



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 278

APPLICANT NQ

RESPONDENT TN

**SECOND
RESPONDENT P Ltd**

**THIRD OR
SUBSEQUENT
RESPONDENT JN**

**THIRD OR
SUBSEQUENT
RESPONDENT NN**

The Tribunal orders:

P Ltd is to pay NQ the sum of \$30,000.00 by no later than 25 August 2023.

Reasons:

1. [NQ and husband] were approached by TN from P Ltd to see if they wanted trees on their property trimmed. As [NQ and husband] did want trees trimmed, they asked for a quote. A verbal quote was provided, initially of \$50,000, however [NQ and husband] were advised P Ltd could reduce the price to \$35,000. [NQ's husband] accepted the price and P Ltd started work immediately.
2. NQ claims staff "stood over" her at the end of the first day demanding they be paid \$10,000 immediately. This amount was paid as NQ felt intimidated. Work was completed over another two days and the agreed price paid in full.
3. [NQ and husband] are senior citizens. After the work was completed, they told their adult children what had happened. Their children were concerned about the price paid for the work

that was done, the manner in which it was done, and that the process provided for uninvited sales in the Fair Trading Act 1986 had not been followed.

4. NQ has since sought advice from other contractors and believes the value in the work carried out by P Ltd was less than \$5000. NQ therefore claims in the Disputes Tribunal for a refund of the money paid.
5. The issues to be determined by the Tribunal are as follows:
 - i. Did P Ltd fail to comply with their obligations under section 36L of the Fair Trading Act 1986? If so, what is the effect of that failure?
 - ii. What is the value of work completed by P Ltd?
 - iii. Is NQ entitled to a refund?

Did P Ltd fail to comply with their obligations under section 36L of the Fair Trading Act 1986? If so, what is the effect of that failure?

6. Section 36L of the Fair Trading Act 1986 (the Act) applies to uninvited direct sales. An uninvited direct sale is one in which the consumer is approached in their home or workplace by the supplier, and where the consumer did not invite the supplier to come to that place to enter into negotiations to supply their goods or services.
7. As [NQ and husband] were approached in their home by P Ltd without a prior invitation, I find the agreement subsequently entered into to be an uninvited direct sales agreement.
8. Section 36L of the Act states the supplier must ensure that every uninvited sales agreement is in writing, that a copy is given to the consumer at the time the agreement is entered into, and that the agreement contains a summary of the consumer's right to cancel the agreement under section 36M(1). The supplier must also give the consumer oral notice before the agreement is entered into, of the consumer's right to cancel the agreement within 5 working days after the date on which the consumer receives a copy of the agreement; and how the consumer may cancel the agreement.
9. [NQ and husband] were not provided with a quote. An invoice was sent to them after works commenced, after the first payment had been made. The invoice did not contain any information about their rights to cancel the contract at any time, nor were they advised orally of their rights.
10. NN, director of P Ltd, and TN, salesperson, attended the first hearing on 28 April 2023. They stated [NQ and husband] were advised verbally of the cooling off period and cancellation policy. However, as written notice was not provided when the agreement was made, nor was it on the invoice, and as oral advice is disputed, I find it unlikely [NQ and husband] were given this information. I therefore find P Ltd in breach of their obligations under section 36L.
11. Section 36M of the Act states a consumer may cancel an uninvited direct sales agreement at any time if the supplier failed to comply with section 36L, and under section 36P, once a contract has been cancelled, the supplier must repay all money paid.

What is the value of work completed by P Ltd?

12. NQ arranged for three other arborists to provide an estimate of the value of works completed by P Ltd. Prices obtained were \$2760, \$4013.50 and \$9142, being an average of \$5305.16 inclusive of GST. Comments on the reports provided indicate the price of \$35,000 is unjustified and that a team of 3 or 4 trained arboricultural workers with the appropriate equipment could have completed the job more efficiently in less time.
13. P Ltd did not provide any evidence to indicate the price charged was reasonable. Mr M, representing P Ltd at the second hearing, stated it was a lot of manual work and they had up to 10 people working on the site. The staff however are not qualified arboricultural workers.

Contributing to the cost was the need to accommodate the workers and their families at a nearby motel.

14. On the evidence that has been presented, I find a reasonable price for the work to be in accordance with the three estimates provided by NQ. I find no evidence to support the price paid.

Is NQ entitled to a refund?

15. Section 36N of the Fair Trading Act states a contract can't be cancelled if the failure to comply with the obligations under section 36L is minor and does not materially prejudice the consumer. However, as I have found [NQ and husband] were not advised of their rights at all, and as work started immediately without giving them time to consider the contract, I find they have been materially prejudiced. I therefore find [NQ and husband] were entitled to cancel the contract under the provisions of section 36M(1)(b) and that they are entitled to a refund under the provisions of section 36P.
16. NQ has claimed a refund of \$30,000, being the limit of the jurisdiction of the Disputes Tribunal. Section 43 of the Fair Trading Act enables the Disputes Tribunal to make order following breaches of that Act. In view of the findings above, I order P Ltd pay NQ the sum of \$30,000.
17. NQ was of the view that the balance paid of \$5000 was adequate compensation for the work done. Overall, I find that to be fair and reasonable in view of the estimates provided by other contractors.
18. The order is made against the company only, being the party contracting with [NQ and husband].

Referee: K. Edwards

Date: 1 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 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>.