

**Small Claims Court of Nova Scotia**  
**Cite as: Shaver v. Logan, 2016 NSSM 3**

Between

Whitney Shaver

Claimant

-and-

Heather A Logan

Defendant

Adjudicator: David TR Parker QC

Heard: March 14, 2016

Decision: March 19, 2016

Counsel: The Claimant was self-represented

The Defendant was represented by Counsel, Meg E McDougall

*Contract-breach of contract-damages not proven-nominal damages only*

**Decision and Order**

1. This case came before the Small Claims Court in Truro Nova Scotia.
2. The parties were asked if there were any preliminary matters they wish to bring to the courts attention.
3. The Claimant requested that counsel for the Defendant be removed as there was a conflict of interest. While counsel was a director for Maritime Specialty Service Dogs Society, which the Defendant was a member, does not in itself indicate a conflict. Counsel was representing the defendant not the society. The defendant while being a member of the Society was the person who was being sued. The Society was not involved in this action. Further there was no suggestion that there was information being held back from the Claimant either by the Society or by the Defendant. There is no evidence or information put forward that counsel is prejudicing the Claimant's action in this matter. Other than counsel being a member of the Society which the Defendant is a member of does not raise any issues of conflict. If it becomes evident that there is a conflict of some nature during the course of this hearing then I will deal with the matter. However the ruling shall be at this point there is no conflict of interest in this situation.
4. The next preliminary matter involved the documentation contained in the Statement of Claim of the Claimant and the affidavit of the Defendant. Both parties agreed that the documentation of each would be entered into evidence and the Claimant and Defendant could be cross-examined on that documentation.
5. The procedure of the Small Claims Court was explained to both parties and there being no further questions the matter proceeded accordingly.

**Facts:**

6. In November 2014 the Claimant contacted the Defendant who was operating a dog training program, called, Cloverfield Specialist Trainer Program. The Claimant was interested in finding out about the course and the cost of taking it. She told the Defendant she was in her third year animal science at the Agricultural College.
7. The Defendant's website advertised the program as "offering a 40 session course specifically designed to train students to become certified dog obedience and service dog trainers. "Students will learn to use Operant Conditioning Behavior Analysis and the basics of dog behavior in solving problem behaviors. The goal is to prepare the student to teach basic puppy and adult beginner classes and to train service dogs."
8. The course objectives were as follows: "Operant Conditioning Behavior Analysis, Level 1 Certificate; Reading and Understanding Dog Behavior, level 1;

family dog Problem-Solving; earn a teaching certificate for public puppy classes, adult beginner classes, CGC level classes; and Service Dog Trainer Certificate.

9. Classes for dog training with the Defendant involve one class per week. In addition to attending classes, the Defendant was to complete homework requirements and keep a journal.
10. The Claimant began classes with the Defendant in January 2015.
11. In February 2015 there were emails between the Claimant and Defendant indicating that there were communication problems between the two parties. However the parties carried on and in May 2015 the Defendant obtained a dog that was donated to her. The Defendant felt the donated dog would be an appropriate dog to be trained as a service dog.
12. The Defendant felt that the Claimant was a very good trainer and could take on this donated dog, named Sophie, to be trained as a service dog.
13. The Defendant provided the Claimant with a list of requirements that would be necessary in training Sophie.
14. These requirements were as follows:
  - Each dog regardless of age is to begin training as if it were eight weeks old;
  - All food is to be hand fed;
  - Introduce clicker – click treat;
  - Begin each behavior at its easiest increment;
  - Crate training is a must;
  - Umbilical cord in house until house broken completely;
  - Continue umbilical cord if dog attempts to counter surf or escape through doorways;
  - Training chart to be filled in daily and passed in weekly;
  - Journal the dog's daily activities and submit weekly;
  - Service dogs in training are not to be loose at any time unless the area is fenced;
  - Hiking can be done on a long line;
  - Do not take service dogs to any dog parks;
  - Exercise a minimum of one hour daily;
  - Report any and all signs of aggression.
15. The service dog, Sophie, was assessed by the Defendant and found to be an appropriate candidate to become a service dog. After the assessment she reviewed a write up on Sophie from the veterinarian who had received Sophie on May 9,

