



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 2

APPLICANT AS

RESPONDENT EI Ltd

The Tribunal orders:

EI Ltd is to pay AS the sum of \$44.00 on or before 28 February 2023.

Reasons

1. AS ordered a grape plant from EI Ltd nursery in [Town], and paid \$44.00 including shipping. She supplied her address to EI Ltd but unfortunately EI Ltd supplied the incorrect address to its courier company so the plant was (presumably) delivered to AS's neighbour at [Address].
2. AS explained at the hearing today why she did not want to approach that neighbour to attempt to retrieve the plant when the mistake in the address became evident. While practically it would be an easy enough thing in most circumstances to ask one's neighbour if they have received a delivery meant for you, there is no legal obligation on the customer to do so and AS has provided good enough reasons today as to why she did not want to have any contact with that neighbour at all.
3. EI Ltd did not attend the hearing today so I make this order in their absence.
4. The Consumer Guarantees Act 1993 provides guarantees to consumers that goods will be of acceptable quality and services will be provided with reasonable care and skill (among other guarantees).
5. Arranging delivery of the plant to AS was a service being provided by EI Ltd alongside supplying goods. This was not a failure of the courier company, it was a mistake made by EI Ltd in supplying the wrong address to the courier company and I find that that was a failure of reasonable care and skill by EI Ltd.
6. As EI Ltd has not remedied the failure of guarantee I find that EI Ltd is liable to pay to AS a refund for the plant and the consequential loss of the cost she paid for shipping, a total of \$44.00 claimed.
7. AS also wished to claim the \$45.00 filing fee, stating that the Tribunal's online information said that would be ordered to be paid by the other party if she was successful. I have invited her to email through a copy of that page, because it will need to be corrected if she has indeed read that in our pre-hearing information. Section 43 of the Disputes Tribunal Act 1988 states that costs, which include the filing fee, shall not be awarded against a party to any proceedings before the Tribunal (except in very limited circumstances which do not apply in this case).

Referee Perfect
Date: 24 January 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>.