



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 250

APPLICANT **BN and UN**

RESPONDENT **ON**

The Tribunal orders:

ON is to pay BN and UN the sum of \$3565.00 by no later than 13 July 2023.

Reasons:

1. BN and UN arranged for ON, director of B Ltd, to sign off and submit building plans to Council. BN and UN were invoiced the sum of \$3565 by B Ltd on 25 August 2022. This amount included B Ltd's fee for ON signing off the plans, and the Council consent fee. ON suggested UN provide him with their credit card details so ON could pay the Council directly with that, however BN and UN preferred to pay the sum invoiced directly into the B Ltd bank account. Payment was made the same day on 25 August.
2. Several months later, BN contacted the Council and found plans had never been submitted. BN and UN further discovered ON had been suspended from the LBP register on 24 August 2022, and his company, B Ltd, went into liquidation on 26 August 2022. As attempts to contact ON were unsuccessful, BN and UN claimed in the Disputes Tribunal for recovery of the amount paid. It is for the Tribunal to determine if ON is personally liable to refund the fee.

Is ON personally liable to refund the fee?

3. Section 9 of the Fair Trading Act 1986 states no person in trade shall engage in conduct that is misleading or deceptive or likely to mislead or deceive.
4. On the evidence presented, I find ON's conduct was misleading and deceptive as he failed to advise BN and UN, he had been suspended from the LBP register and as such he was unable to sign off any plans. ON further misled and deceived BN and UN by failing to submit plans to Council, despite assurances, and by failing to advise them of the liquidation of his company.
5. As I have found ON engaged in conduct that was misleading and deceptive, I find BN and UN are entitled to compensation from him personally under section 43 of the Fair Trading Act to recover their loss, being the sum paid of \$3565.
6. The hearing of this matter took place at 2pm today by teleconference, however as ON did not answer calls made to the number provided for him, the hearing proceeded in his absence.

Referee: K. Edwards
Date: 21 June 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>.