



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 199

**APPLICANT** BD

**APPLICANT** CD

**RESPONDENT** U Ltd

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. CD is 13 years of age and was represented in the hearing by [redacted], BD.
2. CD became a member of U Ltd and in order to do so, provided an incorrect date of birth so that it appeared he met the U Ltd membership criteria. He began trading and in total paid to U Ltd \$622.73 for success fees on the sales he made.
3. In October of 2022, U Ltd was alerted to CD's true age and suspended his account. BD claimed for CD to be reimbursed for the success fees paid while he was a minor.
4. The issue to be resolved is whether U Ltd is entitled to keep the success fees paid by a minor.

**Is U Ltd is entitled to keep the success fees paid by a minor?**

5. A contract is formed when two parties exchange promises that they agree to be bound by. In this case, CD promised he met the membership criteria and U Ltd granted him access to its online auction platform. There is no dispute that CD did not meet the U Ltd membership criteria and provided an incorrect date of birth, however, U Ltd accepted his application in good faith.
6. The basis of contract law is that two parties freely consent to be bound by agreed terms. In the Contract and Commercial Law Act 2017, people under the age of 18 years are provided with some legal protection on account of their age and reduced ability to validly consent to what would otherwise be a binding contract. It is for that reason that U Ltd insist its members have full legal capacity as it ensures that purchasers can rely on the contract not being declared unenforceable on the grounds that the seller was a minor.
7. CD became a member on the false information he provided. U Ltd was entitled to rely on CD providing true information. Through the online platform, CD made many sales and used the U Ltd service. U Ltd is entitled to be paid for the service that CD made use of. The sales were conducted and there is no reason why U Ltd should forfeit the success fee. It is entitled to keep the success fee that it agreed with CD he would be charged at the outset of the contract. It was through no fault of U Ltd that CD incorrectly completed the application. CD's claim must therefore be dismissed.

**Referee: Cowie DTR**

**Date: 13 April 2023**



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.