



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

District Court

[2023] NZDT 454

**APPLICANT**      **SB**

**RESPONDENT**    **UC Ltd**

**The Tribunal orders:**

UC Ltd is to pay the sum of \$18,797.27 to SB on or before 14 September 2023.

**1. Reasons:**

On 20 April 2018, SB signed an agreement to work as an independent contractor for UC Ltd, a real estate agency. She was the selling agent for three townhouses to be built at [address]. The sale and purchase agreements were signed in 2018, but the building work was not completed until April 2022, and the properties were settled in May 2022.

Meanwhile, UC Ltd closed its business and stopped trading in May 2019. SB and the other employees of the company went to work for other agencies. The company remained registered awaiting some late settlements so that the deposits could be disbursed from the trust account.

SB remained in contact with the purchasers of the townhouses, and was also in contact with Mr T, one of the directors of UC Ltd. On 14 April 2022, SB emailed Mr T to let UC Ltd know that the townhouses had been completed and that she was expecting to receive commission as the selling agent. SB conducted the pre-settlement inspection. However, UC Ltd sought legal advice and disbursed the deposit without paying any commission to SB.

SB now claims commission of \$17,978.64 plus interest at 14% per annum. The issues to be determined are whether she is entitled to the commission and, if so, whether interest is payable.

**2. Is SB entitled to the commission?**

Clause 42 of the contract provides that, when the contract ends, commission is payable only if the sale and purchase agreement becomes unconditional within 30 days of termination, and if payment is received by UC Ltd and authorised to be released within three months of termination.

UC Ltd submitted that SB's contract was terminated the moment she signed a contract with another agency, in which case the commission period had long since expired. UC Ltd noted that SB left before the business closed its doors, and did not follow the majority of the team members to their next position.

However, SB took a different view regarding termination. Clause 39 of the contract allows either party to end the contract by two weeks' notice in writing. Clause 40 allows UC Ltd to end it immediately by written notice in certain circumstances. SB submitted that her contract was never terminated, because neither party gave written notice ending the contract.

I have considered whether there was an implied term that the contract would end automatically if an agent signed with another agency. A term may be implied if there is evidence of a clearly established custom. However, no such evidence was produced, and to the contrary SB gave evidence that [real estate company] had paid out commissions for properties with long settlements after it went into liquidation.

Another situation in which a term may be implied is where the term is so obvious that it "goes without saying". However, it is not at all obvious that an independent contractor agreement would be regarded as automatically terminated due to the contractor signing with a new agency, at least in the circumstances where the imminent closure of the business had been announced, everyone was seeking new work, and there were outstanding sales needing to be handled.

It is notable that the UC Ltd directors did not behave consistently with a belief that it was "obvious" the contract had ended. Mr T gave evidence that he told SB until the last minute that she would get paid. Although Mr T told SB that he did not look after the administrative and legal side of the business, I consider that he had apparent (if not actual) authority as a director of the company to assure her that she would be paid, and that she relied on that assurance by remaining in contact with the purchasers and handling the pre-settlement inspection.

Furthermore, Mr T forwarded SB's email of 14 April 2022 to the other directors at her request, and one of them gave her an email address for "all lawyer correspondence", but there was no indication until after settlement that commission would not be paid. This silence would have reinforced SB's belief in Mr T's assurance that her work would be remunerated.

In all the circumstances, I conclude that the contract remained on foot for limited purposes while long settlements were pending, and that SB is entitled to be paid the commission under the contract.

### **3. Is interest payable?**

I could find no contractual provision for interest. However, the Tribunal has discretion to award interest under s 20(1) of the Disputes Tribunal Act 1988, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016, for the whole or any part of the period from when the cause of action arose to the date of the order. I consider that interest should be paid from 9 June 2022, which comes to \$818.63.

The total sum payable is therefore \$18,797.27.

**Referee: E Paton-Simpson**

**Date: 31 August 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>.