



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 313

APPLICANT EU

RESPONDENT UX

The Tribunal orders:

UX is to pay the sum of \$4,990.00 to EU on or before Friday 13 July 2023.

Reasons:

1. In December 2022, UX (the supplier) provided a written quotation to EU (the consumer) to supply and install a 5m electronic driveway gate for \$10,887.00. The consumer paid a deposit of \$2,500.00, and the supplier did a couple of hours' work prior to Christmas digging a trench, putting in a post and burying some electric cable. He said he would return in January to complete the job, but has never returned despite the consumer's efforts to chase him up.
2. The consumer filed a claim in March 2023 for \$4,990.00 by way of a refund and damages, and has since had the work done by another supplier.
3. The supplier did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issue to be determined under s 30 of the Consumer Guarantees Act 1993 (CGA) is whether the supplier has failed to complete the work within a reasonable time. On the evidence before me, I accept that the supplier failed to complete the work within a reasonable time. I also accept that the supplier failed to remedy this failure within a further reasonable time when required to do so by the consumer. The consumer is therefore entitled to the extra cost of having the work completed by another supplier.
5. The consumer provided evidence that it cost a total of \$14,950.00 to have the work completed by another supplier, whereas the unpaid balance of the contract price was only \$8,387.00. The amount required to put the consumer into the position he would have been in if the contract had been performed is therefore \$6,563.00. This exceeds the amount claimed, and no more than the \$4,990.00 notified to the supplier can be awarded without adjourning to give further notice. For these reasons, I find that the supplier must pay \$4,990.00 to the consumer.

Referee: E Paton-Simpson

Date: 23 June 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 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>.