



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 566

APPLICANT **IM Ltd**

RESPONDENT **HI**

The Tribunal orders:

HI is to pay the sum of \$6,653.78 to IM Ltd on or before Tuesday 19 December 2023.

Reasons:

1. In April 2022, HI engaged IM Ltd to provide legal advice regarding a dispute with the [redacted] District Council, and IM Ltd emailed HI a letter of engagement attaching its standard terms of engagement. On 17 May 2022, IM Ltd invoiced HI \$5,836.37 for its legal services.
2. The invoice remains unpaid, and IM Ltd now claims \$7,762.27, comprising payment of its invoice together with \$817.41 in interest and \$1,108.49 for debt recovery.
3. HI did not attend the teleconference hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issues to be determined are:
 - a) Is HI contractually bound to pay the original invoice?
 - b) Is interest payable?
 - c) Are debt collection costs payable?

Is HI contractually bound to pay the original invoice?

5. The common law of contract allows parties to enter into legally binding agreements. A contract need not be in writing; an agreement can be formed verbally or inferred from the parties' conduct.
6. Although the letter of engagement was not sent until eight days after the initial meeting, it would generally be understood that a law firm would be charging for its services unless otherwise agreed. HI's continued interaction with IM Ltd without any objection to its terms of engagement constituted acceptance of those terms, so the terms of engagement became the agreed basis for the contract.
7. It later became apparent that there was a misunderstanding or disagreement about the basis for fees, when HI first raised that he was hoping to get legal aid. However, this was not until around 17 May, and the invoice is for services rendered before that date. I therefore conclude that HI is contractually bound to pay the original invoice for \$5,836.37.

Is interest payable?

8. Clause 2.5 of the contract allows IM Ltd to charge 12% interest per annum on overdue accounts. This provision is enforceable as the interest rate is reasonable by way of compensation rather than being a penalty clause. HI must therefore pay the \$817.41 claimed for interest.

Are debt collection costs payable?

9. Clause 2.5 of the contract provides, "All costs in relation to the collection of overdue accounts will be added to your account." It is not clear whether this would include IM Ltd's internal costs, or only disbursements to a third party, but in any case, I find that the costs are not recoverable in this instance.
10. It was clear even before the invoice was sent that there was a dispute, so costs could have been mitigated by filing in the Disputes Tribunal as soon as the payment became overdue. Also, an unspecified portion of the costs relates to the Tribunal proceedings. IM Ltd cannot recover costs of the proceedings since s 43 of the Disputes Tribunal Act 1988 provides that, with very limited exceptions that do not apply here, costs shall not be awarded against a party to any proceedings before a Tribunal.
11. I therefore conclude that the sum payable by HI to IM Ltd is \$6,653.78.

Referee: E Paton-Simpson

Date: 30 November 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 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>.