



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 120

APPLICANT UC

RESPONDENT QG and RG

The Tribunal orders:

QG is to pay \$15,000.00 to UC on or before Friday 24 March 2023.

Reasons:

1. UC is a registered breeder of [Dog Breed]. He said he imported into New Zealand a [Dog Breed] with a sought after and rare gene [redacted]. He entered into a written contract with QG for her to use his dog over one of her bitches. The agreement was that QG would pay \$2,000 as a deposit with a further \$4,000 on the 28th day when the pregnancy was confirmed. Additionally, it was an express term of the contract that no puppy was to be sold as a breeding dog from the litter (but subsequent generation puppies could be sold). The parties agreed in the contract that a failure to keep to the terms of the agreement would result in a penalty of \$25,000.
2. UC claimed that QG had not paid the \$4,000 on confirmation of pregnancy and had sold at least two dogs that were entire and could be used for breeding.
3. QG requested for the matter to be adjourned when it was first called so that she could provide additional evidence. In the adjournment direction I requested that the parties provide a list of any witnesses they wanted to call in the hearing not later than 10 days before the hearing. QG did not provide the names of any witnesses and did not attend the continued hearing. The hearing therefore continued in her absence.
4. The issues to resolve the claim are;
 - (a) Who were the parties to the contract?
 - (b) Did QG breach the contract by failing to pay the mating fee on confirmation of the pregnancy?
 - (c) Did QG breach the contract by selling breeding dogs?
 - (d) If so, what loss can UC prove he has incurred that he is entitled to be compensated for?

Who were the parties to the contract?

5. The parties agreed that the contract was between UC and QG.

Did QG breach the contract by failing to pay the mating fee on confirmation of the pregnancy?

6. QG agreed that she had not paid the \$4,000 mating fee on confirmation of pregnancy and that she owed UC that amount. The sum of \$4,000 is therefore added to the amount of amount of this order.

Did QG breach the contract by selling breeding dogs?

7. QG said she sold two puppies from that litter that were born on 4 September 2022. She agreed they were sold still entire as the puppies were too young to castrate. She wanted to be given an opportunity to provide evidence that the purchasers would desex them, however, QG did not provide that evidence.
8. The written agreement provided that “no puppies including “keepers” are to be sold as breeding dogs from this litter”. It was for QG to ensure that she complied with that term. QG confirmed that she had sold two of the puppies that were entire and therefore could be used for breeding.
9. I find that QG breached the express term by selling two dogs without ensuring that she complied with her promise to UC that they only be sold without the ability to use them for breeding purposes.

What loss can UC prove he has incurred that he is entitled to be compensated for?

10. In the contract the parties agreed that if any term was breached then a penalty of \$25,000 would apply. UC said he reduced his claim to \$11,000.00 for the two puppies instead of \$25,000.00 because he desired to come to a resolution with QG.
11. UC provided evidence that he sold [Dog Breed] puppies when they were one week old for \$6,500 and had a waitlist for them. He said that if he was to sell a puppy as a breeding dog, he would not sell the dog for less than \$12,000 and it could be as high as \$25,000. NJ, also a registered [Dog Breed] breeder attended as a witness and expected that a breeding dog would sell for between \$10,000 to \$15,000.
12. UC therefore considered that his claim for \$11,000 to be compensated for two dogs sold in breach of the agreement was fair and reasonable. I find that UC has proven his loss of \$11,000 and therefore that amount is added to the amount of this order.

Conclusion

13. As UC has proven that QG breached the contract by not paying the mating fee and selling two dogs without desexing them, an order is made for the amount of his claim being \$15,000.00.

Referee: K Cowie DTR

Date: 8 March 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>.