Claim No. SCT 178/2020 THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS BEFORE SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN BETWEEN LUNACY CONSULTANCY LUDON Claimant and LIUNY Defendant Hearing : 25 June 2020

Claim No. SCT 178/2020

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

BETWEEN

LUNACY CONSULTANCY LUDON

Claimant

and

LIUNY

Defendant

Hearing	**: 25 June 2020**
Additional Submissions	**: 28 June 2020**
Judgment	**: 7 July 2020**

JUDGMENT OF SCT JUDGE AND DEPUTY REGISTRAR AYESHA BIN KALBAN

UPON this Claim being filed on 31 May 2020

AND UPON the Defendant filing an Acknowledgment of Service intending to defend all of this Claim dated 4 June 2020

AND UPON a Consultation being held before SCT Judge Delvin Sumo on 9 June 2020

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a hearing having been listed before SCT Judge Ayesha Bin Kalban on 25 June 2020, with the Claimant and the Defendant's representatives in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 74,366.46.

2. The Defendant shall pay the Claimant the Court fee in the sum of AED 3,878.41.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 7 July 2020
At: 2pm

THE REASONS

The Parties

1. The Claimant is Lunacy Consultancy (the "Claimant"), an entity registered in onshore Dubai that provides recruitment services to employers.

2. The Defendant is Liuny, an entity registered in onshore Dubai that has entered into an agreement with the Claimant company for the provision of recruitment services.

Background

3. The underlying dispute arises over invoices allegedly owed by the Defendant to the Claimant pursuant to an agreement for the supply of recruitment services dated 4 September 2019 (the "Agreement").

4. The Claimant alleges that it is entitled to the sum of AED 77,515.20 pursuant to the Agreement, for the introduction of candidates to the Defendant for vacancies identified by the Defendant.

5. On 4 June 2020, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

6. The parties met for a Consultation with SCT Judge Delvin Sumo on 9 June 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 25 June 2020.

The Claim

7. The Claimant's case is, as set out above, for the sums allegedly owed to it pursuant to the Agreement, for the amount of AED 77,515.20. It submits that it had introduced several candidates to the Defendant pursuant to the instructions provided and has yet to receive its fees for the services it has undertaken.

8. In accordance with the Agreement, the Claimant issued two invoices (the "Invoices") to the Defendant as follows:

a) INV-123 dated 11 December 2019 for the introduction of a candidate in the role of Business Development Manager (the "First Candidate") in the amount of AED 36,000 and;

b) INV-124 dated 9 January 2020 for the introduction of a candidate in the role of `DevOps' (the "Second Candidate") in the amount of AED 63,000.

9. The Claimant submits that it is entitled to its introduction fee for the placement of the Candidates under Clause 5.1 of the Agreement which reads as follows:

"In consideration of the Engagement of a Candidate introduced by Lunacy, the Client shall pay Lunacy the Introduction Fee, which shall be calculated as a percentage of the Candidate's Annual Remuneration as stated below.."

10. Furthermore, the Claimant states that the invoices provided should have been settled by the Defendant within 14 days of the date of the invoice, in accordance with Clause 6.2 of the Agreement which reads as follows:

"The Client agrees to pay Lunacy's invoices within 14 days of the date of the Invoice."

11. Therefore, due to the Defendant's failure to settle its obligations as agreed between the parties in the Agreement, the Claimant proceeded to file a claim seeking the sums owed to it by the Defendant. In a statement of account provided, the Claimant confirms that it has issued a credit note to the Defendant against the placement of another candidate, in the amount of AED 22,284.80 ("CN-1222"), making the sums owed to the Claimant AED 77,515.80. The Claimant has also issued to the Defendant a credit note in the amount of AED 3,148.74 against the introduction fee charged to the Defendant for the placement of the First Candidate ("CN-123"). The Claimant submits that this credit note was issued to the Defendant as a gesture of good will and that the Defendant would not be entitled to this rebate under the Agreement, and therefore has not deducted said amount from its Claims against the Defendant.

The Defence

12. In responding to the Claimant's claims, the Defendant submits that it has not been provided with adequate services by the Claimant under the Agreement, and that the Claimant has made several breaches to said Agreement as well as to principles of law.

