



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 482

APPLICANT HC

RESPONDENT S Ltd

The Tribunal orders:

1. S Ltd is to pay HC \$1794.42 on or before 5pm on 6 August 2023.
2. HC is not liable to pay S Ltd any further money.
3. If S Ltd deducts any money from HC's account after today's date, 6 July 2023, it is to be refunded to him in full within ten working days of the payment being deducted.

Reasons

1. HC thought he had a 24 month contract to use a shared office space up to five times a month with unlimited use of a business lounge. After using the facility for five days he was told he could not use it until the next month and that it did not have a business lounge.
2. HC claims a full refund of the \$1836.92 he has paid S Ltd and a declaration of non-liability for the remainder of the contractual term.
3. The issues to be determined are:
 - a. Did S Ltd make false or misleading statements about the location or accessibility of the business lounge at [Shopping Mall]; and
 - b. Was the misrepresentation an essential term of the contract?; and
 - c. If so, can HC cancel the contract; and
 - d. Can HC obtain a declaration of non-liability for the remainder of the 24 month contract; and
 - e. Can HC recover the money S Ltd has deducted from his credit card?

Did S Ltd make false or misleading statements about the location or accessibility of the business lounge at [Shopping Mall]?

4. The Contractual Remedies Part of the Contract and Commercial Law Act 2017 allows a party to cancel a contract if it entered into the contract due to a misrepresentation about an essential term of the contract. A misrepresentation is a false or misleading statement which may be deliberate or unintentional.
5. HC signed on-line for what he believed was access to five days co working space per month and unlimited use of a business lounge. He signed up with [Shopping Mall] and thought he was

accessing their business lounge. After five days he was told he could not access the services for another month. HC says that at no time was he told [Shopping Mall] did not have a business lounge and was not advised of any other locations that had business lounge services.

6. The website states S Ltd provides unlimited access to a business lounge. In the hearing, S Ltd accepted its website and information including the terms and conditions did not include information about the services they could access.
7. S Ltd accepted an ordinary person would not know [Shopping Mall] did not have a business lounge and would not know they had to access another building to use the unlimited business services. It also accepted HC was not advised of this when he signed up to the contract nor when he used [Shopping Mall].
8. S Ltd made false and misleading statements and misrepresented the location and accessibility of the business lounge at [Shopping Mall].

Was the misrepresentation an essential term of the contract?

9. As set out above in para (4) of this order, a party to cancel a contract if it entered into the contract due to a misrepresentation about an essential term of the contract. And, if he had been aware of the misrepresentation, would not have entered not the contract.
10. HC told me he signed up for the [Shopping Mall] contract with S Ltd because the website states “unlimited access”. He did not get unlimited access and he would not have entered into the contract if he knew he could not have unlimited access to a business lounge at [Shopping Mall].
11. The misrepresentation was an essential term of the contract.

If so, can HC cancel the contract?

12. S Ltd misrepresented the location and accessibility of the business lounge at [Shopping Mall]. This misrepresentation was an essential term of the contract.
13. HC told S Ltd he wanted to cancel the contract. The contract is cancelled.

Can HC obtain a declaration of non-liability for the remainder of the 24 month contract?

14. The Contractual Remedies Part of the Contract and Commercial Law Act 2017 provides that where a contract is cancelled a party for misrepresentation a party may claim its reasonable costs incurred for services provided before the cancellation. It cannot claim any amounts after the cancellation.
15. The only contractual term allowing the client to cancel relates to contractual renewal at the end of the term. The contract states that if S Ltd cancels the contract the client must pay the remainder of the contractual term.
16. There is no evidence S Ltd has any losses from the cancellation. S Ltd is not entitled to claim any money after the contract is cancelled.
17. HC is not liable to S Ltd for any further money under the contract.
4. S Ltd told me it may take up to ten days to stop deductions from HC’s account. If S Ltd deducts any money from HC’s account after today’s date, 6 July 2023, it is to be refunded to him in full within ten working days of the payment being deducted.

Can HC recover the money S Ltd has deducted from his credit card?

18. HC told me S Ltd has deducted \$1836.92 from his account. He used the services for five days. His monthly payment is \$169.00. He expected to be able to use [Shopping Mall] every week. He did not receive the service he thought he had purchased.
19. HC should pay for the five days he used. Based on all the evidence before me, I consider a fair deduction from the monthly payment is \$42.25.
20. S Ltd owes HC \$1794.42.

Referee: K O'Shea

Date: 6 July 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>.