2015. The report indicated the dog was fine but did growl on occasion when meeting people and was a bit nervous.
16. These same tendencies by Sophie were shown to have existed in the Claimant's journal that she sent to the Defendant on a weekly basis. Sophie was nervous around people and would growl or bark around or near people she did not know.
  17. On October 10, 2015 there was a dog show in which Sophie was to attend however the Claimant was unable to attend with the Sophie. The Claimant advised the Defendant that she did not particularly want Sophie to attend the dog show but if she must she suggested one specific trainer.
  18. Sophie did attend the dog show and Kim Cavanaugh a veterinarian who was taking the training course, was at the dog show with Sophie. Ms. Cavanaugh said that Sophie was calm at the show; there were minor incidents with Sophie. Sophie barked at another gentleman when he raised his hand and she also barked at others.
  19. On October 11, 2015 the Defendant sent an e-mail to the Claimant which said "we have a major problem with Sophie, she will stay here at Cloverfield until I return from Ottawa. We can meet and discuss her future after my return."
  20. On October 17, 2015 a meeting of all trainers was held at *Hurricane Heidi's Café* in Brookfield,
  21. At that meeting the Claimant wished to discuss issues involving Sophie and the Defendant. However this did not make the agenda at that meeting and ultimately the Claimant and Defendant met at the Defendant's home. Sophie at this time was still in the care of the Defendant following the dog show on October 10, 2015.
  22. During that meeting at the Defendant's home it was decided to return Sophie to the Claimant on the condition that the Claimant completes her daily journals and completes behavioral exercises for dogs that showed aggression.
  23. On October 19, 2015 the Claimant advised the Defendant that she could not make her next dog training lesson on October 21, 2015. On the Defendant's insistence the Claimant did attend this lesson.
  24. The next lesson was scheduled for October 28, 2015. However the Claimant felt it was unnecessary to attend that lesson so it was rescheduled by the Defendant for October 30, 2015 at 5 PM. The Claimant advised the Defendant by e-mail that she could not attend the lesson as she could not drive in the dark.
  25. On October 30, 2015 the Defendant arrived at the Claimant's residence and took Sophie back into her custody.

26. The Claimant on the evening of October 30, 2015 emailed the Defendant and members of the board of Maritime Specialty Service Dogs Society to explain to the board about the incident at the dog show on October 10, 2015 and that following a meeting with the Defendant on October 17, 2015 she had regained possession of Sophie who had been doing very well. The Claimant requested the board examine the matter before any irrevocable action is taken.
27. Within minutes after the above email was sent by the Claimant, a subsequent email was sent by the Defendant to all trainers and board members.
28. The email said in part “Whitney is a talented trainer, so I was pleased to have her working with Sophie. She was aware and in agreement with the expectations and responsibilities of a trainer when she took Sophie. Whitney and I have reviewed these expectations many times since she has had Sophie but despite multiple opportunities she has chosen not to comply with the rules and opportunities.”
29. The Defendant goes on to say that she is responsible for the training and well-being of these dogs and she has chosen reluctantly to bring Sophie home with her at this time. Sophie will be placed with another trainer after she has had time to evaluate Sophie further. She stated “I want you all to know that I do not remove a dog lightly. I was extremely reluctant to make this decision – this is upsetting for all of us, and it was certainly not my first choice of action. Whitney had many chances to fulfill expectations and chose not to follow the rules, even when she knew the consequences included Sophie being removed. I am not writing this to beat up on Whitney, who is a very good trainer I simply want to keep you all informed so you don’t hear misinformation through gossip.”
30. The Claimant had trained Sophie for approximately five months and had two more lessons to complete 40 lessons with the Defendant.
31. On November 5, 2015 the Claimant emailed the Board of Directors of Maritime Specialty Service Dogs Society which she termed a very unacceptable event. The Claimant stated “I must do this because of the egregious nature of the personal attack on me by Heather A Logan.”
32. She also stated in the email “the Board of Directors of MSSDS should be my first and best recourse for a fair hearing of my concerns in this situation. I am most concerned about my reputation and how it has been damaged already by Miss Logan’s actions and statements. The monetary losses are also an issue. In addition, Miss Logan is in an obvious conflict of interest position in this situation and this is patently unjust.”
33. Meg McDougall on behalf of the Board of Directors responded by saying “the board of directors agreed that although the dog you were training was financially sponsored by MSSDS, your contract for training services was with Cloverfield Animal Behavior Services, not MSSDS. Therefore any issues regarding the

contract for training services should be addressed with Cloverfield Animal Behavior Services.”

**Analysis:**

34. Based on the emails, the testimony of the parties and the Defendant’s witnesses, this matter made its way to court because of personality differences between the two parties, or at least the two parties were not able to deal with each other. It was also evident that hurt feelings were involved. It is not the function of this court however to deal with these types of matters and whether a person has been defamed or whether parties have not acted with the virtues one would expect to see in dealing with each other. It is the function of this court to determine if there is a recognizable area of law and to deal with that area.
35. In the complaint to the board of directors of MSSDS the Claimant asked the board to have an open and transparent examination of the Defendant’s actions in taking the dog Sophie from the Claimant.
36. However, in the claim before this court the claim is for \$8,390.00 and the reason for the claim is “Expulsion from Cloverfield Specialist Trainer Program without cause and without a refund. Pain and suffering. Unpaid work.”
37. The Claimant is claiming there was a contract, that contract was breached by the Defendant and as result there flowed damages. The Claimant alleges that the terms of the contract are captured in the website of the Defendant.
38. There was an agreement between the parties and this agreement was the Defendant provides the Claimant with 40 weeks of training with the goal of the Defendant becoming a service dog trainer. The cost would be \$20.00 per lesson and payment was to be made on the day of the lesson.
39. The Defendant said, in her email to the board, the Claimant despite multiple opportunities has not complied with the rules and responsibilities. Those rules and responsibilities with respect to Sophie were contained in an email to the Claimant. These rules or responsibilities contained in the email were the following:
  - Each dog regardless of age is to begin training as if it were eight weeks old;
  - All food is to be hand fed;
  - Introduce clicker – click treat;
  - Begin each behavior at its easiest increment;
  - Crate training is a must;
  - Umbilical cord in house until house broken completely;
  - Continue umbilical cord if dog attempts to counter surf or escape through doorways;
  - Training chart to be filled in daily and passed in weekly;

