



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

District Court

[2023] NZDT 280

**APPLICANT** EE

**RESPONDENT** H Ltd

**The Tribunal orders:**

H Ltd is to pay the sum of \$185.14 to EE by no later than 25 August 2023.

**Reasons:**

1. EE purchased second hand hearing aids and a charger unit from a person in [City]. When the items were approximately 18 months old, faults developed in both the hearing aids and the charger. EE took the items to his audiologist, [Audiologist], for repairs. [Audiologist] sent the items to the manufacturer, H Ltd, for repair. H Ltd repaired the hearing aids and the charger. The hearing aids were repaired under warranty, however H Ltd charged [Audiologist] \$185.14 for the charger as it was outside the 12 month warranty for that unit.
2. EE disputed the charge as he believed a charger that cost over \$400 new should last longer than 1 year. [Audiologist] offered to waive the charge, however EE felt they should not have to suffer the loss as they had not supplied the product in the first place. EE therefore paid [Audiologist] and now claims in the Disputes Tribunal for recovery of the amount paid, plus the cost of filing the claim in the Tribunal, from the manufacturer.
3. H Ltd have disputed liability. The issues for the Tribunal to determine are therefore as follows:
  - i. Can EE make a claim against the manufacturer?
  - ii. If so, was the charger of acceptable quality? Is H Ltd liable to compensate EE for the amount paid?

**Can EE make a claim against the manufacturer?**

4. H Ltd did not want to attend the teleconference hearing that took place on 3 August 2023. Instead they sent a written submission outlining their reasons for disputing the claim. The submission has been taken into account when making this decision.
5. H Ltd state in their submission that there is no legal basis to the claim as EE did not buy the hearing aids through an approved dealer. However the Consumer Guarantees Act 1993 (the Act), in section 27, provides that claims can be made against the manufacturer by a person other than the original purchaser.

6. H Ltd also referred to their warranty statement excluding liability if products have not been sold by an approved dealer, however a company cannot contract out of their obligations under the Act.
7. In view of the provisions of the Consumer Guarantees Act, I find EE is entitled to make a claim against H Ltd.

***If so, was the charger of acceptable quality? Is H Ltd liable to compensate EE for the amount paid?***

8. A claim may be made against the manufacturer of goods if the goods are not of acceptable quality. EE states the charger should have lasted longer than 12 months for the price paid, his expectation being 5 years. EE noted some audiologists offer a 3 year warranty on the same product, again suggesting it should last longer than one.
9. After consideration of the above, I find a reasonable consumer paying the retail price would expect such an item to last longer than 18 months. I therefore find the charger was not of acceptable quality as it failed within 18 months.
10. When there has been a failure to comply with a guarantee, the Act provides remedies for the consumer. H Ltd stated in their submission that they had offered to support [Audiologist] with a free repair of the charger, however when this offer was passed on to EE, he declined it. However, it appears there may have been some miscommunication about this offer. EE states he was not told by [Audiologist] that H Ltd would waive the fee. I have also spoken to Dr U at [Audiologist]. Dr U confirmed EE had paid the fee and stated he had no recollection of an offer from H Ltd to waive that fee. It therefore seems likely there was a breakdown of communication between the three parties involved.
11. Having considered all of the above, as I have found the charger was not of acceptable quality, and as H Ltd had originally intended to waive this fee in any event, I find it now reasonable to order H Ltd compensate EE for the amount paid.
12. EE is not able to recover the cost of the Tribunal filing fee as such costs are not recoverable in the Tribunal due to the provisions of section 43 of the Disputes Tribunals Act 1988.

**Referee: K. Edwards**  
**Date: 10 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>.