



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 669

APPLICANT S Ltd

RESPONDENT NG

**SECOND
RESPONDENT** N Ltd

The Tribunal orders:

1. N Ltd is removed as a respondent.
2. NG is to pay the sum of \$1,837.35 to S Ltd on or before Thursday 14 December 2023.

Reasons:

1. In October 2022, S Ltd engaged NG to conduct a telemarketing campaign for its interior design business, and paid a deposit of \$805.00. In November, S Ltd paid invoices for \$221.60 and \$810.75 for databases of leads to be used in the campaign. The campaign was supposed to start in November 2022, but NG delayed for various reasons, and S Ltd now seeks a refund of the \$1,837.35 paid to her.
2. S Ltd's claim was originally filed against NG, but N Ltd was joined as second respondent at the previous hearing since its name was used on the invoices. However, N Ltd's representative ND informed the Tribunal and confirmed in the hearing that NG has no connection with that company and is unknown to ND. NG was the director of a company named NGD Ltd that was removed from the Companies Register in 2021. The correct respondent is therefore NG herself, and N Ltd is accordingly removed as a respondent at S Ltd's request.
3. NG did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issue to be determined is whether S Ltd should receive a full refund. S Ltd provided copies of the invoices, and evidence of its correspondence with NG. After the claim was filed, NG offered to pay a refund by instalments, but no refund has been received.
5. I consider that S Ltd is entitled to cancel the contract due to unreasonable delay. Cancellation does not result in an automatic refund (CCLA s 42) but the Tribunal has the power under CCLA s 43 to grant relief such as a refund if it is just and practicable to do so. In the absence of any evidence to the contrary, I accept that S Ltd has not received any value from the contract and therefore conclude that a full refund should be paid.

Referee: E Paton-Simpson

Date: 23 November 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 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>.