



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 380

APPLICANT LQ

RESPONDENT NE

The Tribunal orders: NE is ordered to pay LQ the sum of \$3,200.00. Payment of this sum is ordered no later than 19 July 2023.

Reasons:

- 1) In December 2022 the applicant enrolled her dog in a training programme offered by the respondent to dog owners. This involved the dog boarding with the respondent for 4 weeks. The applicant had particular needs for her dog including for 'recall, reactivity and loose leash-walking.'
- 2) The training programme for the applicant's dog was completed in February 2023. The arrangement between the parties provided for a 'handover' by the respondent when the dog was returned. A meeting with the respondent did not take place until about 3 weeks after the dog was returned.
- 3) The applicant says that her dog's behaviours have worsened. LQ seeks a refund of the fee paid to the respondent of \$3,200.00. The respondent says he is, and has continued to be, available to assist with the issues the applicant is experiencing with her dog. That being the case, he should not be liable for the refund sought.
- 4) The relevant law is the Consumer Guarantees Act 1993 ('the Act'); in particular, the guarantee [section 29] that a service provided to a consumer should be reasonably fit for the required purposes. The issues to be determined by the Tribunal are:
 - a) Was the service provided by the respondent for the applicant consistent with the above statutory guarantee?
 - b) If not, is the applicant entitled to the refund sought?

- 5) With respect to the fundamental issues here arising, I accept that, with respect to programmes offered to consumers to change the behaviours of pets, there can be a range of subjective opinions as to what might constitute reasonable success. A pet owner certainly cannot reasonably expect perfection as regards expected outcomes.
- 6) However, and that said, a dog owner paying, in this case, the not inconsiderable sum of \$3,200.00 is entitled to expect some reasonably significant, and measurable, change in the behaviours of concern which have led to the engagement of the respondent's services. In this regard, it is appropriate to consider, in determining whether the statutory guarantee referred to above has been breached, the representations of the supplier of the service. The respondent's advertisement, which the applicant relied on, stated the following: *"Does your dog run up/lunge/bark/snarl/dominates or even bites at other dogs or humans and you are afraid to let them interact as your worried they may attack, or they have attacked previously. Or is your dog super anxious and struggles to live a happy life. Then this is the course for you. This programme covers issues such as anxiety, dog reactivity, resource guarding, unsocialised dogs, aggression etc. Is a 4 week programme. This is a FULL BEHAVIOURAL MODIFICATION course."*
- 7) The respondent's agreement with the applicant-as per the advertisement-included 3 free follow-up meetings. There was only 1 attendance of the respondent, and this was about 3 weeks after the completion of the programme. More precisely, the dog was returned on 10 February and the single 'follow-up' was on 1 March.
- 8) My concluded view is that the applicant did not get anything approaching reasonable value for what she paid for. She was entitled to legitimately expect at least some reasonable and, importantly, sustained improvement with her dog. That (some improvement) happened briefly, but not for long. In this regard, the applicant, I conclude, was entitled to expect a proper 'handover' of her dog upon return, with time spent on the techniques to be adopted, and applied, by LQ.
- 9) The applicant was also entitled to expect, in my view, 3 full follow-up visits, within a reasonable time after 10 February. As stated, there was only one. The respondent contends that he did make himself available for further follow-up. I do not accept that. The onus, and responsibility, was on the respondent to ensure that the follow-ups happened. He did not. This was not, in my view, because of any refusal by the applicant to make herself available. LQ eventually dispensed with NE's services when her dog's behaviour continued to deteriorate and efforts to engage with the respondent were not successful.
- 10) I find that the statutory guarantee stated above has not been met. The failure has been of a 'substantial character' for the purposes of the Act and LQ is entitled to the refund sought.

Referee: G.P.Rossiter

Date: 4 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>.