claim under CRTA section 10(1). This is because it is about entitlement to documents that are only available to members or members at the time of the request.

Alternatively, I would refuse to resolve it under CRTA section 11(1)(c) because it is impractical to resolve it given that the issue of membership is outside my jurisdiction.

Issue #4. Must I order NBBC to hold a general meeting within 60 days of the date of this decision?

45. Mr. Sobral says NBBC must hold a general meeting. He relies on SA section 71(1). It says that the directors of a society must call AGMs so that an AGM is held in each calendar year.
46. NBBC denies the need to hold a general meeting. It says it has not been in operation since February 2020. It did not say if it called an AGM in 2020, 2021, or 2022.
47. The most recent BC society summary in evidence for NBBC is dated June 13, 2022. It says that NBBC last held its AGM on October 25, 2021. According to the summary, NBBC is not in liquidation and filed an annual report for 2021.
48. From the above, I find that NBBC called an AGM in 2021 as this is supported by the society summary. However, I find it did not call an AGM for 2022, because there is no evidence or submission to suggest that it did. NBBC was vague on this point, as noted above. Further, there is no evidence or explanation that shows NBBC should be exempt from the requirements of SA section 71(1). NBBC says it is not in operation, but the documents in evidence do not support this.
49. Given the above, I order that within 60 days of the date of this decision, NBBC must call an AGM as required under the SA.

CRT FEES AND EXPENSES

50. Under section 49 of the CRTA, and the 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. Mr. Sobral proved several of his claims, so I find him to be largely successful. I therefore order NBBC to reimburse Mr. Sobral for CRT fees of \$225. The parties did not claim any specific dispute-related expenses.

ORDERS

51. I order NBBC to immediately stop applying the bylaw amendments filed on September 18, 2020.
52. I order that within 60 days of the date of this decision, NBBC must call an AGM as required under the SA.
53. I order that within 30 days of the date of this order, NBBC must pay Mr. Sobral \$225 for reimbursement of CRT fees.
54. Mr. Sobral is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
55. Under CRTA section 10(1), I refuse to resolve Mr. Sobral's claims about the membership of NBBC.
56. Under CRTA section 10(1), I refuse to resolve Mr. Sobral's claims about requesting records NBBC must keep under SA sections 20(1) (a) through (k) and 20(2) (a) through (c).
57. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member