13. The Defendant submits that the Claimant did not carry out its obligation to provide capable and well-suited candidates for specific roles with the Defendant company, and submits that this constitutes as a breach of the Agreement as to principles of law insofar as the implementation of an Agreement is not restricted to what is set out therein but also encompasses the spirit of the transaction itself.

14. The Defendant submits that the First Candidate resigned from her role within 12 weeks of her placement due to her inability to commute to the Defendant's offices, despite the fact that the First Candidate was aware, before accepting the role, that this would form as part of her responsibilities should she be engaged by the Defendant. The Defendant submits that an agent working for the Claimant attempted to persuade the First Candidate to delay the submission of her resignation to the Defendant for a further week in order for the Claimant to be released from its obligation to find a replacement for the role under Clause 7 of the Agreement. The First Candidate, however, did submit her resignation ahead of the 12 week and therefore the Defendant submits that it should be entitled to receive a replacement candidate for the role left by the First Candidate. Upon seeking said replacement from the Claimant, the Defendant submits that the Claimant confirmed that a replacement would not be provided and that the Claimant would, as a gesture of good faith, issue an 8.3% rebate of the introduction fee for the placement of the First Candidate.

15. The Defendant submits that the Claimant should not be entitled to its fee for the placement of the Second Candidate, as, it alleges that, the Second Candidate has made several criminal breaches against the Defendant causing damages to it. The Defendant states that it was in the process of considering bringing legal proceedings against the Second Defendant, but has not provided evidence of said damages or of a filed claim. The Defendant questions the screening process carried out by the Claimant in introducing the Second Candidate which constitutes a breach of Clause 3 of the Agreement which reads as follows:

"Lunacy shall use reasonable endeavours to Introduce one or more suitable Candidates to meet the requirements of the Client for any particular vacancy."

16. The Defendant therefore submits that the Court must dismiss the Claimant's claims and terminate the Agreement entered into by the parties.

Discussion

17. This Agreement contains an opt-in clause to the jurisdiction of the DIFC Courts for the determination of any disputes relating to the Agreement, and therefore I am satisfied that the DIFC Courts has exclusive jurisdiction over this Claim.

18. In review of the parties' arguments relating to the invoice issued for the introduction of the First Candidate, I have determined that the Defendant relies on Clause 7 of the Agreement by stating that the Claimant, by refusing to provide a placement for the First Candidate's vacant role, has breached the Agreement that therefore seeks the termination of the Agreement and the claims against the Defendant.

19. Clause 7 of the Agreement reads as follows:

> "7.1 If the Permanent Placement of the Candidate terminates within the Agreed Rebate Period, Lunacy will have exclusivity for a period of 4 weeks to introduce replacement Candidate(s) to the Client at no further costs to the Client. If the Client offers a replacement Candidate that subsequently enters into an Engagement with the Client then no Rebate payment will be due for the original placement. The Client agrees to waive any right to a rebate payment or further replacement Candidate(s) should the replacement Candidate leave the Engagement for any reason.
>
> 7.2 Where the Client qualifies for a rebate payment in accordance with clauses 7.1 and 7.3, the Client shall be entitled to a rebate of the Introduction Fee:

Week in which the Permanent Placement ended	**Percentage of the original Introduction Fee to be rebated to the Client**
Week 1	100
Week 2	100
Week 3	83.3
Week 4	75
Week 5	66.6
Week 6	58.3
Week 7	50
Week 8	41.7
Week 9	33.3
Week 10	25
Week 11	16.7
Week 12	8.3
Week 13	0

> "7.3 The following conditions must be met in order for the Client to qualify for a rebate:
>
> a) The Client must notify Lunacy in writing that the Candidate's Engagement has ended within 7 days of the Engagement ending;
>
> b) Lunacy's invoice for the Introduction Fee must have been paid in full within the payment terms in accordance with clause 6.2;
>
> c) The Client has paid all sums owed to Lunacy in relation to any other Temporary or Permanent Placements
>
> d) The Candidate's Engagement is not terminated by reason of redundancy or re-organisation or change in strategy of the Client;
>
> e) The Candidate did not leave the Engagement because he/she reasonably believed that the nature of the actual work was substantially different from the information the Client provided prior to the Candidate's acceptance of the Engagement; and
>
> f) The Candidate's reasons for leaving the Engagement as communicated to the Client or Lunacy did not relate to any allegations of less favourable treatment, harassment, or victimization for any of the protected characteristics or any other bulling by the Client or any of its staff."

