

**BETWEEN**

**AFO**

FIRST APPLICANT

**AND**

**AFP**

SECOND APPLICANT

**AND**

**ZUH**

RESPONDENT

Date of Order:

5 December 2013

Referee:

Referee Blyth

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZUH to pay to AFO and AFP the sum of \$8,534.00 on or before 12 December 2013.**

### **Facts**

[1] On 30th June 2013, ZUH purchased at auction AFO and AFP's property at [street], [suburb], Auckland. ZUH failed to pay the deposit. AFO and AFP cancelled the agreement and re-sold the property. AFO and AFP are seeking an order for the financial loss they have suffered as a result of ZUH not proceeding with the agreement.

### **Issue**

[2] The issue for the Tribunal is whether ZUH is liable to pay AFO and AFP's losses.

### **Decision**

[3] ZUH did not attend the hearing (although it is clear that he had received the Notice of Hearing for this hearing). The Tribunal therefore determined this case on the evidence of AFO and AFP alone, in accordance with s 42 of the Disputes Tribunals Act 1988.

[4] I find that ZUH is liable to pay AFO and AFP's losses for the following reasons.

[5] Under clause 2.7 of the Agreement for Sale and Purchase ("the Agreement"), ZUH agreed to pay a deposit of 10 per cent of the purchase price immediately on the completion of the auction. ZUH did not pay the deposit.

[6] I accept that AFO and AFP have cancelled the contract in accordance with clause 4.1 of the agreement, which states "if the deposit is not paid... the vendor may cancel this agreement by serving notice of cancellation on the purchaser". The evidence establishes that notice of cancellation was served by AFO and AFP's lawyer faxing a letter of cancellation to ZUH's lawyer on 5 July and subsequently posting the letter; and AFP personally handing a copy of the letter of cancellation to ZUH on 10 July.

[7] In accordance with the law of contract, ZUH has breached his agreement, which was an unconditional agreement at the time the hammer fell at the auction.