



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 487

APPLICANT **NH**

RESPONDENT **QM**

The Tribunal orders:

QM is to pay the sum of \$1,824.00 to NH on or before 17 October 2023.

Reasons:

1. NH was invited by QM to join a poker club named the CM. The club was run as a private “room” hosted by QM on an online gambling site. QM, who took a cut (“raked the pot”) in the form of virtual gold coins for organising the group, would collect the money and pay the winners.
2. On 17 April 2023, NH lost \$1,824.00 gambling in the club, and paid this sum to QM, who paid the winners. The next day, NH won \$11,200.00, but QM would not pay him this sum because the losing gamblers had lost their funds and refused to pay. NH now claims \$11,200.00 from QM.
3. The issues to be determined are:
 - a) Were NH and QM parties to an illegal contract?
 - b) Should the Tribunal grant NH relief?

Were NH and QM parties to an illegal contract?

4. Section 9 of the Gambling Act 2003 (GA) provides that gambling is prohibited and illegal unless it is authorised or is “private gambling”. The poker games appear to have been “remote interactive gambling”, which cannot be authorised, but in any event the parties admitted that the gambling was not authorised. Neither did it come within the definition of private gambling: it was online rather than conducted in a private residence; and QM received a percentage of the pot.
5. By accepting QM's invitation to join the club, and by participating in poker games run by QM, NH entered into a contract, or a series of contracts, with QM and others. However, GA s 14(1) provides that “Every contract for, or relating to, illegal gambling is an illegal contract”, and that the illegal contract provisions in subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (CCLA) apply. I therefore conclude that NH and QM were parties to an illegal contract.

Should the Tribunal grant NH relief?

6. CCLA s 73(1) provides, “Every illegal contract is of no effect.” However, the tribunal has discretion under s 76 to grant any relief that it thinks just, including restitution, compensation,

variation of the contract, or validation of the contract in whole or in part or for any particular purpose.

7. I have considered whether QM should be required to pay NH his winnings. I cannot accept QM's submission that, because he was only the initiator and not the losing party on that game, he had no responsibility to pay NH. QM was responsible for collecting the gambling debts under the contract, and there was no evidence of any agreement that he would not have to pay the winners if he did not receive the money from the losers.
8. However, when deciding what relief (if any) to grant, the Tribunal must have regard to certain matters under CCLA s 78. In the case of a breach of an enactment, one of the relevant considerations is the object of the enactment and the gravity of the penalty expressly provided for any breach of the enactment. One of the objects of the GA is to "prevent and minimise harm from gambling, including problem gambling." Another is to "ensure that money from gambling benefits the community". I believe it would be contrary to both of these objects for a gambler to receive winnings from illegal gambling in the circumstances of this case.
9. I have therefore decided that the appropriate relief is for NH to receive restitution of the amount he lost the previous day. Perhaps this may leave QM out of pocket, having benefitted from only a percentage of that money, but this is appropriate given the much greater penalty for conducting, promoting, or profiting from illegal gambling (up to one year's imprisonment or a fine not exceeding \$20,000) than for merely participating in illegal gambling (a fine not exceeding \$1000). I therefore conclude that QM must pay NH \$1,824.00.

Referee: E Paton-Simpson

Date: 28 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>.