



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 556

APPLICANT ED

RESPONDENT MA

The Tribunal orders:

MA is to pay ED \$110.00 on or before 9 May 2023.

Reasons

1. ED and his partner bought a kitten from MA through the [online] website, paying a total of \$1,240.00. After possessing the kitten for a couple of days, ED discovered a minor rash on the kitten's muzzle, which over the next few days became progressively worse. He contacted MA who said it would not be necessary to take it to the vet, but ED grew concerned it may be an infection. The vet confirmed it was, and prescribed antibiotics. ED asked MA to pay for the vet, but she refused. ED filed a claim in the Disputes Tribunal.
2. This is a claim for \$110.00 which is the vet fee for prescribing medication to treat the kitten ED bought from MA.
3. The issues to be decided were as follows:
 - a. Does the Consumer Guarantees Act 1993 (CGA) apply to the sale of the kitten?
 - b. If so, has the kitten breached the guarantee of acceptable quality, and is the cost of treatment claimable?
4. No phone number of MA was available and she was unable to be contacted for the claim. Under the Disputes Tribunal Act 1988 I can resolve a dispute in the absence of one of the parties. I note that if MA is not satisfied with the result of the hearing she could apply for a rehearing.

Does the Consumer Guarantees Act 1993 (CGA) apply to the sale of the kitten?

5. The CGA applies to sales of goods by those in trade to consumers. The definition of goods in the CGA includes animals. Whether a seller is in trade is a matter to be determined on the facts, under the wide definition in the Act, which provides "any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services".
6. ED advised that this kitten was not the only one MA had for sale at the time. He also said that he understood that MA was selling kittens from more than one litter. As a result of this I find that MA's enterprise falls within the definition for being "in trade", and as a result the CGA applies to the sale and purchase of the kitten.

If so, has the kitten breached the guarantee of acceptable quality, and is the cost of treatment claimable?

7. The CGA imposes guarantees, to protect consumers, into contracts for sale and purchase of goods, amongst other things. One of the guarantees, in section 6, that goods sold must be of acceptable quality, includes being free from minor defects, bearing in mind the price or the other relevant matters.
8. The context of this sale is that the kitten was a purebred, sold for a relatively high price. It had an infection, as it turned out, which is a minor defect, in terms of the definition of the guarantee of acceptable quality. It was necessary to obtain antibiotics to treat it. Antibiotics are not over-the-counter medicines and require a prescription which would only be obtainable from a vet, so the visit to the vet was necessary to fix the problem. Because the CGA applies, MA is required to pay for the cost of fixing the problem which was the failure to comply with the guarantee of acceptable quality, and thus she is liable for the cost of the visit to the vet.
9. The visit to the vet cost \$110.00, and this is the amount MA must pay.

Referee: M Wilson
Date: 18 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>.