

CLAIM NO: SCAM 205814
Date: 20040518

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Results Consulting Group Inc. v. Automotive Professionals Inc., 2004 NSSM 46

BETWEEN:

Name Results Consulting Group Inc. Claimant

Name Automotive Professionals Inc. Defendant

DECISION

Date Appearing at Amherst, Nova Scotia: April 22, 2004

Revised Decision: The text of the original decision has been revised to remove addresses and phone numbers of the parties on August 23, 2007.

Appearing with the Claimant: Appearing for the Defendant:

Brian S. Creighton

Russ Morrison

1. On the 22nd day of April, 2004, a hearing was held in this matter. The Claimant,

Results Consulting Group Inc., ("Results"), was in attendance represented by its solicitor, Brian S. Creighton. The Defendant, Automotive Professionals Inc., ("API") appeared and was represented by its principal officer, Russ Morrison. Results filed a claim in this proceeding requesting that API be ordered to pay the sum of \$3,244.89 for invoice #1183 filed as Exhibit "1" in this proceeding.

2. On the 22nd day of April, 2004 a hearing was also held in respect to a claim, SCAM. No. 205815, filed by Results against API requesting that API be ordered to pay the sum of \$10,000.00 in respect to Results' invoice # 1178 filed as Exhibit # 2 in this proceeding.

3. Although there was no consolidation of SCAM. No. 205814 and SCAM No. 205815, both were heard together and both arise out of the same circumstances in the relationship of these parties.

4. On or about November 1, 2000 Results and API entered into an arrangement the intent of which, had it been concluded, was to merge these companies. During the process leading up to this expected merger each of these companies was involved in the cross-training of their employees, associates and others all of whom are called in this decision "facilitators". Each company provided services for the other for which invoices were issued.

5. On March 5, 2001 Results informed API that it was withdrawing from the intended merger and in a letter of that date it proposed a procedure by which all the outstanding accounts and invoices between the two companies could be resolved. This letter is filed as Exhibit "3". This proposal was unsatisfactory to API and a series of letters were exchanged between the parties in an attempt to resolve outstanding issues.

6. API objected to the inclusion, in invoice # 1178, of expenses and payment to Results' facilitators who had attended to observe API's trainers delivering courses. API was prepared to pay for any actual training or facilitation conducted on API's behalf by Results' facilitators but not for any observation time. Results' position on this matter was that its facilitators had been requested by API to specifically attend certain observation sessions and that their attendance had been requested by Glenn E. Hardy, Executive Vice-President of API, with whom Results had dealt in respect to bookings, training sessions, etc. In evidence given by API it appeared that Glenn Hardy was in a position of authority and could, through his actions, contract on behalf of API. Glenn Hardy was not a witness at this hearing.

7. Gordon Cameron, principal officer with Results, testified that Glenn Hardy had requested Results' facilitators to attend as observers at the training sessions in question. Mr. Cameron understood from his conversations with Glen Hardy that API would pay for Results' facilitators time and expenses in respect to those observation sessions. Mr. Cameron testified that if the commitment in respect to payment had not been made, he would not have sent his facilitators.

8. Russ Morrison, on behalf of API, testified that it has never been the practice of API to pay persons to observe his trainers deliver their product. He suggested that he sent many of API's facilitators to observe Results' training sessions. API did not bill Results for the time and expenses of those facilitators. In respect to Results' invoice #1178, the original amount of which was \$10,140.70, API deducted \$4,209.43. This was the amount invoiced for Results' facilitators' time and expenses at the observation sessions. After deducting this amount, API acknowledged the sum of \$5,931.27 was owing by it to Results for invoice #1178.

9. In respect to Results' invoice #1183, API acknowledged it owed the amount of \$3,244.89.

10. As against both invoices outstanding, invoice #1178 and #1183, API requested a set off for an invoice owed by Results to API under # 01-02035 filed as Exhibit "6" in this proceeding. This will be referred to as "Napoleon Project" since this is the reference given to this invoice by the parties. The amount of this invoice is \$ 7,757,50.

11. API also wished to set off against its indebtedness to Results monies owing to it under the "Hockley Valley Resort" invoice outstanding in the amount of \$1,781.76.

12. Results acknowledged that it owed API for the "Hockley Valley Resort" indebtedness. It did not acknowledge its indebtedness in respect the "Napoleon Project" and because it had been given no notification in this proceeding of any counterclaim, or request for set-off it objected to the Defendant's presentation and my consideration of any evidence in respect to these claims.

13. API alleged that Results had already accepted a set off in respect to both invoice #1178 and #1183. By letter dated April 29, 2002, filed as Exhibit "5" Glenn Hardy wrote to Gordon Cameron including a proposal to reconcile all accounts outstanding between Results

and API, a summary of which appeared as follows:

SUMMARY

1)	Hockley Valley Resort - Outstanding to API	\$1,781.76
2)	Napoleon Days - See attached Invoice	\$7,757.50
3)	Invoice #1178 Reconciled - Schedule A	(\$5,931.27)
4)	Invoice # 1183 Reconciled - Schedule B	(\$3,244.90)

	<u>\$ 363.09</u>
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15. As a result of this summary, Results would owe API the sum of \$363.09. Nothing would be owed by API to Results in respect to invoices #1178 and #1183.

