



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**[2023] NZDT 554**

**APPLICANT**      **L Foundation**

**RESPONDENT**    **OS**

**The Tribunal orders:**

1. The claim for the return of two horses is struck out.
2. The hearing is adjourned. The parties will be notified of the date and time of the new hearing.
3. The parties may submit any additional evidence by email to [the Disputes Tribunal] using reference [file number].

**Reasons**

1. The Applicant is a registered charitable trust.
2. EV, a trustee, represented the trust at the hearing.
3. The original claim sought the return of two horses and a dog named HJ. The amount claimed was \$30,000.00.
4. On 9 January 2023, EV filed a submission entitled "Additional Evidence and Claim", wherein the Trust sought to add a claim for a debt allegedly owed by OS to the Trust, totalling \$10,185.00.
5. The jurisdiction of the Disputes Tribunal is limited.
6. Section 10(1) of the Disputes Tribunal Act 1988 states that the Tribunal has jurisdiction to hear certain types of claims, including claims for the recovery of any physical property.
7. Section 10(3) states that:

For the purposes of subsection (1), a claim is within the jurisdiction of the Tribunal only if the total amount in respect of which an order of the Tribunal is sought does not exceed \$30,000, including–

(a) Where a claim is made for the recovery of property, the value of that property.

8. EV submitted that the two mares that she seeks the return of are worth a total of approximately \$50,000 - \$60,000.

9. That part of the claim exceeds the jurisdictional limit of this Tribunal. The recovery of the two horses is a single cause of action. If the Trust wishes to pursue that claim, it must do so in the District Court.
10. The remainder of the claim, seeking the return of HJ and recovery of an alleged debt of \$10,185.00, are separate causes of action, and are within the jurisdiction of the Disputes Tribunal.
11. From May 2021 until mid-2022 EV and OS had a commercial relationship wherein OS sold puppies and “off grid” showers on a commission basis.
12. OS does not deny that she accrued a debt to EV (OS submitted that she was not aware of the existence of the Trust), but submitted that she is owed commission on sales of puppies and showers that more or less equals the amount of the debt.
13. EV does not dispute that the Trust owes OS commission, but she disagrees with OS’s figures.
14. There are also some complexities around the ownership of HJ. OS purchased HJ (and another dog named UB) from the breeder, but EV submitted that she did so using money from the Trust, on the understanding that HJ would go to EV and UB would go to OS. HJ was originally in EV’s possession, but came to OS because of a concern that she could become entangled in an SPCA investigation involving EV.
15. Determination of the claim would require the Tribunal to determine:
  - a. Who is the owner of HJ?
  - b. If the Trust is the owner of HJ, what is her “market value”?
  - c. What amount of commission is owed to OS for sales of puppies and showers?
  - d. In respect of the two pups sold by OS that the Trust has not received payment for, were those pups sold for \$4,000 or \$1,000?
16. The parties are likely to have access to evidence that will assist the Tribunal in determining those questions. This was a commercial arrangement. The Trust is required to maintain accurate and complete financial records of its assets, income, and expenses. There will be bank statements, records of sales (such as advertising information, emails and texts with purchasers, etc) that should enable an accurate calculation of the number of sales and therefore the amount of commission owed to OS. There should be some record of the sale of the final two pups. There should be information about the cost of HJ and UB and where the money came from for their purchase.
17. The hearing is adjourned to allow the parties the opportunity to gather and submit that information.

**Referee: Nicholas Blake**

**Date: 9 February 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>.