

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Rahul Ramesh Kapadia (Applicant)
AND Namel Ltd (in receivership) formerly Rolle Ltd (Respondent)
REPRESENTATIVES Rahul Ramesh Kapadia in person
Michael Gould, for Respondent
MEMBER OF AUTHORITY Vicki Campbell
MEMORANDA RECEIVED 11 July 2005 from Respondent
28 July 2005 from Applicant
DATE OF DETERMINATION 18 November 2005

DETERMINATION OF THE AUTHORITY

- [1] I take this opportunity to apologise to the parties for the delay in concluding this matter. Unfortunately other work priorities have prevented me from addressing this matter earlier.
- [2] Mr Kapadia was partially successful in his claim against Namel Ltd. In my determination issued on 9 June 2005 I reserved the question of costs. Both parties have now filed memoranda to assist the Authority in the exercise of its discretion in relation to costs.
- [3] Mr Kapadia was unsuccessful in three out of his four claims before the Authority. For his claim for bonus on commissions earned Mr Kapadia was successful in receiving an order for the payment of \$15,000 as a secured creditor with the outstanding \$12,242 remaining due and owing as an unsecured creditor.
- [4] Mr Gould, on behalf of the respondent, submitted that the respondent had previously accepted that the claim for the bonus on commissions was payable. The documents submitted by Mr Kapadia show that he was aware in February that an amount of \$15,000 was due to him as a preferential creditor. On this basis, Mr Gould submits that an award of costs should be made in the respondents' favour.
- [5] Mr Kapadia opposes any award of costs against him and says that he also was exposed to legal costs in pursuing his claims against the respondent. He says further that while the amount of the outstanding payments were discussed as early as September 2004 the respondent took little or no steps to reach agreement on the matters.

[6] Given the nature of this matter and the extent to which both parties were successful, I conclude that it is appropriate that costs should lie where they fall.

Vicki Campbell
Member of Employment Relations Authority