



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 761

APPLICANT **DN and KN**

RESPONDENT **NQ**

The Tribunal orders:

NQ is to pay DN and KN \$30,000.00 by 30/12/23.

Reasons:

1. This order should be read with that dated 13/9/23.
2. The applicant elected to file submissions and evidence in support of those in accordance with the directions in my last order.
3. The respondent elected not to do so.
4. The Respondent was a licensed real estate agent prior to entering into the sale and purchase agreement and still is.
5. The issues identified during the hearing as requiring determination were:
 - a. Was the sale and purchase agreement breached and if so by whom?
 - b. What proven losses have directly flowed from any proven breach and in what proven amounts?

Was the sale and purchase agreement breached and if so by whom?

6. I am satisfied on the evidence filed and presented today that the Respondent breached the agreement by failing to settle/complete the agreement.
7. I say that because:
 - a. A valid sale and purchase for real estate was entered into between the parties.
 - b. A final inspection was carried out by the Respondent the night before settlement was due to take place.
 - c. The Respondent failed to settle on the due settlement date and an agreed extended settlement date.
 - d. A settlement notice was issued which was not met by the Respondent.
 - e. No written reasons were raised by the Respondent as to why he did not settle the agreement, as he was required to do, at that time nor up to the commencement of this hearing.
8. In his defence the Respondent said today that he did not proceed with the agreement because there had been incomplete disclosure of certain matters by a real estate agent from [AB]. He did not elaborate on

that non-disclosure to any material degree when asked and provided no evidence in relation to that. That allegation is unproven.

What proven losses have directly flowed from any proven breach and in what proven amounts?

9. If a party breaches a contract, then he is liable to pay compensation to the innocent party for all losses that directly and foreseeable flow from that breach.
10. Here that would include an amount of around \$43,000.00 for:
 - a. wasted legal and real estate agent costs on the first sale of around \$4,752.00.
 - b. continued holding and outgoing costs (OPEX levies, mortgage interest costs [not principal repayments] of around \$39,134.00.
 - c. lost rental income as the Respondent required vacant possession of the property in the agreement so the existing tenancy was terminated (unclaimed and undetermined).
 - d. Default interest for late settlement as set in the agreement at 14% p/a (unclaimed and undetermined).
 - e. Also, any diminution of the re-sale price achieved if I am satisfied reasonable steps were taken to resell the property at a reasonable resale price in reasonable period of time.
11. Here the property was resold some months later for effectively \$40,000.00 less than the agreed \$85,000.00 the Respondent agreed price (which had been negotiated down from \$100,000.00). I am satisfied that loss is reasonable given the market conditions at the time (a soft market, falling sale prices and increasing interest rates) and that it was a leasehold property, suitable for rental but with no sitting tenant. Any adjustment to that resale loss downward would be academic as the amount awardable in the Tribunal is limited to 30,000.00.
12. Adding the amounts in paragraphs 10 and 11 together the applicants have proven losses of and are entitled to compensation for an amount well in excess of the monetary limit of this Tribunal.
13. Accordingly, I award compensation in the amount claimed \$30,000.00.

Referee: A Hayes

Date: 12/12/23



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>.