



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 612

APPLICANT BM

RESPONDENT NE

The Tribunal orders:

NE is to pay BM \$21,494.93 on or before the 27th day of November 2023.

The money may be paid into account [redacted].

Reasons:

Introduction:

1. On the 13th of May 2021 BM purchased a house from NE.
2. Prior to purchase BM noticed some textured walls throughout a large portion of the house and was concerned these might contain asbestos.
3. Through a third-party BM asked NE whether the textured walls contained asbestos.
4. BM received an e-mail response from NE saying, "the textured walls are plaster over wallpaper and not asbestos they have a sponge finish."
5. Given that statement by NE, BM purchased the house.
6. On the 26th of August 2023, BM discovered that the statement made by NE was not true and that the textured walls did contain asbestos.
7. BM has already removed 30 of the 70 metres of wallboard containing asbestos and is seeking \$21,485.93 to remove the rest.

The issues to be determined by the Tribunal are:

- I. Was there a misrepresentation by NE as to whether the wallboards identified by BM contained asbestos?
- II. Was BM induced to purchase the house because of that misrepresentation by NE?
- III. If so, what is a fair and reasonable sum for which the applicant should be compensated?

Was there a misrepresentation by NE as to whether the wallboards identified by BM contained asbestos?

8. A 'misrepresentation' is a false, or inaccurate, statement made by one party to a contract with respect to, in this context, whether the walls of a house contained asbestos. Where the party to

whom a misrepresentation is made is induced to enter into the contract, they may be entitled to compensation.

9. The statement made by NE was factually incorrect in that the patterned walls of the house contained asbestos. BM has provided evidence of this to the Tribunal through two separate tests both confirming the presence of asbestos, there is no issue about the presence of asbestos.
10. The statement by NE that the walls did not contain asbestos was made in the context of the sale and purchase of a house where NE was the vendor.
11. I find that NE made a statement that was a misrepresentation. The misrepresentation can be either fraudulent or innocent.
12. The statement made by NE is very specific and there is no argument about the meaning of the statement.
13. NE gave evidence that he had asked a friend who was a plasterer, who has long since retired, about whether that wallboard was likely to have asbestos in it and he was told that it wouldn't. NE was relying on this conversation when he told BM that there was no asbestos in the wallboard.
14. NE said if BM had been concerned about the possibility of the walls having asbestos, then he ought to have made proper inquiries from a specialist as part of his due diligence before signing the contract.
15. BM thought that although NE did not specialise in working with asbestos, his years of renovating houses and working in the industry could not be ignored. The statement NE made should be considered as more likely to be accurate than a person who was not in the industry.

Was BM induced to purchase the house because of that misrepresentation by NE?

16. BM stated that he had been induced to put a bid in for the house by the statement made by NE that the walls contained no asbestos. He said that if he had thought the house had asbestos, he would not have bought it because of the stigma attached to asbestos, and the cost of getting rid of it.

If so, what is a fair and reasonable sum for which the applicant should be compensated?

17. If a misrepresentation is found to have induced a party into entering a contract, in this case, BM is entitled to damages from NE in the same manner and to the same extent as if the representation were a term of the contract that had been breached.
18. In this case the remedy is to have the asbestos removed at the cost of NE who made that misrepresentation.
19. BM has provided quotes for the cost of the following:

Removal of the asbestos. (40m2)	\$9,971.31
Replacement of the walls	\$8,491.26
5 days local accommodation	\$1945.00
Two textured wall tests	\$949.36
One house swab to confirm whether the house was contaminated	\$138.00
Total	\$21,494.93

20. NE is to pay BM \$21,494.93

Referee: Verdun Tawhara
Date: 6 November 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>.