

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 20
5325282

BETWEEN	DANIEL WADSWORTH First Applicant
AND	ANTONY REX Second Applicant
AND	AC DESIGN ARCHITECTURE LIMITED Respondent

Member of Authority:	Rachel Larmer
Representatives:	Both applicants in person Isaac Latimer for Respondent
Investigation Meeting:	14 January 2011 at Tauranga
Determination:	17 January 2011

DETERMINATION OF THE AUTHORITY

- A** AC Design Architecture Limited is ordered to comply with the terms of its Settlement Agreement with Daniel Wadsworth dated 29 September 2009 by no later than 4pm on Monday 24 January 2011.
- B** AC Design Architecture Limited is ordered to pay Mr Wadsworth \$71.56 as reimbursement of his filing fee.

Employment Relationship Problem

[1] On 29 September 2010 Antony Rex and Daniel Wadsworth (“the applicants”) entered into separate Settlement Agreements under section 149 of the Employment Relations Act 2000 with their former employer AC Design Architecture Limited (“the respondent”).

[2] The applicants said that they compromised their claims in order to quickly get paid the amounts that the respondent had agreed to pay each of them under their respective Settlement Agreements. They have struggled to get the amounts they are owed from the respondent which resulted in both of them applying to the Authority for compliance orders.

[3] Mr Rex appeared at the investigation meeting in Tauranga and confirmed that he had now finally been paid what he was owed under the terms of his Settlement Agreement with the respondent. Accordingly, he sought to withdraw his application for a compliance order.

[4] Mr Wadsworth confirmed that the respondent still owes him \$1500 under the terms of his Settlement Agreement. He believes that the respondent will not pay him unless he gets a compliance order.

[5] Isaac Latimer is one of the respondent's employees. He was instructed by Alex Carlton, sole director of the respondent, to attend the investigation meeting on behalf of the respondent.

[6] Mr Latimer is a Senior Architectural Technician. He has no financial expertise or experience. He had not reviewed the respondent's books and had no information about its financial position.

[7] Mr Latimer was unable to explain why Mr Wadsworth had still not been paid what he was owed and Mr Latimer agreed that should have occurred by now. Mr Latimer's only explanation was that the respondent had *a couple of big bills in the last week of December last year* but he could not explain why the settlement monies had not been paid prior to that. No details of this alleged expenditure was provided.

[8] Mr Latimer said he had not been briefed by Mr Carlton, so could not give any evidence about why Mr Wadsworth's Settlement Agreements had not been complied with.

[9] I was told Mr Carlton was not at the investigation meeting because he was in a meeting at his office in Tauranga. Mr Latimer did not know when Mr Carlton had arranged that meeting.

[10] I am satisfied that the parties entered into Settlement Agreements which under section 149 of the Employment Relations Act 2000 were final binding and enforceable. The evidence satisfied me that the respondent has not fully complied with the terms of its Settlement Agreement with Mr Wadsworth.

[11] Mr Wadsworth is entitled to be paid the money that is still outstanding. Given the length of time that has elapsed since the Settlement Agreement was entered into, the efforts that have been made by Mr Wadsworth to obtain the money he is still owed, and the respondent's failure to provide a satisfactory explanation for not fulfilling its obligations under the Settlement Agreement, I consider it appropriate to exercise my discretion to order compliance.

Order

[12] The respondent is ordered to pay Mr Wadsworth the amount outstanding (currently \$1500) under the Settlement Agreement by no later than 4pm on Monday 24 January 2011.

Costs

[13] The parties are not represented so no issue arises as to costs.

[14] Mr Wadsworth incurred a filing fee for this application, so he is entitled to be reimbursed for that. Accordingly, the respondent is ordered to pay Mr Wadsworth \$71.56 for the filing fee.

Rachel Larmer
Member of the Employment Relations Authority