



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 40

APPLICANT FC

RESPONDENT DN

The Tribunal orders:

The claim is dismissed.

Reasons

1. FC has claimed that DN misrepresented the age of the horse 'C' when she advertised him for sale. FC based her claim on the finding of SM of [vet clinic]. The assessment from a thorough examination of C's teeth was that he was born in 2019 making him officially a 4 year old at the oldest. However the breeder, LB of 'BQ' has documented that C was born late December 2018. He was contacted during the hearing and said that the exact date of birth was not recorded. C was one of a batch of horses born around this time. It could be within two to three months of that date but C would not have been an 'out of season' foal born in February 2019. Even if C was born in January 2019 he would not be three and a half years old at the time FC purchase him.
2. It is the burden of an applicant to prove the claim. In weighing up the evidence it is reasonable to give more weight to the evidence of the breeder than the expert making an assessment from an examination of the horse. A breeder's evidence is based on fact whereas the expert is giving an opinion.
3. I do not find it proved that DN misrepresented C's age at the time of discussions with FC. I am satisfied that C was born about December 2018 and was therefore approaching 5 years of age at the time FC purchased him.

Referee: B M Smallbone
Date: Thursday, 11 January 2024



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>.