



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 762

APPLICANT LB

RESPONDENT CX

The Tribunal orders:

The claim is dismissed.

Reasons:

1. Someone posing as CX advertised a [mobile phone] on Trade Me. LB purchased the [mobile phone] on 29 December 2022 for \$850.00 and paid \$870.00 into the bank account provided.
2. The goods failed to arrive and the seller initially gave assurances and then ceased all contact with LB.
3. LB filed this claim on 9 January 2023 with only an email address for CX. An address was subsequently obtained from Trade Me.
4. CX failed to appear at the hearing or make any submissions in defence of the claim.
5. The Tribunal found that this was a fraudulent transaction and the Tribunal ordered CX to refund the purchase price and shipping and statutory interest of \$18.27, pursuant to s20 of the Disputes Tribunal Act 1988, for a total due of \$888.27.
6. CX subsequently contacted LB and claimed she had not sold a phone to her and that she had been the victim of identity theft.
7. The registry advised CX to file an Application for Rehearing, which she did on 10 August 2023. That Application was heard on 29 November 2023 by teleconference with both parties participating.
8. CX presented extensive evidence to prove her defence that she had been the victim of identity theft following a burglary of her home on 3 October 2022.
9. LB and the Tribunal are persuaded that CX was not the seller and the claim must be dismissed.

Referee: L. Mueller

Date: 18 December 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>.