- Journal the dog's daily activities and submit weekly;
  - Service dogs in training are not to be loose at any time unless the area is fenced;
  - Hiking can be done on a long line
  - do not take service dogs to any dog parks;
  - exercise a minimum of one hour daily;
  - Report any and all signs of aggression.
40. The Claimant was also expected to attend weekly lessons and to care for Sophie in her home.
41. There is no evidence before this court that those rules and regulations were broken except for possibly a couple of lessons which were not attended by the Claimant. However none attendance would not amount to a breach of the agreement. I say this because there were times that the Claimant would not be able to attend or makeup lessons were possible.
42. The main reason for the Defendant taking Sophie was because of her aggression. The only evidence of what might be termed aggression was what I read in the report of Kim Cavanaugh when she obtained Sophie for the Defendant, the journal entries of the Claimant and the testimony of Kim Cavanaugh at the October 10, 2015 dog show.
43. Sophie obviously was nervous around people would growl and would bark but there is no evidence to show that she was aggressively going after someone particularly based on the testimony of Kim Cavanaugh.
44. The evidence shows that the Claimant was promised 40 lessons in dog training. One of the objectives of the course was to receive a Service dog trainer certificate.
45. The Defendant asserts that this statement on the Defendant's web site of 40 lessons was not realistic when the Claimant started training with the Defendant. The web site was done up previously in the hope that was the number of lessons it would take to train a service dog. The Defendant said, in reality it would take at least 50 lessons and maybe more.
46. The Defendant said after she took Sophie from the Claimant, the Claimant was told that she could bring her own dog in for the last two lessons. There is no evidence of this was communicated to the Claimant.
47. The Claimant entered into an agreement and she would pay \$20 for each lesson. She completed all but two of her lessons in order to receive a certificate. She did not receive those final lessons nor did she receive a certificate. This was a breach of an agreement by the Defendant to provide a 40 session course.
48. What are the damages for such a breach?

49. The Claimant did not pay for each lesson in advance, rather the Claimant paid for each lesson as it occurred. Therefore there was no loss of monies to the Claimant for not receiving the final lessons. It could be argued that each lesson was a contract unto itself. This argument was not advanced.
50. What damages can be attributed to the Claimant for not receiving a service dog trainer certificate?
51. There is no evidence before this court to show any losses resulting from not receiving a certificate. There is no evidence before this court as to what a certificate means. I suppose it would be easy to conjecture that it qualified the Claimant to become a service dog trainer. This court however does not deal with conjectures. Nor can I infer that not having a certificate disqualifies the Claimant from being a service dog trainer. Further, Exhibit D-10 clearly shows that the Claimant holds herself out to be a service dog trainer.
52. The Claimant is claiming return of her monies for payment of lessons and that is not a loss to the Claimant as she did receive the lessons.
53. The Claimant also claims for time off work to attend each lesson and there is no evidence to support that claim. Even if it was allowable which I do not believe it to be, the Claimant would have to provide foundational evidence to support such a claim.
54. The Claimant is also claiming for \$30 per day as that would be what a trainer would be paid. The Claimant bases this on a report developed by the Defendant in order to receive financial support for MSSDS program. This would only apply in any event if she had a contract with the Defendant to train the dog at \$30 per day which was not the case.
55. With respect to the gas claim of \$760.00. This was for mileage going to the training sessions however she was going to go to the training sessions anyway to receive her lesson and consequently it would be an invalid claim.
56. With respect to the pain and suffering claim there is no doubt from the testimony that I heard from the Claimant, she was very distraught about the way she was treated and what happened with respect to her and Sophie. I agree on the testimony and evidence I have before me the matter could have been handled differently. On the other hand based on the email provided to the court, the Claimant's actions or interactions with the Defendant could have been dealt with differently as well. In law pain and suffering as a claim results from a proven medical condition resulting from a Defendant's actions. There is no such evidence before this court.



57. The Claimant has not proven any damages and therefore I shall be awarding nominal damages of one dollar for breach of contract plus court costs.

\$1.00  
\$99.70  
**\$100.70 total**

Dated at Truro this 19<sup>th</sup> day of March 2016