

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 69/10  
5132005

BETWEEN	KAREN LOWE Applicant
AND	FIRST STREET BODY CORPORATE MANAGEMENT LIMITED (FORMERLY FIRST STREET PROPERTY MANAGEMENT LIMITED.) Respondent

Member of Authority:	Yvonne Oldfield
Representatives:	Ms Lowe in person Tony Woodworth, Director, for Respondent
Investigation Meeting:	20 July 2009
Submissions received:	27 July, 4 August, 5 August 2009 from Applicant 30 July 2009 from Respondent
Determination:	16 February 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] This employment relationship problem arose in May 2008 when Ms Lowe was made redundant from her job as a property manager after only five months of employment with the respondent. Ms Lowe alleges that the redundancy was neither genuine nor fair.

[2] The respondent company, First Street Property Management Limited (“First Street”) set up in the business of strata and body corporate management in 2006. Until late 2007 it remained a relatively small operation, with all its work handled by its two directors (Tony Woodworth and Nick Wevers) and one administrative staff member.

[3] In late 2007, a “*Bluechip*” subsidiary contracted the provision of certain property management services to First Street. This contract represented a significant expansion of First Street’s operations and to handle the new work, the respondent employed two property managers (Ms Lowe and one other) who had been associated with the Bluechip group of companies, along with additional administrative staff, to start work at the end of 2007.

[4] The events of early 2008 concerning the voluntary liquidation of the Bluechip group are public knowledge. One consequence was the automatic termination of the contract between First Street and the Bluechip subsidiary in question. All was not immediately lost, however. It was now open to First Street to make direct approaches to owners of properties it had previously been contracted to manage and to negotiate an on-going property management role for First Street.

[5] In the short term, First Street was very busy, fielding calls from anxious property owners seeking information and taking the initiative in approaching others and offering its services. Family members of directors and staff (including Ms Lowe’s own daughter) were pulled in on a temporary basis to help.

[6] Over the weeks to come, regular updates were provided to Ms Lowe and other staff to inform them of the number of properties retained within First Street’s portfolio. By the end of April this stood at just over 300 compared to the almost 800 which First Street had originally been contracted to manage. This was not enough, as the Directors saw it, to sustain the salaries of two property managers. Ms Lowe’s colleague was made redundant on 30 April. Then, over the next couple of weeks, the Directors decided that they could manage without any property manager at all. They decided that most of the work Ms Lowe would otherwise have done would be absorbed by the administrative staff and the rest would be handled, as necessary, by a contractor.

[7] On 22 May Ms Lowe was told that she too was redundant. The news was delivered in a telephone call. In that call she was asked if she was interested in coming back to work part time as a contractor but she did not follow up this suggestion. She

told me that she no longer trusted the directors and did not think contracting would work.

[8] At the time her colleague was made redundant Ms Lowe believed the number of properties on the books to be sufficient to justify the retention of one property manager. Having considered her job secure at that point, she could not see what had changed significantly by 22 May. This alone led her to question the genuineness of the redundancy. There were also, however, further factors which contributed to her mistrust.

[9] On 28 April 2008 Ms Lowe had been involved in a work related car accident. At first her injuries appeared relatively minor and she made a brief return to work on 5 May. However it transpired that she had sustained damage to her shoulder that prevented her from driving or using a computer, and her doctor advised that she would need to be off work for some time. She went on leave on 12 May and on 20 May provided an updated medical certificate for on-going leave. Meanwhile Mr Wevers had talked to her about her sick leave arrangements and told her that the company would be paying her only what it was obliged to and nothing more. Ms Lowe found this attitude disappointing. When she was made redundant just two days later she concluded that the real trigger for the termination of her employment was a desire to replace her whilst on leave.

[10] Ms Lowe also told me that she later found out that before telling her of the redundancy Mr Wevers spoke to her ACC case manager and made inquiries about what effect any termination for redundancy might have on Ms Lowe's ACC entitlements. She sees this as a breach of her privacy. Mr Wevers told me that he did this out of a concern to ensure that the respondent did nothing to cause Ms Lowe to lose her earnings related compensation. He said he and Mr Woodhouse did consider the possibility of deferring the redundancy until Ms Lowe returned from her leave (as there was no cost to them while she was on earnings related compensation) but they thought there were benefits for her in knowing the reality of her situation earlier, and potentially starting to look for work whilst still on leave.

