



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

District Court

[2023] NZDT 430

**APPLICANT** E Ltd

**RESPONDENT** I Ltd

**The Tribunal orders:**

I Ltd is to pay E Ltd the sum of \$12,831.33 on or before 21 September 2023.

**Reasons:**

1. In January 2022 I Ltd entered into a contract with E Ltd for debt collection services. Under that contract E Ltd will provide its services to collect any debts that I Ltd loads in its system.
2. In January 2023, I Ltd's director, NP, contacted E Ltd regarding a debt and shared with them an invoice for approximately \$38,000.00. He enquired about collecting the whole debt in one go. I Ltd then loaded of \$110,306.16 on 27 January. E Ltd immediately contacted NP and queried the amount. NP then explained that there were three invoices – of approximately \$45,000.00, \$38,000.00, and \$6,000.00, plus a late collection fee of 20% to cover E Ltd fees. He confirmed that he wanted E Ltd to collect the entire debt.
3. E Ltd began work on the file, and on 9 February the debtor paid the entire first invoice of \$45,788.40. It subsequently made further smaller payments towards the remaining debt. I Ltd has not paid E Ltd collection fees.
4. E Ltd claims the sum of \$12,831.33 for collection fees.

**The issue to be determined is what amount, if any, E Ltd is entitled to in commission.**

5. Prior to loading this debt I Ltd had negotiated directly with the debtor. The debtor had made an offer to get a bank loan to pay off the largest invoice of \$45,788.40, and to pay the others off in monthly instalments. The monthly instalments had not been satisfactory for I Ltd, so the offer was declined, and the choice made to load the debt with E Ltd. I Ltd also added 20% to the debt, which it wanted to recover from the debtor as a late fee to cover the E Ltd's fees. This brought the total amount loaded in the system to \$110,306.16.
6. Under the terms and conditions of the contract I Ltd is to pay 20% commission on each payment that E Ltd recovers for it. The \$45,788.40 was included in the amount I Ltd loaded, and I Ltd did not explain or specify at the time that this was not part of the debt it wanted to engage E Ltd services for. E Ltd carried out work, including communicating with the debtor several times, prior to the \$45,788.40 being paid. I find that this work was sufficient for E Ltd to be considered to have recovered the debt. I note that if I Ltd was confident that it had done enough itself to ensure recovery of the \$45,788.40, it did not need to include it in the amount loaded.

7. At the hearing NP also argued that he had wanted E Ltd to make the debtor pay the entire debt in one payment, or to pay monthly and agree to pay the 20% late fee that was not provided for in the contract with the debtor. However, the terms of the debt collection contract do not specify that E Ltd will collect a debt in a single payment, or that it will persuade a debtor to pay more than they are contractually or legally obliged to. Therefore, I find that it is not proven that E Ltd breached the contract by collecting the debt in instalments.
8. For these reasons I find that I Ltd is required to pay commission of 20% on all the money collected by E Ltd. Therefore, I Ltd is to pay E Ltd the sum of \$12,831.33 by the date stated in the order.

**Referee: K Rendall**  
**Date: 31 August 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>.