



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 171

APPLICANT EM

RESPONDENT S Ltd

The Tribunal orders:

S Ltd is to pay EM \$1,500 by 6 July 2023

Reasons

1. EM claims a refund of the \$1,500 deposit he paid S Ltd which was retained after he cancelled his order for wedding flowers and rental decorations. He also asks for his \$45 filing fee and has requested the Tribunal consider compensation for stress in having to arrange other flowers for his wedding to B.
2. As explained at the hearing I will not award the filing fee given the costs provisions of the Tribunal in the Disputes Tribunal Act 1988 (section 43).
3. In deciding whether EM is entitled to a refund or other compensation I need to have regard to the provisions of the Consumer Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA). While S for S Ltd explained there is no refund available for a change of mind, I am satisfied both the CGA and the FTA applied given S is in trade and is a supplier of goods and services under the CGA. This is relevant as a refund is a possibility under the CGA if it is not simply a situation where EM has changed his mind but there has been a significant breach of one of the CGA guarantees.

Is EM entitled to a refund?

4. The best evidence of when and how EM cancelled his order is the email he sent at 10.09pm on 25 January 2023 to S Ltd in which he cancelled the flower order and rental equipment and explained why he was doing it. It is clear that from reading that email EM was cancelling the flower order as S Ltd could not provide 28 rose ball flowers looking the same as the [wedding arch] that was in S Ltd's showroom.

5. Having considered all of the evidence before me, on a fine balance I preferred EM's evidence that the 28 rose balls needed to look the same as the [wedding arch] and S Ltd was to provide a sample for approval before the rose balls were completed.
6. While S for S Ltd has explained that EM and B had agreed to using different looking flowers in the rose balls, I have not been persuaded that they did. At most I consider they had been open to S Ltd trying to source an alternative provided it would give the same look. I do not consider B had accepted the flowers by responding "OK" to the photos in the [messaging app] S Ltd sent earlier. It is clear S Ltd was presenting the flowers already completed not as a sample. Significantly I do not consider it likely that if they had agreed to using different flowers S would have left the [messaging app] voice messages on 25 January after EM left S Ltd saying, among other things "*Now, if you want them to be exactly the same as the arch before, I honestly couldn't find them...That's why I used that flower head; it somewhat resembles the color [sic] you mentioned*" and not mentioning that the balls had been made with alternative flowers already approved.
7. I consider the difference between the flowers presented completed and the sample EM and B had agreed on to be significant and entitled them to cancellation of S Ltd's goods and services under the CGA. I consider the cancellation was appropriate for the order as a whole including the rental equipment as that is how it had been placed. While S Ltd has explained the costs it had expended in providing the flowers, and a lost opportunity for the rental equipment, I do not consider any of the deposit is entitled to be withheld as it appears S Ltd was unable to realistically provide flowers of the type on the arch displayed but did not make that clear to EM and B. As the CGA provides for a refund I do not make further orders under the FTA or consider an award for stress is warranted given alternative flowers and equipment were able to be arranged.

Referee: J Costigan

Date: 5 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>.