



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1355

APPLICANT **JA**

**FIRST
RESPONDENT** **KQ**

**SECOND
RESPONDENT** **BT**

The Tribunal orders:

The claim is struck out under section 19(1)(h)(i) of the Disputes Tribunal Act 1988 as no reasonable cause of action against these respondents has been presented.

Reasons

1. JA claims \$20,521.45, being money that she had invested in term deposits with a company, [Investment Company] Limited, which then went into receivership on 1 April 2020 and into liquidation on 24 July 2020.
2. KQ and BT were directors of [Investment Company] Limited. There is no general liability on directors for the actions or conduct of their company – only the High Court has the ability to 'lift the corporate veil'.
3. JA wishes to claim under the Fair Trading Act 1986 (FTA) based on her contention that employees of [Investment Company] Ltd engaged in misleading and deceptive conduct which led her to re-deposit funds and deposit further funds with [Investment Company] Ltd in the months before it went into receivership.
4. However, while section 43 of the FTA may confer personal liability on employees, directors or other persons in certain circumstances, JA says that the misleading conduct was conveyed to her by employees of the company. Her argument is that the directors should be responsible for the actions of their company and their employees, which is in essence a request for the Tribunal to 'lift the corporate veil'. JA did not have any personal dealings, contact or communication with either of the directors in which they may even potentially be caught by the provisions of section 43, FTA. The claim is therefore struck out.

Referee:

Date: 20 January 2021



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.