



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 398**

**APPLICANT**      **OD**

**FIRST  
RESPONDENT**      **MW**

**SECOND  
RESPONDENT**      **FW**

**The Tribunal orders:**

The claim is dismissed against both respondents.

Reasons

1. In May 2022 OD and his husband were gifted a \$1000.00 voucher for [restaurant] in [suburb]. The voucher was to expire in May 2023. OD says they tried to book using the voucher but received no reply to their emails. He noted that [restaurant] did not take bookings by phone as a matter of policy and their online booking system did not accommodate gift vouchers because it required a non-refundable deposit to be paid. The restaurant closed in June 2023.
2. In February 2023 OD requested a refund in lieu of use of the voucher which the restaurant declined, suggesting that if OD and his husband no longer wanted to dine there, they could consider selling, donating or gifting the voucher to someone else (having previously offered to assist with confirming a booking).
3. Neither respondent attended the hearing, and I note that the address provided for them with the claim is the address of the former restaurant so it is possible that they have not been served notice of the claim. The restaurant appears to have been operated by the limited liability company, E Ltd, which is registered at the same address, has FW as its sole director, and is described as a 'restaurant operation'. OD did not wish to join E Ltd as a third respondent – there is a note on the Companies Register that the company is overdue in its filing obligations and may be removed.
4. OD contends that MW and FW should be personally liable to refund the value of his voucher because they were running an operation that made it difficult/impossible to book using a voucher, that the advertising for the restaurant was very much centred around them personally so they should not be able to 'hide behind' a company, and because they did not front for the hearing today so should be held accountable.
5. The legal basis for a claim of this kind would be either a breach of contract and/or a failure of guarantee under the Consumer Guarantees Act and/or misleading or deceptive conduct of some kind under the Fair Trading Act.

6. A cause of action under the Fair Trading Act could potentially include directors and/or staff of the company if they personally engaged in misleading or deceptive conduct alongside or for the company. However there was no tangible evidence to support OD's claims in this regard.
7. Even if there was an established basis for a claim against the respondents personally, OD has not been able to provide much evidence of the problem his claim is based on, that is attempting to book multiple times before expiry of the voucher and being unable to because of [restaurant]'s booking systems.
8. He emailed the restaurant on 7 February 2023 stating that his husband had "emailed this address numerous times to organise claiming this voucher. He has received no response. I have called your listed number several times – no response and no answer service". He received no response to the 7 February email so emailed again on 13 February 2023 requesting a refund for the voucher and compensation.
9. G from [restaurant] responded the same day asking for details of the email address previous booking requests had been sent from. OD declined to supply his husband's email address (from which all attempts at booking prior to 7 February 2023 had apparently been made), stating that by that time they had reached a state where they would not enjoy an experience at [restaurant]. G advised that the voucher was non-refundable and offered to facilitate a booking at the restaurant.
10. I note that the email OD sent on 7 February had a typo in the restaurant's email address – he wrote [redacted] instead of [redacted] which is probably why he did not receive a reply to that email. OD did not supply any previous emails that his husband had sent to [restaurant] because he says they could no longer be accessed.
11. In all these circumstances I find that neither the substance of the claim nor any potential personal liability against either respondent has been proven on the balance of probabilities so the claim is dismissed.

**Referee Perfect**

**Date: 8 September 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>.