



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

**District Court**

**[2023] NZDT 460**

**APPLICANT**     **TT**

**RESPONDENT**   **Q Ltd**

**The Tribunal orders:**

Q Ltd is to pay \$2026.57 to TT on or before 26 September 2023.

Reasons

1. TT had an independent contractor agreement with Q Ltd and worked for them as an associate real estate agent. He began working with Q Ltd in August 2022, the contractor agreement was signed in October 2022, and his contract was terminated without notice by Q Ltd in April 2023.
2. TT claims commission payments for two properties for which he did work while working as an associate for Q Ltd. There is a dispute about the interpretation of the commission schedule contained within the signed contract. TT also claims interest and the Tribunal filing fee (which is not able to be awarded).
3. The first property for which TT claims further commission is due is [Property 1]. TT was to receive a flat \$2000.00 for every property sold by Ms N, whose team he was working as an associate on – he was brought into the team to assist with the work on her listings including conducting open homes and covering her listings if she was away. Instead, he was paid \$500.00 when [Property 1] sold. \$1500.00 was deducted because Q Ltd paid another agent to cover his work when TT was away. TT says the other agent covered 1-2 open homes out of many, and while he was aware and agreed to a deduction being made for his absence, the amount was not discussed with him and he believes the deduction to be excessive.
4. The second property for which TT claims commission is [Property 2], the claim being for \$16,170.00. [Property 2] was another of Ms N's listings but TT had introduced the eventual buyer. That buyer had made an offer on the property before TT's contract was terminated but it was declined. The same offer was renewed and accepted by the vendor a few days after Q Ltd terminated TT's contract without the usual two weeks' notice provided for in the contract. Q Ltd disputes both TT's entitlement to commission for [Property 2], and also the amount he would have received, saying it would have been the flat \$2000.00 provided for any of Ms N's listings that sold.

5. The issues to be determined are:

- Was Q Ltd's deduction from the [Property 1] commission reasonable?
- Was Q Ltd's termination of the contract without notice justified?
- What commission would TT have been paid if Q Ltd had given him two weeks' notice of termination?
- Is Q Ltd liable to pay interest on any commissions payable?

*Was Q Ltd's deduction from the [Property 1] commission reasonable?*

6. I find that Q Ltd's deduction from TT's [Property 1] commission was reasonable. TT had agreed to Q Ltd paying another agent to cover his absence and deducting that from his commission, so even though the amount was not agreed, it was up to Q Ltd to pay someone at the rate they deemed appropriate for a week's work (as internal emails provided by Q Ltd show there was much more work carried out than the 1-2 open homes TT mentioned).
7. Q Ltd have also provided evidence to show that they paid the other agent the amount of \$1500.00 and that it was specified on her payment slip that the amount was for a week's cover for TT.

*Was Q Ltd's termination of the contract without notice justified?*

8. The contract signed by the parties provides for two weeks' written notice of termination without cause by either party and it also provides for immediate termination by the Licensee Agent in certain specified circumstances.
9. Q Ltd gave a wide variety of reasons that they considered TT's performance, attitude (particularly in terms of time spent at work versus 'time off') and skills did not meet their expectations of an associate agent. It is clear from Ms C's submissions on behalf of TT, that he was not particularly happy with the workplace culture and expectations of Q Ltd either.
10. Q Ltd has not provided much supporting evidence to back up its range of reasons above. With respect to the particular reason that they give for eventually terminating the contract without notice, Mr Q says that occurred because TT was supposed to be covering Ms N's open homes one weekend when she was away, but he arranged someone to cover him without her knowledge when she had already informed her client that he would provide cover. Mr Q says it is just not acceptable for an associate to make such a decision and it was one in a series of occasions in which TT did not prioritise work attendance. TT via his representative says he attempted to discuss the fact that he would not be available that weekend with Ms N but says she told him she was too busy to talk and to deal with her PA, which he did.
11. As a result of these events, Mr Q sent TT a WhatsApp message on 1 April 2023 (the start of the weekend in question above) advising that he would be terminating TT's contract that coming Monday. TT then received an email on 3 April stating "Q Ltd is terminating your contract for services effective immediately" and citing "that the company goals, direction and commitment differ to yours". Mr Q further says in the email that "this service that we provide requires being on call at any time, personal sacrifice and a dedication to the work not found in many other industries".
12. One of the reasons given in the contract that termination without notice can be given is where "If in the opinion of the Licensee Agent the Licensee Salesperson brings the company into disrepute by any action whatsoever". While the wording "in the opinion of" appears to give Q Ltd broad licence, it is implicit that the opinion should be reasonably held and stand up to objective scrutiny. Given that no evidence was provided by Q Ltd to demonstrate how TT's actions that weekend brought Q Ltd into disrepute (he had arranged cover and there is no suggestion that that arrangement was not adequate even if he had not followed the proper process), I do not consider it a situation that warranted immediate termination.

13. Q Ltd was free to terminate without cause at any time by giving two weeks' notice, and given the range of other reasons they offered as to why TT was not considered a good fit for their agency, they should perhaps have taken that course of action at an earlier time. Mr Q acknowledged that he did not deal with the matter as fairly as he could and apologised to TT at the hearing for the way he approached the termination.

*What commission would TT have been paid if Q Ltd had given him two weeks' notice of termination?*

14. The contract contains a commission schedule, sections of which are poorly and ambiguously worded. TT has claimed 70% commission for [Property 2] based on one of the ambiguously worded sections. However I find that 70% commission (or 70% of 30% which Q Ltd says is the meaning) does not apply and no ambiguity needs to be resolved, because that section applies only when "[TT] sells another salesperson listing" and in the context of the first two sections, that means NOT one of Ms N's listings.
15. Rather, the first line of the commission schedule applies to [Property 2], which is "[Ms N's] listing and sale will result in a commission to [TT] of \$2000...". This is consistent with payments TT had been receiving under the contract, whereby he would get a \$2000 flat payment whenever one of Ms N's properties sold, regardless of how much or how little work he had done on that particular listing.
16. The contract further provides, that upon termination commission will be payable to the Licensee "provided a Sale and Purchase agreement was signed by both parties with all terms, conditions and price accepted to the contract prior to the termination of this contract..." Q Ltd accepts that this occurred for [Property 2] within two weeks of TT's actual 'without notice' termination.
17. However Q Ltd contends that just because Ms N managed to close the deal with TT's buyers and the vendor within that two-week period, does not mean that TT would have done so, because TT had not concluded a contract at all during his time with them.
18. I consider it reasonable to assume, that if Q Ltd had given TT two weeks' notice instead of immediate termination, they may have done so without expecting/requiring or wanting him to carry out any more client-facing work. So it is quite likely that events would have transpired exactly as they did anyway, with Ms N or another agent taking over the negotiation with the vendor at [Property 2] which sounds like it needed an experienced hand.
19. As TT was going to receive \$2000.00 whether or not he concluded the deal with his buyers or whether Ms N did, and because of the way Q Ltd handled the termination combined with the fact that Ms N DID actually sell the property, I find that TT is entitled to receive \$2000.00 as if he had been given two weeks' notice by Q Ltd.

*Is Q Ltd liable to pay interest on any commissions payable?*

20. There is no obvious provision for contractual interest in the contractor agreement so interest is awarded on \$2000.00 as per the Interest on Money Claims Act 2016, being \$26.57 (using the nominal date of 6 May 2023 as the starting date as it is not known when the commission was paid to the agency).

**Referee Perfect**  
**Date: 29 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 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>.