

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 86
5288079

BETWEEN	KAREN HARRIS First Applicant
AND	ROBYN COUSINS Second Applicant
AND	NORTH DUNEDIN HOLDINGS LIMITED and MAITLAND BOOTH Respondents

Member of Authority:	Philip Cheyne
Representatives:	Nicholas Eketone-TeKanawa, Counsel for Applicants Maitland Booth, for Respondents
Investigation Meeting:	19 May 2011 at Dunedin
Further information:	1 & 13 June 2011 from the Respondents 13 June 2011 from the Applicants
Determination:	17 June 2011

SECOND DETERMINATION OF THE AUTHORITY

[1] On 22 July 2010 the respondents entered into a record of settlement pursuant to s.149 of the Employment Relations Act 2000 by which the company promised to pay \$20,000.00 on or before 20 December 2010 to the applicants and Mr Booth guaranteed that obligation.

[2] The respondents failed to comply with their respective obligations so the applicants sought a compliance order. In a determination dated 24 May 2011 I adjourned the matter for a period to allow the respondents an opportunity to file affidavit evidence in support of Mr Booth's contention that neither he nor the

company had the ability to meet their obligations at present. I also indicated that a compliance order would issue otherwise.

[3] What has been received by the Authority is a copy of a letter dated 21 December 2010 from a barrister to Mr Booth about an unrelated Timaru legal claim by Mr Booth which apparently has good prospects of eventual success; and a letter dated 31 May 2011 from a firm of accountants to an employment law advocate who the respondents indicated might be representing them in these proceedings, but who has not so advised the Authority. The accountant's letter asserts that Mr Booth's financial position is precarious and the company is technically insolvent with no current income stream. There is an offer by Mr Booth to pay \$250.00 per month pending an improvement in his circumstances based on some prospects coming to fruition by December 2011.

[4] In response, counsel for the applicants points out that there is no sworn information about either the company's or Mr Booth's financial circumstances and says that the offer is insufficient.

[5] There is a further email from Mr Booth repeating information about the Timaru legal claim, asking for compassion because of the Canterbury earthquakes and indicating a preparedness to bring his accountant to a further hearing.

[6] I should deal first with the point about the Canterbury earthquakes. Aside from the following issue there is no evidence to suggest that Mr Booth and his company have any business interests in Canterbury. During the investigation meeting in May 2011 there was no suggestion by Mr Booth that earthquakes had contributed to the respondents' failure between 21 December 2010 and 21 February 2011 to meet their obligations. The only relevance is that there was apparently a mediation scheduled for 22 February 2011 to deal with Mr Booth's unrelated legal claim (referred to above). I am told that the mediation was abandoned as a result of the earthquake and is yet to be rescheduled. I understand that Mr Booth's barrister cannot access his office in a Christchurch CBD building which may delay that matter. If the contention is that Mr Booth was relying on the proceeds of his unrelated legal claim to meet the respondent's obligations, it does not explain the breach between 21 December 2010 and 21 February 2011 nor is the record of settlement in any sense

conditional. In my view this is not a case where the Canterbury earthquakes should affect the outcome.

[7] I have not been provided with any evidence to support Mr Booth's contentions so matters are no further forward despite the adjournment to allow Mr Booth the opportunity to prove his contentions.

[8] It is difficult to know with any degree of certainty whether the respondents can meet their obligations but are reluctant to do so perhaps preferring other creditors; or whether they cannot meet their obligations. An overview of the entire proceedings leads me to think that Mr Booth makes promises but then does not meet them unless pressed to the limit. That tends to indicate that Mr Booth might personally or through his company be able to meet his obligations but chooses not to. A compliance order is an effective remedy in such a situation. The risk of imprisonment, substantial fines and sequestration for further non-compliance does bring matters to a head. On balance, I consider that there should be a compliance order.

Compliance order

[9] Pursuant to s.137(1)(a)(iii) of the Employment Relations Act 2000, the respondents are ordered to comply with the terms of settlement between them and the applicants dated 22 July 2010 by paying to the applicants the sum of \$20,000.00.

[10] The respondents must comply with this order within 14 days from the date of service on them by the applicants of a copy of this determination.

[11] The respondents must pay interest on \$20,000.00 at the rate set by the Judicature (Prescribed Rate of Interest) Order 2008 of 8.4% commencing on 21 December 2010 until that sum is paid in full.

[12] Annexed to this determination is an extract from s.140 of the Act explaining the consequences of a failure to comply with this compliance order.

Philip Cheyne
Member of the Employment Relations Authority