



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 578

APPLICANT M Ltd

RESPONDENT AAI

The Tribunal orders:

AAI is to pay the sum of \$8,000.00 to M Ltd on or before Monday 28 August 2023.

Reasons:

1. In August 2021, AAI submitted a Consignment Quote Request form to M Ltd for a [designer purse]. The form stated, "We only sell authentic items." He shipped the purse to M Ltd in [Country]. M Ltd received the purse in September 2021, and an artificial intelligence-enabled authentication service provided by FJ provided a positive authentication result at the time. On 14 September 2021, M Ltd sold the purse on AAI's behalf to a third party for [foreign currency] 7,700 (including the agreed 10% commission) and remitted [foreign currency] 7,000 to AAI, which converted to NZ\$7,300.28 received by him.
2. On 31 January 2023, the third party contacted M Ltd stating that the purse was not authentic. The third party relied on a later result from FJ dated 19 January 2023, where FJ took the position that it is unable to provide a positive authentication result for the purse. AAI did not respond to M Ltd's requests for any further evidence that could establish the authenticity of the purse. M Ltd contacted FJ for clarification, and FJ confirmed in writing that the 2023 authentication outcome supersedes the 2021 result.
3. M Ltd appointed another authenticator CIC to examine the purse, and CIC certified that the purse is not authentic. M Ltd therefore had to refund the purchase price of [foreign currency] 7,700 to the third party.
4. M Ltd filed a claim for \$8,000.00, but clarified a few days before the hearing that it wished to claim the current NZD equivalent of [foreign currency] 7,700, which is currently nearly \$9,500.
5. AAI did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
6. There was no express agreement as to whether the contract would be governed by the law of [Country] or New Zealand, but given that [Country's] law is based on the English common law, I presume that the same general principles of contract law apply regardless. The issues to be determined are:
 - a) Has AAI breached the contract?
 - b) What sum (if any) is payable in damages?

Has AAI breached the contract?

7. There is an implied condition in a contract for the sale of goods by description that the goods will correspond with their description. The same term can be implied into the consignment contract, which expressly states that M Ltd only sells authentic items.
8. M Ltd provided evidence of the authentication results. In the absence of any contrary evidence, I accept that the purse consigned by AAI was not a genuine [designer] purse as described, and that AAI breached a term of the contract.

What sum (if any) is payable in damages?

9. The normal measure of damages for breach of contract is the amount required to put the innocent party in the same position as if the contract had been performed. If the purse had corresponded with its description, M Ltd would not have had to refund the [foreign currency] 7,700. M Ltd provided evidence of its communications with the third party as evidence of its loss.
10. I accept that the loss has been suffered in [foreign currency], and therefore that the current exchange rate (or perhaps the exchange rate on the date the third party was recently refunded) would apply. However, M Ltd is limited to the \$8,000.00 it originally claimed, since AAI did not receive sufficient notice of a higher sum. The sum payable by AAI is therefore \$8,000.00.

Referee: E Paton-Simpson

Date: 11 August 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 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>.