



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 641

APPLICANT **ZI**

RESPONDENT **DM**

The Tribunal orders:

ZI's claim against DM is struck out.

Reasons:

1. The parties are directors and shareholders of a company called DD Ltd, each with a fifty per cent. share in the company. The respondent withdrew \$9,587.17 from the DD Ltd's bank account. The applicant requests that the Tribunal:
 - a. Orders that the respondent repay DD Ltd \$9,587.17.
 - b. Orders that the respondent's attorney stops harassing the applicant and that the respondent provides evidence as to why she has appointed an attorney.
 - c. Orders that the respondent cooperates with the applicant to wind up DD Ltd.
2. After the claim was filed the applicant increased her claim to \$11,447.14 and by a further \$5,000.00 for her time to pursue the claim against the respondent and the stress she has suffered.
3. The respondent was represented by RQ. This representation was approved by the Tribunal prior to the second hearing.
4. The issue to be determined at today's hearing was whether the Tribunal has jurisdiction to hear this matter.

Does the Tribunal have jurisdiction to hear this claim?

5. The Disputes Tribunal does not have jurisdiction to hear every claim that is filed. Its jurisdiction is limited by the Disputes Tribunal Act 1988 (DTA). Under section 10(1) of this Act, the Tribunal only has power to hear claims founded on contract, or on tort if they relate to the loss or injury of any property or the recovery of any property.
6. With respect to the order that the respondent repay DD Ltd for money withdrawn from its bank account, I note that DD Ltd is not a party to this claim. I also note that even if DD Ltd was a party, there was no evidence provided to the Tribunal that the money withdrawn by the respondent was either in breach of any agreement with either the applicant to DD Ltd, or it was converted by the respondent, that is, taken from DD Ltd without its knowledge. I say this as the respondent is a fifty per cent. shareholder and there was no evidence regarding what approvals

were needed or protocols that should have been followed before any funds were withdrawn from DD Ltd's bank account which both parties had access to.

7. If the respondent is in breach of her duties as a director or shareholder of the company, that is a matter that should be argued under the Companies Act 1993 or alternatively, as a breach of fiduciary duty. The Tribunal has no jurisdiction for matters arising pursuant to the Companies Act now for matters arising under the law of equity.
8. Further, I note that the orders that the Tribunal is able to make are limited to those set out in section 19 of the DTA. The DTA does not empower the Tribunal to issue an injunction, that is, require or restrain the doing of an act or course of conduct.
9. The applicant also claimed \$5,000.00 for their time, effort and stress suffered in bringing their claim to the Tribunal as well as \$180.00 for the Tribunal's filing fee. Section 43 of the Disputes Tribunal Act 1988 only allows for a party to claim a refund of these costs in certain limited circumstances, none of which apply in these circumstances.
10. As the Tribunal does not have the jurisdiction to hear the applicant's claim, it must be struck out.

Referee: K. Armstrong
Date: 14 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>.