



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 214

APPLICANT OOJ

RESPONDENT QD Inc

The Tribunal orders:

The claim is dismissed.

Reasons

1. OOJ is in the business of running poker events. In April 2022 OOJ was approached at one of their events by BE who apparently introduced himself as the manager of QD Inc.
2. BE entered into a contract with OOJ to run weekly poker nights at QD Inc. OOJ sent a written contract to him which was never signed but which records the details of the agreement formed, including the fees payable to OOJ. BE's mobile phone and personal email address were recorded on the written document and that is where both the contract and the invoices were sent to.
3. The poker nights were advertised on QD Inc's National Body SB's website and continued for a period of 7 weeks, before OOJ began to chase payment of their invoices, which had not been paid.
4. The events ceased after the SB discovered that the invoices were made out to the SB. The SB states that at no time has BE been employed by the SB or been on the Board or committees of the SB and that he had no authority to enter into contracts on behalf of the SB.
5. EO, manager of QD Inc, stated that BE was a member of the club (and an undischarged bankrupt) and had approached him to ask if he could book the club on Sundays to run poker nights. EO says booking the venue is a service they offer to members, and events put on by members will commonly be advertised on the SB website.
6. OOJ claims \$4542.50, which includes the invoiced amount of \$1581.25, \$1811.25 for the remaining period of the contract and \$1150.00 for time spent chasing the debt.
7. The issue to be determined is whether or not QD Inc entered into a contract with OOJ. If BE had actual authority to act as an agent for the SB, then this dispute would not have arisen – I am satisfied based on the information put forward that he did not have actual authority to bind the SB, even though he apparently told OOJ that he did.
8. The hearing was adjourned because OOJ wished to see evidence from the SB to prove that they had not employed BE during the relevant period. While the evidence the SB presented

was not ideal, being simply a printed page of names of employees and therefore not verifiable as being an accurate record from their system, I find that the list combined with verbal statements from both EO, Manager, and NI, Board Chair, at the hearings, is sufficient for me to accept that BE was not employed by SB. OOJ states that BE introduced himself as the Manager of QD Inc, but I note that this is the position that EO holds and that information is publicly available on the SB website. I also note that it is on public record that BE received a prison sentence in August 2022 for dishonesty and forgery offences.

9. There is still a question about whether or not BE had apparent authority to enter into the contract, that is, did the SB engage in any conduct that made it possible to infer that BE had authority to act on their behalf. I find that they did not –BE did not have a SB email address, there is no evidence that he was driving a SB vehicle at any point or that he had SB business cards or other ID in his name. It appears he simply told OOJ that he could enter a contract with them on behalf of the SB. It is significant that he used a personal email address and a personal phone number in his dealing with OOJ.
10. Further, running an event at premises that are available for hire or for use by members (as opposed to strictly private premises) is not sufficient to bind the owner of the premises (and the running of the event occurred after the contract had already been formed). Although I accept that the advertising of the events on the SB website was consistent with what OOJ thought was happening (that they had engaged with the SB), the advertising also occurred after the contract had already been formed, and I find that it was formed with BE directly, not with the SB for all the reasons outlined. The claim is therefore dismissed.

Referee Perfect
Date: 20 June 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>.