



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 216

APPLICANT **NM**

RESPONDENT **LK**

The Tribunal orders:

LK is to pay NM \$9,000.00 within 28 days.

Reasons

[1] NM claims that LK misrepresented the condition of a horse that she purchased from LK, and claims compensation of \$9,000.00. LK acknowledges that she misrepresented the state of the horse, but does not accept that she is liable to pay \$9,000.00.

[2] NM runs a [horse riding] business and in late October 2022 wished to replace a lead horse. She saw a ten-year-old horse, H, advertised for sale by LK and, on 28 October, contacted LK to make enquiries about the horse. In particular, she enquired of LK whether the horse had health problems. LK wrote, in reply: "No, she hasn't had any soundness or health issues that I'm aware of – I asked her old owner when I purchased her too." LK provided to NM a veterinary certificate, dated 4 October 2022, which a previous potential purchaser had obtained from [veterinary practice], which made no mention of any lameness in H. NM then purchased H for \$13,000.00, and H was transported to [city], where she arrived on 19th November. NM paid \$1,095.00 for the transport.

[3] After riding H, NM detected lameness in her gait. Then, by chance, an acquaintance of NM recognised H as a horse that someone he knew of had previously considered buying but that sale had not proceeded because H had failed a vet check. The acquaintance put NM in touch with F from [stables], whose client was the person who had considered buying H. F and her client provided to NM a copy of the veterinary report that the client had obtained at the time she had been contemplating buying H. That report included statements from the vet who had examined H on 3 October that H was suffering from some lameness.

[4] NM provided a letter from F, who confirmed that the vet in question had x-rayed H, but that her client had decided to purchase H before the x-ray results were known. However, when her client went to collect H on 8 October, she found that the horse was very lame, and could not walk without an obvious limp. Its condition was the same the following day, and the client withdrew from the purchase.

[5] NM provided as evidence a copy of the veterinary report which LK had given her, and a copy of the one that F and her client had provided to her. The reports were identical except that the report provided by LK had been edited, so that the references made by the vet to lameness had been removed. It was not apparent on the face of the edited report that any changes had been made.

[6] NM said that she had informed LK of the nature of her [business] and had made clear her requirement that the horse be healthy. Because the vet report provided to her by LK had been completed only a short time before, NM did not obtain another one. She said she had relied on that

report, and would not have bought H if she had known of the lameness. She said that H's condition had improved a little during the five months that she had had her in her care, but that the lameness still persisted.

[7] NM said that H was of no use to her in a state of lameness, and it was impossible to know if she would recover completely. However, she was reluctant to return the horse to LK, given the circumstances, and was willing to keep H herself. She therefore had the prospect of future treatment costs and other expenses with no assurance that the horse would fully recover. She was prepared to accord a value of about \$4,000.00 to H and sought \$9,000.00, the balance of the purchase price, from LK.

[8] LK acknowledged that she had deliberately altered the vet certificate that she had provided to NM. She also accepted that the result of that action was that NM was misled. However, LK said that there was no evidence that H was still lame, and that she had considered that he was sound when he was transported to [city].

[9] LK did not accept that she should pay \$9,000.00 to NM. She considered that H had a higher value than \$4,000.00, and objected that NM had not provided any evidence about H's current state and market value.

The issues

[10] The questions for me to decide, given that LK accepts that her conduct was misleading, are:
- whether NM reasonably relied on the vet report and was induced to enter the contract; and
- if so, what compensation should be payable.

The law

[11] Section 35 of the Contract and Commercial Law Act 2017 provides that a person who is induced to enter a contract by a misrepresentation, whether fraudulent or innocent, is entitled to compensation as if the misrepresentation were a term of the contract. In this case, it is clear that LK deliberately altered the vet report with the intention that NM would not see the vet's comments about H's lameness.

Did NM reasonably rely on the vet report, and was she thereby induced to buy the horse?

[12] In my view, the evidence is very clear, and it is obvious in any event, that NM wanted to buy H only if she was in a good state of health and could be used in NM's business. She asked LK about health, and LK replied that there were no problems that she was aware of. LK, having redacted the vet's crucial comments about lameness, provided the vet's report to NM. The only reason for doing so must have been to induce NM into the false belief that the horse was sound and was not lame.

[13] It was reasonable of NM to rely on the vet report. The report had been prepared by a professional third party, a vet, and NM had no reason to question its contents. She, of course, was unaware at the time that the report had been altered by LK. The health of the horse was, of course, essential to NM and, I have no doubt, she would not have bought H had she known that a vet had certified lameness only a short time before the purchase and that LK had deliberately concealed that fact.

What compensation should be payable?

[14] I consider the evidence relating to the horse's lameness to be clear. I accept that the horse was lame at the time of the sale, she having been so before the sale according to the vet report, and after the sale according to NM's version of events. The fact that NM took steps to contact F and her client, the previous potential purchaser, supports NM's credible personal evidence.

[15] As far as the sum that should be paid by way of compensation is concerned, I consider that NM's claim for \$9,000.00 is reasonable. A lame horse is of no use at all to NM in her [business] so that, in effect, she has to date received nothing for her purchase price of \$13,00.00. NM cannot be sure if H will ever be useful to her but is willing to keep the horse and care for her in the hope that her condition

will improve. NM has also paid \$1,095.00 to have H transported to [city], a cost she would not have incurred had she known that the vet report had been altered by LK.

[16] Thus, I consider it a generous estimate on NM's part in the circumstances to regard H as having a value of \$4,000.00, and NM is entitled to the \$9,000.00 that she claims.

Referee: C Hawes
Date: 13 April 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>.