

**BETWEEN**

**AER**

FIRST APPLICANT

**AES**

SECOND APPLICANT

**AND**

**ZVD Ltd**

FIRST RESPONDENT

**AND**

**ZVC**

SECOND RESPONDENT

Date of Order:

8 August 2013

Referee:

Referee Tunncliffe

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZVC is to pay \$14,654.82 to AER and AES on or before 20 August 2013.**

## **Facts**

[1] ZVC is a sole trader, operating an independent mortgage and insurance broking business trading as RW under a franchise purchased from ZVD Ltd. Around March 2013, AER approached ZVC to arrange finance for a house purchase. As a result of that approach, ZVC asked AER if he required house and contents insurance. ZVR provided a quote for insurance with TB Insurance Ltd. AER accepted the quote. ZVC arranged the insurance for 12 April 2013, as instructed by AER, being the date AER expected to settle the new property.

[2] AER claims that ZVC told him that the contents insurance would cover his belongings both at the property he occupied (Property A) and at the new property (Property B).

[3] AER cancelled his existing policy with QW Insurance from 19 April 2013, the actual date of possession.

[4] On 21 April 2013 there was an extreme weather event and Property A was flooded with water and sewage. Most of the AER's belongings were still at Property A. Belongings to the value of \$14,654 had to be dumped.

[5] TB Insurance Ltd declined insurance cover because the contents policy was for the Property B and not Property A, and the items claimed had never been at Property B. TB also noted that AER and AES were required to take reasonable steps to protect property, yet they had stored eight boxes of belongings outside under the eaves. On legal advice, AER accepts TB's interpretation of the policy.

[6] AER and AES claim against ZVC on the basis that he wrongly informed AER that the contents would be covered at both addresses. Relying on that advice, AER cancelled his contents policy with QW Insurance relating to Property A.

## Issues

[7] The issues for the Tribunal to determine are:

- (i) Whether there is a legal relationship between AER and ZVD Ltd;
- (ii) Whether ZVC told AER that the contents would be insured at both properties;
- (iii) If so, whether AER is entitled to compensation for the uninsured loss;
- (iv) If so, how much and whether the fact that some boxes were stored outside contributed to the loss.

*Is there a legal relationship between AER and ZVD Ltd?*

[8] I find no legal relationship exists for the following reasons. Firstly, ZVC is not an employee of ZVD Ltd. ZVD Ltd is a separate legal entity from ZVC. ZVD Ltd did not provide any service to AER and AES therefore there is no contractual relationship between AER, AES and ZVD Ltd. Therefore, there can be no claim founded on contract against ZVD Ltd. Secondly, the claim is based on statements said to have been made by ZVC. There is no suggestion that ZVD Ltd has done anything wrong. Therefore, there can be no claim against ZVD Ltd for negligent misstatement.

[9] Because there is no legal relationship between AER, AES and ZVD Ltd, ZVD Ltd has no liability in respect of this claim.

*Did ZVC tell AER that the contents would be insured at both properties?*

[10] AER recollects a conversation with ZVC at Property A around the date of the insurance quote (1 March 2013) about insurance at both properties. AER believes he told ZVC that the move would be protracted because he has a household of eight children. AER is certain that ZVC said the contents would be covered at both properties and that he would not have cancelled his insurance with QW Insurance if ZVC had said otherwise. AER says he was aware that the contents were not covered when in transit, but considered that risk low because belongings were being moved trailer load by trailer load, rather than as one lot. AER

claims that after insurance cover had been declined, he contacted ZVC and ZVC said words to the effect that this would be a problem for ZVD Ltd's agents because they all sold the policy that way.

[11] On the other hand, ZVC denies saying the contents would be covered at both addresses. ZVC said he understood settlement was on 12 April 2013 and did not know the move would be unduly protracted. ZVC said that if had he been advised that insurance cover was required at both addresses and that AER and AES were intending to take longer than the usual day or two to move, that would have been different from the norm and he would have investigated more with TB. The fact he did not indicates that he was unaware. ZVC says he is familiar with the policy terms and arranges approximately 120 insurance contracts each year for contents or similar. After insurance cover had been declined, ZVC denies saying that that decision would be a problem for other agents. ZVC is the only person who arranges insurance cover in his business, and ZVC says he would not know what other agents elsewhere in the country would know or say.