[11] Ms Lowe remained on earnings related compensation from the beginning of May 2008 until the beginning of August 2008 when she obtained work for a period of

four months (to early December 2008.) This was at a lower rate of pay than she had received at the respondent. By way of remedies Ms Lowe claims the difference between what she earned in this role and what she would have earned over the same period had she still been employed by the respondent. She also claims compensation for hurt and humiliation arising out of the termination of her employment.

### **Issues**

[12] Ms Lowe remains of the view that the termination was not in reality a redundancy but was the result of her accident and her need for time off work. She also objects to what she says was the unfair way her termination was handled. She told the Authority that there was no consultation. She was simply rung at home and presented with the news which made it particularly distressing. She also says that her distress was compounded by the fact that her situation was discussed with her case manager without her knowledge.

[13] If Ms Lowe is successful in establishing that the termination was not genuine or was unfair a third issue (remedies) will then fall for determination.

#### **(i) Was the redundancy genuine?**

[14] Ms Lowe's suspicions about the genuineness of the redundancy are understandable given its juxtaposition to her accident and leave taking. I accept that the two events were not entirely unconnected. Her absence focussed the directors' minds on the question of how to manage her work, leading them to conclude that they did not need a property manager at all.

[15] It remained however that there were only 300 properties on the books and the number was continuing to trend down. This was a marginal level of business to sustain the employment of a full time property manager. Other (administrative) staff performed a range of work outside of the property management business. They were needed to keep those other enterprises operating. It was reasonable for the respondent to retain them in preference to its remaining property manager.

[16] I accept that the redundancy was genuine.

**(ii) Was the process fair?**

[17] As noted already, Ms Lowe's injury left her unable to drive. She was spending her leave at her home in Whangamata (it had been her practice, whilst working for the respondent, to spend weekends in Whangamata and stay in Auckland mid week.) When Mr Wevers rang her on 22 May 2008 he told her that he and Mr Woodhouse wanted to talk to her but were unable to come over to Whangamata. Ms Lowe felt she had no choice but to agree to a telephone conversation. She was then told that she was redundant. She said this came as a shock and she would have preferred a face to face discussion.

[18] Mr Wevers explained that he would not normally have told someone that they were redundant over the phone but did so because of the difficulty of arranging a meeting in the circumstances. He said Ms Lowe had been kept well informed of the respondent's situation throughout her employment and the news should have been no surprise. He said that if she had any alternative to the contractor suggestion, he would have expected her to volunteer it.

[19] Ms Lowe told me she wanted the opportunity for some sort of dialogue about her redundancy however she acknowledged that she did not have any more to offer in the way of solutions to the situation.

[20] I accept that the decision was a surprise to Ms Lowe. During the period to the end of April the directors had kept staff informed of the situation with the property management business. However Ms Lowe had not had an update in the time between her colleague's redundancy on 30 April and her own on 22 May. There was no indication to her that the situation was worsening or that the trend continued downwards (although it is now clear that it did.)

[21] I accept that the redundancy was not handled as well as it should have been however I do not consider that the errors in the process were sufficiently serious as to have affected the end result. This is a case of relatively minor procedural failings which have compounded the distress felt by Ms Lowe but which do not call into question the genuineness of the redundancy.

[22] As for Mr Wevers call to ACC I am not satisfied that it amounted to an unjustified action. He neither solicited nor disclosed information which was personal to Ms Lowe, and it was reasonable of him to seek information about the effect a termination would have on entitlements to earnings related compensation.

### **Remedies**

[23] Since the dismissal has been found to be genuinely for redundancy there can be no award of lost earnings.

[24] As for the claim for hurt and humiliation, I conclude that this matter calls for only a modest award of remedies. Ms Lowe has suffered distress as a result of the actions of the respondent but she knew that the background to those actions was out of the respondent's control. In all the circumstances I consider an award of \$2,000.00 for hurt and humiliation is appropriate.

**[25] The respondent is ordered to pay to Ms Lowe the sum of \$2,000.00 pursuant to section 123 of the Employment Relations Act 2000.**

Yvonne Oldfield

Member of the Employment Relations Authority