

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 Kapadia In person
Michael Gould, for Respondent
MEMBER OF AUTHORITY Vicki Campbell
INVESTIGATION MEETING 9 June 2005
DATE OF DETERMINATION 9 June 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is a dispute between Mr Rahul Kapadia and Namel Ltd (In Receivership) (“Namel”) over the interpretation, operation and application of an employment agreement.

[2] Mr Kapadia was employed by Rolle Limited in May 2003 as a Senior Real Estate Agent. That company changed its name to Namel Ltd on 1 September 2004.

[3] Clause 7 the employment agreement and as amended on 23 September 2003 set out Mr Kapadia’s remuneration package as comprising a retainer of \$100,000 per annum, paid monthly. In addition to the retained Mr Kapadia was to receive:

*In addition to your salary a bonus of 10% of your salary will be payable to you based on profitability of the branch (50% weighting) and staff retention, **your own targets** set in conjunction with the CEO, staff happiness and client satisfaction (balance 50% weighting). The latter 50% by agreement and discussion with the CEO.*

[4] The agreement also provided for the payment of commission on the basis of 50% of “...gross commissions paid to Knight Frank...” less any franchise fee and disbursements earned in excess of \$200,000 gross fees.

[5] On 6 September 2004 staff were advised via email that the business operations of Rolle Frank Knight would cease as from 9 September 2004 and a new company would take over all operations on 10 September 2004. In relation to the payment of bonuses, employees were advised:

Bonuses to the 9th Sept will be paid when due by the old company and bonuses from 10th Sept will be paid by the new company when due. These will be based on a pro rata basis and budgets for the new company will be based on the same pro rata basis.

[6] On 8 September 2004 the fact of the business operations ceasing was confirmed in writing in a letter addressed to Mr Kapadia. The pro rating of bonus payments was reconfirmed.

[7] On 13 September 2004 Namel Limited was put into receivership.

[8] Mr Kapadia says Namel owes him bonus payments equalling \$80,620. There are four distinct claims comprising this amount and I will deal with each part of Mr Kapadia's claim individually.

[9] At the investigation meeting Mr Iain Shephard, on behalf of the Receiver, advised the Authority that Namel would be going into liquidation on Monday, 13 June 2005.

Bonus of commissions already earned by the Company until 9 September 2004

[10] Under this heading Mr Kapadia claims \$27,242. Mr Shephard told the Authority that it is accepted that this amount is owing. In accordance with s.30 of the Receiverships Act, Mr Kapadia is entitled to receive a maximum payment of \$15,000 less tax, as a preferential claim, while the outstanding amount of \$12,242 will remain due and owing to Mr Kapadia as an unsecured claim.

I find that it is not disputed that the money is owed to Mr Kapadia. Namel Ltd (In Receivership) is ordered to pay Mr Kapadia an amount of \$15,000 gross.

Bonus on profitability

[11] Mr Kapadia told the Authority that based on the accounting records he had analysed, the Auckland branch where he was employed, was profitable for the period 1 April 2004 to 9 September 2004. He claims \$4,438 under this heading.

[12] The accounts Mr Kapadia relied on in making his claim, were as at 31 July 2004. Mr Shephard advised the Authority that after his appointment as receiver he discovered a number of amounts due and owing by Namel had not been accounted for as accrual's in the companies accounts. Mr Shephard provided copies of documents showing at least \$107,000 worth of accruals which had not been accounted for. Mr Shephard told me there is likely to be a \$150,000 shortfall to creditors and for that reason the Receiver's applied to have the company liquidated.

I find that the Branch financial accounts had failed to take into account more than \$107,000 in accruals and was therefore not profitable. As the payment of the bonus on profitability was conditional on the Branch making a profit, Mr Kapadia's claim must fail.

Bonus on Commissions finalised after 9 September 2004

[13] There are two amounts claimed under this heading. One for \$13,365 and one for \$35,625.

[14] The employment agreement requires, as a pre-requisite for the payment of commissions, that gross commissions due to the company must be "...paid to Frank Knight...". I am satisfied that the two commissions due to Frank Knight from which Mr Kapadia would have earned his commission have not been paid to the company.

Mr Kapadia's claim for \$13,365 and \$35,625 fails.

Summary of Orders

[15] Namel Ltd (In Receivership) is ordered to pay Mr Kapadia an amount of \$15,000 gross.

Costs

Costs are reserved.

Vicki Campbell
Member of Employment Relations Authority