



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 570

APPLICANT TN

RESPONDENT PO Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. TN responded to a [online marketplace] listing for a Ps5 at a promo price of \$450.00. The seller referred to themselves as PO Ltd. During a series of online interactions, and for a variety of reasons given by the seller, TN ended up paying the seller a total of \$1100.00 but has never received any goods. He claims a refund of the money paid as well as \$400.00 additional compensation for bank processing fees and time spent dealing with the matter.
2. Mr T is a director of PO Ltd and owns another company called [redacted] – he attended the teleconference hearing today. Both his companies use the trading name [redacted] and have 18 stores around New Zealand selling mobile accessories and providing mobile repair services. Mr T says they do not sell any electronic products online and that his company names have been used by scammers online since October 2021 that he is aware of, there being many individual victims of the fraudulent activity. He has reported the matter to the police, to little avail so far, and is aware of a fake [social media] account currently running under the name of his other company. There is a scam alert on the companies' genuine website alerting users to the fraudulent use of the company names on [social media] by person/s unknown.
3. The only evidence about who TN might actually have been dealing with through [online marketplace] is in the form of a photograph sent to TN by the seller, of a man holding his photo ID drivers' license next to his face. The man on the drivers' license and the man in the photograph sent with the license appear to be the same person, but of course it is not known whether he is actually the person messaging TN or whether the scammer is also fraudulently using the man's photo and ID obtained through other means. It seems unlikely that a scammer would send his real identity to TN. Mr T confirmed at the hearing today that the person in the photo is not a current or former employee of either of his companies.
4. On the basis of the information and evidence provided by Mr T, I accept and TN accepted at the hearing that it was not PO Ltd that TN was dealing with via [social media platform], rather that he has been defrauded of his money by a scam that has gone to some lengths (including using photographs of the actual mobile shops operated by the genuine companies) to impersonate real companies. The use by the seller of at least four different bank account

numbers, including from different banks, is probably the best indication from the messages available that TN was not dealing with a genuine seller.

Referee Perfect

Date: 16 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>.