



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 21

APPLICANT **S Trust**

RESPONDENT **MU**

The Tribunal orders:

MU is to pay the S Trust \$6,969.00 by 1 March 2024.

Reasons

1. The S Trust is a registered charitable trust. The Trust owns and operates the [Location's museum] at [address]. The building also houses the [Location's library].
2. The building is in need of painting. The Trust obtained a government grant for the project, but the funding was only sufficient for painting the windows, which was (and still is) the most urgent concern.
3. The trust obtained quotes for the work from local painters. MU provided a quote in August 2022. The Trust accepted SU's quote.
4. SU required a deposit of \$6,969.00 to obtain materials. The Trust paid SU that amount on 25 June 2023.
5. SU was on site for two days. He waterblasted, and he applied tape around two windows.
6. SU did not return to site. The Trust has been unable to contact him.
7. The Trust's claim seeks a refund of the deposit.
8. The hearing took place by phone on 12 February 2024. NN represented the Trust and was assisted by GN (museum manager) at the hearing.

Findings

9. SU repudiated the contract by making it clear by his actions that he did not intend to carry out his obligation under the contract. The trust is entitled to cancel the contract.¹
10. Where a contract has been lawfully cancelled, a court or tribunal may grant "relief" to either party.²

¹ Section 36, Contract and Commercial Law Act 2017 ("CCLA")

² Section 43 CCLA

11. My finding is that it is appropriate in this instance to grant relief by way of a full refund of the deposit. The Trust has received no benefit from the minimal amount of work that SU carried out. The Trust has incurred significant inconvenience as a consequence of SU's failure to perform the contract.

12. SU is to pay the S Trust \$6,969.00.

Referee: Nicholas Blake

Date: 12 February 2024



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>.