

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 230
5459875

BETWEEN JASWANT BIELAWSKI
Applicant

A N D DMI HOMESTAGERS
LIMITED
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Eska Hartdegen, Counsel for the Applicant
Dinah Malyon, Director and Shareholder of Respondent

Investigation Meeting: On consideration of papers

Submissions Received: 9 June 2014 from the Applicant
6 and 9 June 2014 from the Respondent

Date of Determination: 11 June 2014

DETERMINATION OF THE AUTHORITY

Orders:

- A. DMI Homestagers Limited (DMI Homestagers) is ordered to comply with the Record of Settlement of 3 March 2014 by paying Ms Jaswant Bielawski \$9,000 together with costs totalling \$321.56 on or before 2 July 2014.**

Employment relationship problem

[1] The parties entered into a Record of Settlement on 3 March 2014 which was signed by a mediator in accordance with the requirements of s.149 of the Employment

Relations Act 2000 (the Act). Ms Jaswant Bielawski and Ms Dinah Malyon signed the settlement.

[2] Under the terms of that Record of Settlement, DMI Homestagers was to pay Ms Bielawski:

The sum of \$9,000 in equal instalments of \$3,000 on 20th March 2014, 20th April 2014 and 20th May 2014.

[3] DMI Homestagers has not made any of the payments due under the Record of Settlement. Ms Bielawski seeks a compliance order against DMI Homestagers for the amount of \$9,000 together with costs.

[4] The parties were given the opportunity to provide further information to the Authority with respect to the application for compliance order. DMI Homestagers provided a bank statement with a record of transactions between 19 and 21 May 2014 which shows various payments, including payments to PLK Investment and a transfer to DMI Trust.

[5] DMI Homestagers offered to pay Ms Bielawski the amount of \$9,000 by monthly instalment of \$500 but this was not accepted by her.

[6] I consider that Ms Bielawski's entitlement to be paid in accordance with the terms of the Record of Settlement entered into by the parties in March should be given priority by DMI Homestagers over various voluntary arrangements it has elected to enter into.

[7] The financial information provided to the Authority by DMI Homestagers in support of its claim that it has insufficient means to pay Ms Bielawski is inadequate. DMI Homestagers provided one bank statement recording transactions over a 3 day period which in my view is insufficient to establish its inability to pay the debt due.

[8] Further, from the bank record provided it shows payments are being made to PLK Investment and DMI Trust. I have reviewed the Companies Office records in respect of both DMI Homestagers and PLK Investments Limited. Ms Malyon is a director of DMI Homestagers and she and PLK Investments Limited are its shareholders. Ms Malyon is a director of PLK Investments Limited and she and Mr John Malyon are its joint shareholders.

[9] The Record of Settlement is a final, binding and enforceable legal document. For mediated outcomes to be successful, parties need to have confidence that the terms of a s.149 Record of Settlement will be complied with.

[10] I consider it appropriate to order DMI Homestagers to comply with the Record of Settlement by paying Ms Bielawski the outstanding sum of \$9,000 in full by 2 July 2014. Failure by DMI Homestagers to comply with the compliance order may result in Ms Bielawski applying to the Employment Court to exercise its powers under s.140(6) of the Act. Remedies can include an order that the person in default be sentenced to imprisonment for a term not exceeding 3 months and /or a fine not exceeding \$40,000.

Costs

[11] Ms Bielawski as the successful party seeks a contribution towards her costs. I consider in the circumstances costs of \$250 to be appropriate plus reimbursement of the filing fee of \$71.56. These costs are to be paid in full by 2 July 2014.

Anna Fitzgibbon
Member of the Employment Relations Authority