16. On or about February 21, 2003 API received an e-mail from Results seeking payment of the balance left outstanding on another invoice #1263. The amount owed by API to Results on that invoice was \$6,037.50.

17. On receipt of the e-mail from Results, API wrote to Results on February 25, 2003. That letter is filed as Exhibit "4" in this proceeding. In this letter API informed Results that it calculated the amount remaining owing to Results as follows:

Date:	Description	Amount	Balance
29/04/02	Owed to API as per letter dated April 29 th 2002		(\$363.09)
04/06/02	Resulting's Inv#1263	\$70532.79	
	Paid by cheque #05268 d/d 09/03/02	<u>\$64495.29</u>	
	Balance due on invoice # 1263		\$6037.50
Feb. 25 th 2003	Balance due to Resulting Group Inc.		\$5674.41

18. In the letter of February 25, 2003 from API to Results Mr. Hardeo Persaud, Controller stated:

"As indicated in the above schedule, based on our letter to Mr. Gordon Cameron dated April 29, 2002 we have deducted the

amount of \$363.09 owing to API from the balance due on invoice #1263 leaving a balance owing to Resulting Group Inc. in the amount of \$5674.41.

In order to bring finality to this matter, please respond to this letter with your unconditional acceptance for payment in the amount of \$5674.41 and release Automotive Professionals Inc. from any claims or obligation to Resulting Group Inc. Upon receipt of your letter, a cheque will be mailed immediately to Resulting Group Inc.”

19. On March 11, 2003 Results wrote to API concerning its letter of February 25, 2003. This letter is filed as Exhibit “4” in this proceeding. In this letter the following appears:

“Thank you for your recent letter received via email. It is important for the payment of invoice #1263 in the outstanding amount of \$6037.50 minus the amount of \$363.09 as indicated in your letter to be received by us by March 14. This invoice has been outstanding for far to long. Please remit by return mail and email me confirmation that this has been done. It is important this matter be cleared up this way or it will be done another way.”

20. API did not make the payment as requested in the letter from Results of March 11, 2003. Results commenced a claim to collect this account in the Small Claims Court under SCAM. No. 199963. It sought the amount of \$5,674.41 and the reason for the claim is disclosed on the Notice of Claim as follows:

“The reason for this claim is: Unpaid amount - the claim is for an amount left outstanding on inv. 1263 dated June 4, 2002. The amount outstanding is \$6037.50 less an agreed amount of \$363.09. This invoice is for work completed in April and May 2002.”

21. The Defendant entered a Defence to this Claim and was represented at a hearing

held on July 17, 2003 at which time the Defendant did not pursue its Defence and the amount of \$5,674.41 was acknowledged to be outstanding and owed by API to Results. No evidence was introduced at that hearing in respect to the letters and e-mails exchanged on April 29, 2002, February 25, 2003 and March 11, 2003.

22. The Defendant submits that it did not contest the proceeding in respect to invoice # 1263 because, based on the previously mentioned correspondence and e-mails it understood its proposal, contained ultimately in the letter of February 25, 2003, was accepted. It noted that in the Notice of Claim the sum of \$363.09 had been deducted from invoice # 1263 as it had suggested. It acknowledged it had not paid the \$5,674.41 that remained owing and knowing this recognized it had no defence to that proceeding.

23. Results objects to my consideration of any of the correspondence and API's explanation of its failure to defend against the claim in respect to invoice #1263. Results suggests that no agreement was ever reached between it and API for the reduction of accounts as claimed by API. Gordon Cameron's testimony was that Results merely reduced invoice # 1263 by the sum of \$363.09 in order to obtain settlement on that account alone. It believed it would receive immediate payment if this deduction was made. Mr. Cameron testified that this reduction was in no way an acceptance of the proposed global settlement of all accounts put forward in the letters Results received from API.

24. I am troubled by the use by Results of the very figure, \$363.09, that had been used by API in its attempt to settle all of the accounts outstanding with Results. It is understandable that API may well have felt that this was in some way an acceptance of its proposal. However, I am also struck by the categorical denial by Results that it owed any money to API in respect to the "Napoleon Project" . This appears in Results' letter to API dated March 14, 2001 , filed as

Exhibit "3" in this proceeding. Further I note there never was an express letter from Results to API suggesting it would not sue in respect to invoice #1178 and #1183.

25. Finally, in order to have the matter in respect to the "Napoleon Project" appropriately before this Court I find that the Defendant should have filed a counterclaim so that Results would have been fully aware of the case the Defendant intended to put forward against

it. As a result I do not intend to set off any claims by API for money owing in respect to "Hockley Valley Resort" or the "Napoleon Project". API is free to pursue its own remedies against Results in respect to those accounts.

26. I find that API owes Results the sum of \$3,244.89 for invoice #1183.

Dated this 18th day of May, 2004.

Beryl A. MacDonald, Q.C.
Adjudicator