



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 132

APPLICANT **ON**

RESPONDENT **MB Limited**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. The parties agree that ON was the successful bidder for four lots of American coins. Each lot contained 16 coins and in total ON paid \$366.00 for all four lots containing a total of 64 coins. The coins were sold by an on-line auction, from photos of the groups of coins. ON said that two of the coins, one dated 1798 and one 1799, were not in the bags of coins that he received. He claimed compensation of \$3,800.00.
2. The issues to be resolved are:
 - (a) Did MB Limited breach the contract by failing to provide the 1798 and 1799 coins?
 - (b) If so, what loss can ON show he is entitled to be compensated for?

Did MB Limited breach the contract by failing to provide the 1798 and 1799 coins?

3. ON said that he had MB Ltd courier the coins to MD because it was a business and so was a more secure address from which he could collect the coins. When the coins arrived, he opened the package in front of LM, an employee of MD, and some other people, so they could verify what it was that he received. ON said he had a gut feeling that not all the coins would be as shown in the photo and so decided he needed to open the package in front of witnesses. He noticed that the 1798 and 1799 coins were missing and were replaced by two other coins not of that year. He had LM check that the coins were not there, and he confirmed they were not.
4. LM attended to give evidence by telephone. He said that he had known ON for around 36 years as over that time ON was a customer. He said that he did not himself handle the parcel, however, thought it remained sealed when it was given to ON. LM was serving customers at the time and was also working on the computer. He did not recollect that anyone else looked at the coins. He thought the event occurred this year in January or February.
5. The auction, however, concluded on 9 October 2022 and the package was sent soon thereafter.
6. TU, director of MB Ltd, said that in this case it would have been most unlikely that a coin could be swapped out before the parcel was sent to ON. He said he reviewed the camera footage and was satisfied it could not have occurred for these coins. He also explained the detailed procedures MB

Ltd followed to ensure that each lot was separately handled so that the purchaser received exactly what they bid for.

7. The onus is on ON to prove that he did not receive what he auctioned for. On the facts of this case there needs to be clear and convincing evidence that two of the coins were not sent. From the evidence provided, I find that ON has not discharged the burden of proof that he bears. LM is not an independent witness as he has a long relationship with ON and has a vested interest in keeping ON's custom. LM thought the parcel was delivered three or four months ago, when it was delivered almost seven months ago. LM also said he was the only person who was there inspecting the coins. However, ON clearly recalled other people present who also inspected the coins. The inconsistencies between ON's account and LM's persuades me to accept the consistent account from TU that all of the coins in the photos were sent to ON.

What loss can ON show he is entitled to be compensated for?

8. ON has not shown that MB Ltd failed to send him the 1798 and 1799 coins and therefore I do not need to determine the loss that ON can show he incurred as a result. However, for the sake of completeness, if ON had successfully shown that he had not received what he purchased, then I would not have been satisfied that he had proven the amount of loss that he claimed.
9. ON paid \$5.63 for the 1798 coin and \$6.25 for the 1799 coin (calculated by taking an average of each lot). TU said that the coins were not sold as being authentic, and fake coins are common. In his case, the coins were owned by an estate and other coins in that estate sold to other buyers had been tested and none of them came back as containing any silver.
10. TU said that MB Ltd offered to take all the coins back and refund ON his purchase price, however, ON wanted to keep the coins. Section 18 of the Consumer Guarantees Act 1993 however, provides that if a good fails to comply with its description, then the consumer may reject the goods or be paid for their reduced value below what they paid. ON did not provide any evidence of what the unauthenticated coins were worth and how much less they would be worth without the two coins that he said were not sent.
11. I accept TU's evidence that the value of the coins was assessed by the public on-line auction, as there were other bidders. The other bidders did not place the high value on the 1798 and 1799 coins that ON thought they might be worth if they were authentic. If I needed to assess the value of the coins, I would not have accepted ON's claim that they may have been authentic and may have also been found to be in good condition and so could possibly get a higher price as what some of the coins were advertised at on online auctions in the States.

Conclusion

12. As ON has not proven his claim it is dismissed.

Referee: Cowie DTR

Date: 5 May 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>.