

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Jo-Anne Baines (Applicant)

**AND** Rosedale Park Limited (formerly EVP North Shore Limited)  
(Respondent)

**REPRESENTATIVES** Jo-Anne Baines In person  
No attendance for Respondent

**MEMBER OF AUTHORITY** Robin Arthur

**INVESTIGATION MEETING** 13 October 2005

**DATE OF DETERMINATION** 13 October 2005

**DETERMINATION OF THE AUTHORITY**

[1] This written determination confirms my oral determination and order made at or around 10.20am this morning.

[2] The applicant ended her employment with the respondent on 5 November 2004. Under s. 131 of the Employment Relations Act 2000 the applicant claims for recovery of commission payments she says she earned for certain placements arranged when working for the respondent's recruitment business.

[3] The applicant initially made her claim against both EVP North Shore Limited – previously known as EVP Recruitment (North Shore) Limited (company no. 1255985) – and EVP Holdings Limited (company no. 1164068). The latter company has since changed its name to Reef Services Limited. Reef Services Limited went into liquidation on 4 September 2005. Under s. 248 of the Companies Act 1993 the applicant's claim could not proceed against Reef Services Limited. The applicant wished to pursue her claim against EVP North Shore Limited. That company changed its name on 5 September 2005 to Rosedale Park Limited. The entitling of this matter has been amended accordingly.

[4] The respondent's director, Roger Brian Pierce, told me in teleconferences on 8 August and 15 September 2005 that the respondent acknowledges its debt to the applicant but the respondent does not have the money to pay it.

[5] The problem was not resolved in mediation on 30 August 2005. It now falls to the Authority to determine the application.

[6] The respondent's statement in reply, dated 28 July 2005, acknowledges liability to the applicant for the sum of \$6108.75. The applicant confirmed in a teleconference with the Authority

on 8 August 2005 that she accepts that the outstanding commission payments to which she is entitled is the sum of \$6108.75.

[7] Mr Pierce did not attend the meeting scheduled to begin at 10am today. I am satisfied that the respondent was properly notified of the meeting. A notice of meeting dated 15 September 2005 was despatched by courier to the respondent's registered office and address for service – 19a Rautara Street, Orakei – on 15 September. It was accompanied by a member's minute regarding the teleconference with Mr Pierce and Ms Baines on 15 September. In a letter to the Authority dated 26 September Mr Pierce acknowledged receipt of the member's minute. The minute also states the time, date and location of the meeting. The notice of meeting included notice that if the respondent did not attend the meeting, the Authority may, without hearing evidence from the respondent, issue a determination in favour of the applicant.

[8] I waited for 15 minutes before starting the meeting. I then took an affirmation from the applicant who confirmed the date of the termination of her employment and her acceptance of the amount of \$6108.75 as the amount owing to her. I then advised the applicant that I would order the respondent to pay the amount which it acknowledged owing.

[9] At or around 10.25am a support officer of the Authority entered the meeting to advise she had just taken a phone call from Mr Pierce stating that he had arrived at Auckland Airport on a flight from Christchurch and wanted to attend the meeting. He offered no reason for not having attended the meeting at the notified time other to say that he could not call from his cellphone while in the air. I instructed the support officer to call Mr Pierce and tell him it was too late to attend the meeting and that I had already determined that an order would be made. I am satisfied on the basis set out in paragraph [7] of this determination that Mr Pierce was aware of the time, date and location of the meeting and had made no prior effort to advise that he might be late or unable to attend.

[10] Further there is no reason to believe that the respondent's position is now any different from that given in its statement of reply acknowledging liability to the applicant for a certain sum. Mr Pierce made no use of the opportunity provided to him after 15 September to provide by 30 September a witness statement or any further relevant documents that might suggest the respondent's position is different.

[11] I find that the respondent owes the applicant the sum of \$6108.75 in payment of outstanding commissions. The respondent is ordered to pay the sum of \$6108.75 within 7 days of this determination.

Robin Arthur  
Member of Employment Relations Authority