



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 127

APPLICANT KQ

RESPONDENT UN

The Tribunal orders: UN is ordered to pay KQ the sum of \$2,300.00. Payment of this sum is ordered no later than 2 June 2023.

Reasons:

- 1) In October 2021, the applicant bought a dog from the respondent. UN is a dog breeder. The price paid was \$3,000.00. At the time of the sale, the dog was 6 months old.
- 2) The dog ([dog]) has been assessed as having a condition called 'luxating patella,' a condition affecting the animal's knees. The applicant seeks compensation for, and with respect to, past, ongoing, and expected veterinary costs, as well as reimbursement of the purchase price.
- 3) The respondent acknowledges the dog sold to the applicant has the health condition referred to above. However, the respondent disagrees that she should be liable for the ongoing costs of treating the problem in question. The respondent says that as soon as she was contacted by the applicant with respect to the problem that has led to this claim, a refund was offered (by telephone).
- 4) The relevant law is the Consumer Guarantees Act 1993; in particular, the guarantee [s.6] that a good supplied to a consumer should be of 'acceptable quality.' The issues to be determined by the Tribunal are:
 - a) Is the dog sold by the respondent to the applicant consistent with the above statutory guarantee?
 - b) If not, what remedy should the applicant be entitled to?
- 5) The respondent breeds, and sells dogs, and makes money from doing so. As a preliminary point, I find that the respondent is 'in trade' for the purposes of the Consumer Guarantees Act and this transaction was subject to that Act.
- 6) UE of [Veterinary Clinic] in a report dated 25 October 2022 states that she examined [the dog] on 19 July 2022 and "confirmed that the dog has bilaterally luxating patella, assessed as grade 2 in the left leg and grade 1 in the right leg." As part of the medical management of this condition [the dog] was referred to another veterinarian for rehabilitation exercises to help strengthen the surrounding musculature and supporting structures, which will, apparently, assist in preventing further damage to her joints.
- 7) It is likely that the above condition was hereditary and that there was a strong prospect, if not inevitability, that [the dog] would develop it. This is therefore quite distinguishable from the

situation of an animal that sustains an injury, or an infection after being bought. I infer that this condition may significantly affect [the dog]'s mobility and require ongoing cost to treat.

- 8) I do not need to analyse, in detail, the statutory definition of the term 'acceptable quality.' In context, that definition means that a good will be of acceptable quality if it as free of defects as a reasonable consumer, fully acquainted with the 'state and condition' of the good, would regard as acceptable. In my view, a reasonable consumer 'fully acquainted' with the nature of 'luxating patella' would not regard a puppy that has, or is very likely to develop, that condition as being reasonably acceptable.
- 9) The respondent suggests that [the dog]'s contracting of 'luxating patella' could be attributed to environmental factors. I do not consider there is any credible evidence to support this explanation. As stated above, it is likely that it was inherited.
- 10) Attempting to apply the principles of the Consumer Guarantees Act to a family pet is potentially problematic. However, the basic point that needs to be made is that a family pet is a 'good,' and the principles of the Act must be applied, as for any other kind of 'good.'
- 11) I am able to find, without, I think, too much difficulty that the pet puppy sold by the respondent to the applicant is not of 'acceptable quality' for the purposes of the Act. There is, however, possible difficulty is in determining what should be the consequences of that, with respect to the consumer's remedies. The scheme of available remedies in sections 18-23 of the Act, by way of overview, are a) damages for reduction in value, b) compensation for the cost of remedying a defect, and c) if the failure to meet a relative statutory guarantee is of a 'substantial character,' refund, or replacement.
- 12) There is a conflict in the evidence regarding an alleged telephone call between the parties of late January 2022. The respondent says that, in this phone call, she offered to take [the dog] back, and provide a refund. The applicant denies that any such conversation took place. I do not need to resolve this conflict to rule on this dispute. However, it is the respondent's clear position now (if not earlier) that she is prepared to provide a refund. This is unacceptable to the applicant if it means returning [the dog]. The position of the respondent, as just stated, may be something I can legitimately take into account in my consideration of the overall 'substantial merits and justice' of this matter.
- 13) The applicant's expectations of the possible outcomes of this process are, I have to say, unrealistic, at a quite high level. KQ wants a refund of the purchase price of \$3,000.00, but to also keep the 'good' that was supplied to him. That is totally at variance with the principles of the Act. He also seeks compensation for expected surgery costs. In this regard, there is, firstly, no tenable evidence of what any such costs might be. Secondly there is not even evidence, I could accept, that surgery is really going to be necessary. There is some reference to this, as a possibility, in an email from veterinarian EB of 11 February 2022. The much later and more proximate report of UE [see paragraph 6 above] only suggests 'rehabilitation exercises' which is precisely what has happened.
- 14) Perhaps most problematic is the applicant's request that the respondent meet the future cost of [the dog]'s rehabilitation for her entire expected life. In addition to the remedies set out in paragraph 11) above, it is correct that a consumer may be entitled to damages for foreseeable consequential loss. Leaving aside contingencies with respect to [the dog]'s expected life span, I would fundamentally not see an award of future economic loss, of this kind, as being consistent with the spirit, and intent, of the Act. It would be analogous to a consumer saying that, with full knowledge of a good's defect, he will continue using the good, but expect the supplier to indefinitely, and for the future, meet all additional costs arising from the defect.
- 15) The applicant, in support of this part of his claim, refers to the mention on the website of 'Consumer NZ' of a case in the Disputes Tribunal in which a Tribunal referee apparently awarded the purchaser of a dog (bought for \$1,000.00) a total of \$7,449.00 including for ongoing veterinary costs. Assuming the 'reporting' of this case is accurate (this being a point about which I cannot

make any assumption) I would have to say that, respectfully, it indicates an approach to the assessment of consequential loss under the Act with which I do not concur. For the guidance of the applicant, decisions of Dispute Tribunal referees are not binding on one another, any more than a District Court judge can be bound by a decision of one of his, or her, judicial brethren.

- 16) Further to the above, if a good supplied to a consumer is not of 'acceptable quality,' that consumer will be entitled to a remedy. In the absence of a consensual outcome (with the supplier) the nature, and extent, of the remedies awarded will be a matter for the discretion, and judgment, of the presiding judicial body. In this case, the applicant is, without question, entitled to compensation. However, the assessment of that should be reasonable, and proportionate. I consider that, as stated above, a relevant factor is the respondent's 'offer' of a refund subject to this dog being returned, and re-homed. That is something the applicant rejects (he wants to keep the dog, but get his money back) obviously because of the emotional attachment that has formed. When a good supplied is an animal, the blunt, possibly even harsh, reality is that it is open to the owner of that good to, so to speak, draw a line under the prospect of continuing costs. If an owner of an animal chooses not to do that, then he will have to bear those ongoing costs.
- 17) The parties appear to agree that the reduced, or diminished, value of this puppy, bearing in mind its condition, would probably be in the order of around \$2,000.00, with the dog being worth therefore, \$1,000.00. In my view, and looking at this matter 'in the round,' I consider a fair and reasonable outcome commensurate with the 'substantial merits and justice of the matter,' [section 18(6) Disputes Tribunal Act 1988 refers] would be an award of \$2,000.00 for diminished value, together with reimbursement of the 4 [Veterinary Clinic] invoices filed with the claim, each for \$75.00, for the period from 4 November 2022 to 20 January 2023. This is a total of \$2,300.00.

Referee: GP Rossiter

Date: 10 May 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>.