



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 307

APPLICANT TB

APPLICANT UB

RESPONDENT HF

The Tribunal orders: HF is ordered to pay TB and UB the sum of \$2,000.00. Payment of this sum is ordered no later than 7 July 2023.

Reasons:

- 1) In December 2022, the applicants bought a puppy from the respondent. HF is a breeder. The sum paid by the applicants for the puppy was \$1,300.00.
- 2) On 2 January 2023, the puppy started to show certain health issues; in particular, a low intake of fluids. The puppy was taken to a veterinarian and, subsequently, the specialist veterinary clinic at Massey University. The puppy was diagnosed with congenital hypodipsia. By way of paraphrase, the veterinary advice the applicants received was to the effect that the puppy's prognosis was very poor, and that, to sustain the puppy, veterinary costs would be incurred at the level of several thousands of dollars. A decision was made to euthanise the puppy.
- 3) The respondent denies liability. HF does not accept that the puppy had the condition known as congenital hypodipsia and says that there can be "no certainty about that." The applicant decided to euthanise the puppy without consultation. There was an offer of a replacement. If the puppy had been returned to her, it "would have been treated and cared for by [the respondent] appropriately or otherwise rehomed."
- 4) The relevant law is the Consumer Guarantees Act 1993 ('the Act'); in particular, the guarantee [section 6] of 'acceptable quality.' The issues to be determined by the Tribunal are:
 - a) Was the puppy supplied by the respondent to the applicants of 'acceptable quality?'
 - b) If not, what remedy are the applicants entitled to?
- 5) An initial question, for consideration in a case such as this, is whether the respondent was 'in trade,' and thus, a 'supplier' for the purposes of the Act. I am satisfied that she was a trader (albeit at a very modest level), even if this was the first occasion HF bred, and sold dogs, with a view to making a profit. The evidence indicated the prospect of the respondent breeding, and selling the results of that breeding, in the future.

- 6) It follows that the applicants had an expectation that the puppy would be of 'acceptable quality.' In context, this would mean, in my view, that the puppy would be free of any significant congenital conditions that would likely pose the risk of substantial veterinary costs for the applicant-consumers. The respondent's evidence that the puppy was, when it was with her, in good health, and had been checked by a vet is noted, but cannot be especially relevant to what happened later, subsequent to the sale.
- 7) The evidence overwhelmingly establishes that some 10 days after the sale, this puppy underwent a rapid, and sudden, decline in its health, characterised by severe dehydration. It underwent a battery of tests at Massey University. The professional advice the applicants received, subsequent to these tests, indicated a high probability of liver damage, and the prospect of brain, and heart, damage. The prognosis was poor in the extreme.
- 8) There is a report from LN, veterinarian, dated 30 March 2023 to the effect that it is her professional opinion that the puppy suffered from congenital hypodipsia. I accept this evidence. The respondent says that she has received opinions from other vets that there may be other possible explanations. No evidence has been produced from these vets the respondent says that she has consulted.
- 9) HF has referred to a certain DNA test on the puppy's mother carried out on 11 April 2023, but not submitted to the Tribunal until the day before the hearing. I would agree with the applicants that this kind of DNA test is not likely to be helpful in considering whether the puppy sold to TB and UB had the congenital condition referred to in the claim.
- 10) Further to the above, a puppy that experiences what this one did, about 10 days after a purchase, which is assessed as being likely to have the congenital condition in question, is not, I conclude, of acceptable quality for the purposes of the Act. The respondent says she was "robbed of choice," and the option of having the puppy returned, and cared for, by her, HF, or re-homed. I have to say, bluntly, that that is a totally unrealistic, and fanciful, view. At the point in time when the puppy was euthanised, it was distressed, barely stable, and had probably sustained significant organ damage. The applicants, if they had attempted to persevere with the puppy's treatment, were probably facing the prospect of veterinary costs of several thousands of dollars.
- 11) The applicants' decision to euthanise the puppy was, in my view, understandable, justified, and, above all, humane. In real and practical terms, I believe the applicants had little, if any option.
- 12) Having found that the puppy was not of 'acceptable quality,' the applicants are entitled to compensation. The scheme of remedies in sections 16-23 of the Act available to a consumer, as against the supplier of a good, allow for a right to a refund, and compensation for consequential loss, where a failure to meet a relative guarantee is of a 'substantial character.' I find that the latter requirement is clearly met in this case.
- 13) It is correct that a right to a refund is, generally, dependent on the good that has been supplied being able to be returned to the supplier. That is, obviously, not possible here because the puppy has been euthanised, and I re-affirm what I believe I have made clear above that that action was for entirely valid reasons.
- 14) The applicants paid \$1,300.00 for this puppy. They have received a part refund of \$500.00. I find that they are entitled to a refund of the balance of the purchase price of \$800.00. The applicants are, as stated above, also entitled to compensation for foreseeable consequential losses. Those losses are the veterinary costs which have been proved and are, respectively, \$750.00, \$240.00 and \$269.00. The total of the above sums is in excess of the claim of \$2,000.00. The respondent will be ordered to pay \$2,000.00 to the applicants.

Referee: G.P.Rossiter

Date: 8 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>.