



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 760

APPLICANT **TF**

1st RESPONDENT **NX Ltd**

2nd
RESPONDENT **TQ**
(joined)

The Tribunal orders:

TQ shall pay TF \$2,000.00 by 19 December 2023.

Reasons:

1. TF paid \$2,000.00 to NX Ltd on 27 October 2022 for an outboard motor.
2. TQ is the sole director of NX Ltd. TQ advised TF that there was a motor available if TF paid the \$2,000.00 deposit. TQ then advised TF that there was a delay obtaining the motor and on 16 November 2022, TQ advised TF that the motor was being loaded on the courier truck that day and would be there in 2 days.
3. The motor never arrived and NX Ltd nor TQ responded to contact until TF went to the police to advise of the fraudulent transaction. The police contacted TQ and he apparently advised them that he was having trouble with the motor and would be in contact with TF shortly, but he failed to do so.
4. TF filed this claim on 5 April 2023 seeking his deposit back.
5. Late on the afternoon the day before the hearing, TQ emailed the case manager and advised that the company was unable to pay TF. NX Ltd failed to appear for the teleconference hearing.
6. The hearing was adjourned to join TQ as a Respondent to the claim based on the misleading and deceptive conduct by TQ in his capacity as the sole director of NX Ltd, in breach of s9 of the Fair Trading Act 1986.
7. The teleconference hearing was reconvened and TQ attended. TQ advised that NX Ltd had stopped trading 12 months prior and that the motor had not been loaded on the courier truck on 16 November 2022 because NX Ltd could not pay the courier. TQ did not advise TF of this and

TF was not given the opportunity to pay the courier directly and receive the motor as promised, rather than be out of pocket and no motor.

8. Based on TQ's evidence and timeline, NX Ltd was insolvent when TQ asked TF for the deposit and NX Ltd was not in the position to deliver the contracted goods when the contract was formed. The deception continued with TQ providing false assurances to TF and to the police.
9. As TQ has personally engaged in misleading and deceptive conduct, which induced TF to enter into the contract, TQ can be held personally liable for the damages TF has suffered.

Referee: L. Mueller

Date: 27 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 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>.