[12] I prefer AER's evidence. I make that finding because ZVC's evidence is inconsistent with the wording of his email dated 9 May 2013 to IG. The wording is more consistent with AER's version of events.

[13] In the email ZVC says he "fully expected that his (meaning AER's) contents at Property A would be covered but his claim has been denied". That statement suggests to me that ZVC had a belief that the contents were insured at Property A. That is consistent with AER's evidence, but not with ZVC's.

[14] In that email, ZVC goes on to say: "Can you investigate the details surrounding this claim and the assessors report, talk to whomever you need to talk to and let me know EXACTLY the reason for the decline and what policy wordings justify the decline?" This wording is inconsistent with a belief that the contents were not insured at the Property A. If ZVC understood that the contents were not insured at Property A, it seems to me that he would not need to ask the reason for the decline, or the policy wording to justify a decline.

[15] ZVC has said that the statements in the email were an attempt on his part to do his best for AER and AES to get TB to reconsider, and that because he places business with TB he was attempting to use this relationship to apply pressure to TB. However, I find that hard to accept. If ZVC thought TB's decision harsh, he could simply have said exactly that and reminded TB of the benefit of the business he had placed with TB. There was no need for ZVC to say he fully expected the contents to be covered at Property A if that is not what he believed.

[16] I am satisfied that ZVC did tell AER that the contents would be covered at both addresses.

*Are AER and AES entitled to compensation and if so how much?*

[17] The Consumer Guarantees Act 1993 applies to the relationship between AER, AES and ZVC. ZVC is required to carry out his service with reasonable care and skill.

[18] I find that the incorrect advice given to AER is a breach of the guarantee as to reasonable care and skill. AER was entitled to rely on ZVC's advice as being accurate, as he is the person familiar with the product.

[19] The failure is not one that could be remedied because, by the time the incorrect advice was discovered, the contents had been damaged by the dirty floodwater and the opportunity to have insurance cover on them at Property A had been lost.

[20] As the failure is one that could not be remedied, AER and AES are entitled to damages or compensation that was reasonably foreseeable as a result of the failure.

[21] It is reasonably foreseeable that, having been told his contents were insured with TB at both addresses, AER would cancel his existing insurance for the same contents. AER's decision to cancel his existing insurance with QW was directly related to the advice given by ZVC and therefore the loss is directly attributable to the failure.

[22] I accept the list of contents and their values submitted by AER at the hearing. This list is on AF's letterhead. AF was the assessor for TB Insurance. Because there has been some oversight of the value independent of AER and AES, I am satisfied that the values are likely to be reasonable accurate. Therefore, I find AER and AES's loss to be \$14,654.

[23] During the hearing mention was made of AER and AES's failure to take sufficient care of eight boxes of items stored outside under the eaves. The reality is that the boxes were at the back of a porch that was only open on the front. The porch is four metres deep. I find no connection between the way these boxes were stored and the loss. The flood was so severe that knee deep water flowed into Property A. Had they been stored on the floor inside, it seems to me they would probably have been damaged by the flood, as were other household contents. Therefore, I find no reason to place responsibility for this part of the loss with AER and AES.

[24] ZVC had emailed a copy of the contents policy to AER together with the Quote for Insurance. In addition, AER acknowledged he had received his copy of the policy from TB before the flood. I have considered whether AER could reasonably have realised on reading the policy that the belongings were not insured at Property A. I have considered Section 1, Clause 1 "What Your Are Covered For?" and Section 3, Clause 6 "What We Don't Cover" in particular. Not unreasonably, AER considered the Property A to be his home and Property B to be his home. Bearing in mind that AER had already been told the contents were insured at both addresses, he would have read the policy with that in mind. I don't think AER could reasonably have realised that ZVC was wrong and his contents were not insured at Property A.

[25] Therefore, I find responsibility for the loss lies with ZVC and find that he is liable to pay \$14,654.82 to AER and AES.