



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 345

APPLICANT **IN**

RESPONDENT **BI**

The Tribunal orders:

The claim is dismissed.

Reasons

1. In October 2022 IN and BI decided to register and produce a dance performance for the [the festival], which was to take place in [redacted]. No formal agreement was made, rather they started the process together as co-choreographers, (developing the piece under IN's trading name '[G Ltd]') and obtained a grant of \$4700.00 from the [the festival].
2. IN and BI met with the group of dancers who were to perform in the piece and plans for further fund-raising were discussed as well as various other issues around the performance, costumes, and logistics of travelling to and staying in [City 1] during the Festival.
3. The working relationship between IN and BI as well as relationships with other members of the group did not go well. BI says while the intention at the outset was to work in partnership, that is not how the project progressed. She says she was not involved in final choreography decisions, nor decisions about finances or other logistics.
4. IN says that the final cost of the production was \$7152.88 and although she says BI was in charge of additional fund-raising, the only grant received was the original Festival grant of \$4700.00. This left a short-fall of \$2452.88 and IN claims a half-share from BI of \$1226.44 based on the partnership arrangement. IN says there had been an explicit agreement during the process that BI would cover half the cost of studio hire that became necessary for rehearsals.
5. The issues to be determined are:
 - Was there a partnership agreement such that BI is contractually liable to pay half of any funding deficit on the project?
 - Is there any other basis upon which BI should pay all or part of the costs sought?

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6. IN contends that BI was responsible for further fund-raising from the outset so that there should have been no deficit at the end of the project. However BI denies there was any such discussion or agreement. She says that at the joint meeting at the start with both parties and the other dancers, it was acknowledged that they would try and fundraise to cover costs but given the tight timeframe it was likely that everyone would need to contribute personal funds which were unlikely to be refunded. BI provided detailed 'expense sheets' for all the dancers (and for herself) which show significant personal financial contributions (relative to the overall project budget).
7. BI further stated that there was no agreement to share the cost of any shortfall and that the intended partnership did not eventuate, as she had little to no input into performance decisions, logistical decisions and financial decisions. BI's statements about the 'partnership' and decision-making dynamics are supported by written witness statements from the dancers involved in the project, two of whom also gave evidence verbally at the teleconference hearing.
8. Although IN names the relationship between her and BI as a partnership on this project, there was no formal partnership agreement and the overall impression I have gained from all the evidence put forward is that there was an original intention to have a more-or-less equal informal partnership/collaboration, but that this was not in fact how the relationship progressed. BI has provided evidence that the funding application actually submitted to the Festival was in IN's name only, and this is consistent with the fact that neither BI nor the other dancers were aware of/invited to a lunch put on by the Festival for funded projects. It is also undisputed that the Festival funding was paid into IN's personal account, meaning that BI had no direct control or oversight of expenditure.
9. For all the above reasons, I find that BI is not contractually liable to pay half of the funding deficit on the project.

Is there any other basis upon which BI should pay all or part of the costs sought?

10. The Disputes Tribunals Act 1998 provides that the overall 'merits and justice' of a claim will be considered, while having regard to the law. In this case my view is that the 'merits and justice' coincide with the contractual position, which is that BI is not liable to pay any of the costs claimed by IN.
11. This is for various reasons, not least of which is because the costs themselves are insufficiently supported and not all of them are proven as valid and necessary costs of the project. I accept BI's contention that some of the costs were for IN's own expenses, noting that all other participants in the project funded at least some of the costs of their accommodation and travel themselves.
12. IN has included, in the overall project budget, the \$1000.00 accommodation cost of [Accommodation] where she and two of the other dancers stayed. The witnesses gave evidence that the two of them who stayed there with IN, paid her \$100 each towards that cost as requested by IN (although it is not known whether the overall cost for the [Accommodation] was \$1000.00 or \$1200.00 as IN provided no supporting evidence for the expenses on her list). IN's contention that the whole group was supposed to stay at the [Accommodation] is disputed, with BI saying that was discussed early on but changed long before accommodation costs were incurred. BI arranged her own accommodation in [City 1].
13. Another category of expense that I consider unjustified is the \$800.00 (total) apparently paid by IN to her mother and father for their input into the project. BI says she was not aware they would be paid for their assistance and there was no agreement that they would be paid.
14. IN says the above costs are not the ones she is claiming a share of, but it is the total project expenses that need to be considered when there is a claim to share any deficit.

15. With respect to whether there was a specific agreement for BI to share the costs of studio hire, IN has provided screenshots of [online messaging] messages from mid-February where BI says she will 'help' cover costs of studio hire. BI says this was based on an understanding at the time that a flight refund for one of the dancers of \$455 would be put towards studio hire but in fact IN applied that to some other cost. There is also written communication to show that BI repeatedly asked for evidence of the cost of studio hire but IN declined to provide it. IN has not provided the supplier invoices to the Tribunal either, whereas BI has provided the original invoice (made out to IN) that she obtained for the hearing from one of the venue hirers which shows a different (and lower) figure than IN has recorded on her expense sheet.
16. IN says this is because the venue invoiced her at a discounted rate but she thought it was reasonable to pay the full cost. However IN has provided no evidence of payments made to providers either. If this evidence had been provided, I may have considered some sharing of studio cost hire reasonable (but based on an adjusted overall project deficit, not based on all the expenses claimed), even though a promise to 'help' is not legally binding.
17. In summary, the project expenses have not all been proven as necessary/agreed nor has supporting evidence been provided for the otherwise legitimate project costs such as studio hire. For all the reasons above, the claim is dismissed.

Referee Perfect
Date: 18 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>.