



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

District Court

[2019] NZDT 1388

APPLICANT LO

RESPONDENT SD

**The Tribunal hereby orders:**

The claim is dismissed.

Reasons

1. Ms O and Ms D were friends when Ms O approached Ms D for help accessing cheap flights to [Country A]. Ms O's son was getting married and the whole family was travelling to [Country A] for the wedding. Ms O knew that Ms D had a contact through whom she arranged cheap fares for herself and her family, and Ms O specified that she wanted to travel with [airline].
2. Ms D made arrangements with her contact to book the required tickets. It transpires that this contact lives in [Country B] and books the tickets through a travel agency there, with payment being deposited into a New Zealand bank account belonging to another contact of the [Country B] agent (thought to be his brother or cousin). Ms D assisted Ms O to deposit total payment of \$12,250.00 into the New Zealand bank account. Payment was completed at the end of September 2018 and travel was planned for early December 2018.
3. The tickets were not sent to Ms O and her family until approximately a week prior to travel and they were not with [airline]. Ms O was not happy with the tickets because they were not with the airline she requested and the flights had multiple stops [redacted]. It also turned out that at least some of the tickets were invalid, and when presented at check-in counters, the ticket holders could not produce the booking credit card and were declined travel. The family booked and paid for new tickets in order to be able to travel to the wedding.
4. Before the intended travel dates, the pastor of Ms O's and Ms D's church became involved because these problems had escalated into a conflict between the two women. He was able to make contact with the [Country B] agent on the phone but while Ms D says a refund, minus booking fee, was offered at that point, Mr C (Ms O's son, appearing as a witness) stated that he also talked to the [Country B] agent at that time and was told that because the [Country B] agent had booked the tickets using airpoints, they were not refundable. Whichever of these versions of events is accurate, there was no cancellation of the tickets and no refund given.
5. Ms C claims \$12,500.00 from Ms D, being the amount she paid for tickets that were not used.

6. The issues to determine are:

- Was Ms D acting "in trade" when she facilitated Ms O's purchase of air tickets?
- Is there any other cause of action against Ms D?

*Was Ms D acting "in trade" when she facilitated Ms O's purchase of air tickets?*

7. I find that Ms D was not acting "in trade" as she is not in the business of making travel arrangements or providing travel agency services. She was simply asked by a friend to help book tickets using the same cheap contacts for airfares that she uses for her personal travel arrangements.
8. That means that Ms D has no liability under the Consumer Guarantees Act 1993 or the Fair Trading Act 1986. In addition, Ms O has no consumer protection in relation to the tickets purchased because they were bought from a person/entity outside New Zealand so that person is not subject to New Zealand laws.

*Is there any other cause of action against Ms D?*

9. I find that there is no other cause of action for a legal claim against Ms D. There was no contract formed for Ms D's help as there was no consideration provided or any intention to create legal relations – Ms D was simply asked to help obtain tickets as a favour to her friend – Ms D emphasises that she was approached by Ms O, not the other way round.
10. There is also no evidence of any deception or fraud on Ms D's part – Ms D showed her text correspondence with the [Country B] contact at the final hearing and it is evident that she did ask him to book tickets with [airline] as Ms O had asked her to do, and that she did not find out till very close to the date of travel that the [Country B] agent had not/was not able to do that. Even if she had communicated more closely with Ms O and her family at that point, it is unknown whether the family could have obtained any of the money back, it all having been paid into the unknown New Zealand contact's bank account by then and the tickets issued.
11. Ms O's other son, Mr T, showed an email at the hearing from a 'SQ, [Company]' with [Travel Company] logos on it, that he received when he queried problems with his original ticket at check-in, so that person/company may be the New Zealand agent/contact/bank account owner. That information seems to suggest that Ms D was not the owner of the bank account into which the money was paid and there is no other evidence that she had anything to do with this bank account – also the long text trail between her and the [Country B] agent shows no evidence of her being involved in any attempt to deceive or cheat Ms O and her family.
12. For all the reasons above, I find that Ms D has no liability for the loss suffered by Ms O and her family and the claim is therefore dismissed.

**Referee: J Perfect**

**Date: 3 July 2019**



## 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 or a mistake was made.

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 outside of time, 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.

### Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the 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, and 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>.