20. The Clause set out above does not contain a provision setting out the mechanism in place for the Claimant's refusal to provide a replacement candidate to fill a role, and does not provide an obligation on the Claimant to ensure a replacement is found. Rather, it seems to provide the Claimant with an exclusive right to offer a replacement, and should it succeed in doing so, no rebate of the original placement fee would be provided. Furthermore, Clause 7 sets out the amount of rebate that would be provided should a placement end ahead of 13 weeks, subject to certain conditions that would have to be met in order for the Defendant to qualify for a rebate.

21. I am of the view that the Claimant's refusal to provide a refusal does not constitute a breach of the Agreement, and does not warrant the termination of said Agreement nor a dismissal of this Claim. The Claimant was not under any obligation to provide a replacement pursuant to the Agreement, and therefore it refusing to do so cannot warrant a full refund of the placement fee.

22. It is pertinent to note that the Claimant has performed its obligation under the Agreement by providing candidates to the Defendant for selection and hire, and it should be compensated for said performance, in accordance with the Agreement. The Defendant has failed to provide evidence of the unsuitability of placement of the First and Second Candidate, for which it claims it should not be charged for. The Defendant does, in its defence, make reference to the termination of a number of candidates provided by the Claimant due to their unsuitability, however, concedes that the invoices in regards to their placements have already been settled.

23. In regards to the rebate, Clause 7 specifically sets out the qualifying conditions to be satisfied in order for a rebate to be issued. In review of the conditions, I find that with the exception of condition (a), no other condition could apply to the circumstance at hand, and I make this determination with a wide and generalised interpretation of the facts at hand, where the Claimant was notified by email by the First Candidate, not the Defendant itself. In light of this, and in light of the fact that the Claimant has conceded by issuing a credit note to the Defendant (albeit it, it

submits, this is done as a gesture of good faith), I find that the amounts owed by the Defendant to the Claimant for the placement of the First Candidate be deducted by 8.3%, in the amount of AED 3,148.74, making the total sum owed to the Claimant under the invoice for the placement of the First Candidate to be AED 32,851.26.

24. I now turn to the invoice pertaining to the placement of the Second Candidate, which, the Defendant submits, has committed cyber crimes against the Defendant by blocking its access to its information. The Claimant has responded to state that the Second Candidate had committed this act under the frustration of having sums deducted from his remuneration by the Defendant, and continues to submit that it is not liable for the Second Defendant's actions. The Claimant also relies on evidence provided which demonstrates that the Defendant was pleased with the Second Candidate's performance, and the behavioural issues that arose is a matter between the Defendant and the Second Candidate under their employment relationship.

25. The Defendant relies on Clause 3 by stating that it should not be liable to settle the fee for the Second Candidate's placement. In review of Clause 3, I am unable to determine how this clause is of aid to the Defendant's argument. Instead, I find that the Claimant has correctly submitted that it is the Defendant's responsibility to determine a candidate's suitability, and screen said candidate accordingly. This is supported by Clause 4.1 of the Agreement, which reads as follows:

> "It shall be the responsibility of the Client to take such steps as are necessary to satidy itself of the suitability of the Candidate and to verify the accuracy of the information supplied by or any statement made by the Candidate. The Client is strongly advised to take up any references provided by the Candidate before Engagement."

26. In accordance with the above set out clause, I find that the Defendant is liable to screen and verify any candidate provided by the Defendant, and that in the event of unsuitability of a candidate, the consequences of this would fall upon the Defendant. The incident that occurred with the Second Candidate is one of an employment nature, and does not relate to any information regarding the Second Candidate's qualifications, which, presumably, would be the information gathered by the Claimant and presented to the Defendant for their selection amongst a number of candidates provided.

27. Furthermore, the Agreement does not capture any liability on behalf of the Claimant as a consequence of any misdemeanors occurring during a candidate's placement, nor has the Defendant provided sufficient proof to demonstrate that the Claimant misrepresented the Second Candidate's capabilities or credentials.

28. Therefore, I find that the Claimant is entitled to the sums owed to it for the placement of the Second Candidate, in the amount of AED 63,000.

Conclusion

29. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 74,366.46, taking into consideration the credit notes issued under CN-122 and CN-123.

30. The Defendant shall also pay the Claimant the court fee in the amount of AED 3,878.41.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 7 July 2020
At: 2pm