

**BETWEEN**

**BF  
APPLICANT**

**AND**

**YU LIMITED  
RESPONDENT**

Date of Order:

13 February 2015

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that YU Limited is to pay the sum of \$29.48 directly to the applicant on or before 6 March 2015.**

### **Reasons**

[1] BF went to YU Limited's ('YU') premises in November 2014 to purchase a wall-hung basin. She spoke to one of the salespeople, letting him know that this was the product she was looking for, and they discussed various options. She says she selected one to purchase from the three wall-hung options they had narrowed it down to through the conversation and paid \$129.38 plus GST for the item.

[2] When BF's builder removed the basin from its box a few days later, he informed BF that it was not able to be wall-hung and she contacted the YU shop. YU staff initially failed to process a refund, although one staff member signed a copy of the invoice to confirm a refund of \$129.38 plus GST would be processed.

[3] The next day BF was told that 20% would be deducted from the refund as per YU's terms and conditions. That reduced amount has now been paid and BF seeks the balance of \$29.48 as well as an acknowledgement and/or apology from YU for what she contends is their breach of the Consumer Guarantees Act 1993.

[4] YU Ltd did not attend the hearing so this order is made under section 42 of the Disputes Tribunals Act 1988.

### **Issues**

[5] Has YU honoured the guarantees provided for the in the Consumer Guarantees act 1993?

[6] Is YU entitled to deduct 20% from the amount paid by BF?

*Has YU honoured the guarantees provided for the in the Consumer Guarantees act 1993?*

[7] I find that YU has not complied with the guarantee as to fitness for purpose. BF made it known expressly to YU's salesperson that she wanted a wall-hung basin, relying on his knowledge of the company's products to meet a particular requirement she had for the property she was renovating. The salesperson has sold her the wrong type of product and YU is therefore in breach of its obligations under New Zealand consumer law.

*Is YU entitled to deduct 20% from the amount paid by BF?*

[8] YU is not entitled to make any deduction from the refund amount. BF said that YU pointed to its terms and conditions on the invoice. However, it is not lawful to contract out of the Consumer Guarantees Act 1993 and those terms and conditions can only apply where there has been no breach of statutory guarantee, such as where a customer simply changes their mind about what type of product they wish to buy (and only when the terms and conditions had been notified and agreed to by the customer prior to the purchase).

[9] BF is entitled to receive a full refund as YU did not remedy the problem when requested and the balance of the purchase price of \$29.48 is awarded.