



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1343

APPLICANT NN

RESPONDENT TD

The Tribunal orders:

TD is to pay NN \$500.00 by 4pm on 1 April 2021.

Reasons:

1. NN entered into an agreement to purchase a puppy from TD and paid a \$500.00 deposit for the puppy. TD then withdrew the offer to sell the puppy to NN. NN claims \$5,000.00 being the deposit he paid for the puppy and costs associated with travelling to visit the puppy and find another puppy.
2. The issues to be determined by the Tribunal were:
 - a. Was there a binding contract between the parties?
 - b. If so, what were the terms?
 - c. Did TD breach the contract?
 - d. What sums, if any, are payable by TD to NN?

Was there a binding contract between the parties?

3. The relevant law is the law of contract. A contract is formed when both parties decide to exchange something of value. A contract can also be conditional, in that until the conditions are fulfilled the contract cannot be concluded.
4. In this case I find that the parties had entered into a conditional contract because the advertisement for the sale of the puppies stated that "on initial approval a \$500 non-refundable deposit will hold a puppy while arranging a meet or /& contact vetting, confidence at both ends, prior to final approval, balance payment request / received & pup being released to their 'Forever Homes'".
5. NN said that the flyer TD produced with the advertisement was not the same as the Trade Me advertisement to which he responded, and he did not recall the conditions set out in paragraph 4 being in the advertisement. As neither party had a copy of the Trade Me advertisement, the best evidence I have of the terms under which TD sold the puppies was the flyer she provided to the Tribunal. It is also a reasonable expectation that a person who was selling an animal would want to make enquiries as to what sort of home and owner the animal was going to after the sale to ensure it would be well looked after.

If so, what were the terms?

6. The terms of the conditional contract were for the purchase of a puppy for \$1,500.00 when a number of conditions had been met, including vetting, confidence at both ends and payment of the balance of the purchase price. The payment of a non-refundable deposit of \$500.00 was also required by anyone wanting to purchase a puppy.

Did TD breach the contract?

7. I find that TD did not breach the contract by cancelling it before the conditions to the contract were met.
8. I say this because one of the conditions to the contract were that the new owner was to be vetted and there was to be "confidence at both ends". TD told the Tribunal that due to the events on the Saturday when NN and his family came to visit their puppy, she no longer wanted to sell a puppy to NN. The parties have two different accounts of what happened that day, however I accept that it was within TD's sole right to decide whether or not to sell the puppy to NN as this was one of the conditions to the contract and cancel the contract.

What sums, if any, are payable by TD to Mr NN?

9. NN claimed for the return of his deposit and for the costs he incurred in visiting TD's puppy and for securing a new puppy. Aside from the deposit of \$500.00, none of the other costs or losses were evidenced. In any event as there has been no breach of contract by TD, these costs or losses would not be recoverable.
10. In respect of the deposit, TD had originally offered to refund this to NN, but this offer was withdrawn when he filed proceedings with the Tribunal and, in any event, it was a "non-refundable deposit". However, I find that, in spite of TD claiming this was a non-refundable deposit, this was a contractual term and she cannot seek to rely on the contractual terms of a contract that she has cancelled. I also note that TD has been able to recover any losses she may have incurred from cancellation of the contract by selling the puppy to another person.
11. Therefore, I find that TD must return the deposit of \$500.00 NN paid to her.

Referee: K. Armstrong
Date: 11 March 2021



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 28 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 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, 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>.