

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2014] NZERA Auckland 14  
5441717**

BETWEEN

CAROL BRADLEY  
Applicant

AND

DMI HOMESTAGERS LTD  
Respondent

Member of Authority: Eleanor Robinson

Representatives: Claire Mansell, Counsel for Applicant  
Dinah Malyon, Advocate for Respondent

Investigation Meeting: 15 January 2014 at Auckland

Determination: 16 January 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] A Record of Settlement (the Settlement) was signed under s 149 of the Employment Relations Act 2000 (the Act). The parties to the Settlement were the Applicant, Ms Carol Bradley and the Respondent, DMI Homestagers Ltd (DMI). The Settlement was signed by Ms Bradley and by Ms Dinah Malyon, Managing Director of DMI, on behalf of DMI.

[2] The Settlement dated 3 October 2013 had been signed by the parties and forwarded to the Mediation Services of The Ministry of Business, Innovation and Employment (MBIE) for signing by a mediator. The Settlement had been signed by the MBIE mediator on 22 October 2013.

[3] The issue now brought before the Authority by Ms Bradley is that the Respondent has not complied with clauses 2 to 5 of the Settlement, which state:

*2 The Employer will pay the Employee (on a without prejudice and denial of liability basis) \$10,000.00 (without deduction) pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000 (“the Settlement Sum”).*

3. *The Settlement Sum will be paid by way of direct credit into the Employee's nominated bank account in two separate instalments as follows:*

a. *The Employer will pay to the Employee \$5,000.00 by 11 October 2013; and*

b. *The Employer will pay to the Employee \$5,000.00 by 25 October 2013..*

4. *The parties agree that payment of the Settlement Sum in accordance with clause 3 of this Agreement is subject to the execution of this Agreement by a Mediator. If a mediator has not executed this Agreement by 11 October 2013, the Employer will make payment of the first and/or second instalments within two days of the execution of this Agreement by a Mediator.*

5. *The Employee will provide to the Employer a Certificate of Service within seven days of the execution of this Agreement by a Mediator.*

[4] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- i. were final, binding and enforceable; and
- ii. could not be cancelled; and
- iii. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

### **Compliance Order**

[5] I am satisfied that DMI has not complied with the terms of the Settlement.

[6] Ms Malyon attributed the reason for non-payment of the outstanding sums to the poor financial situation of DMI and had produced financial information at the Investigation Meeting in support of this submission.

[7] Ms Malyon stated that she was, and remained, willing to make payment to Ms Bradley of the outstanding sums, but submitted that in the circumstances, DMI sought time to make the payments by means of instalment.

[8] Ms Bradley indicated that in these circumstances the proposal that an order for compliance by DMI be made by means of instalments was acceptable to her.

[9] I am satisfied that DMI has not complied with the terms of the Settlement and that it is just in the circumstances for an order to be made requiring DMI to comply with the Settlement, however it is agreed that those payments are to be made as follows:

*Payment of the First Amount*

[10] DMI is ordered to pay the sum of \$7,435.90 direct to Ms Bradley's legal representatives, Martelli McKegg Lawyers, which sum consists of outstanding legal fees of \$7010.90 owed by Ms Bradley in respect of the personal grievance, and a contribution of \$425.00 towards Ms Bradley's legal costs of applying for the compliance order. This sum is ordered to be paid by way of instalments into Martelli McKegg Lawyers trust account by direct credit transfer as follows:

- Weekly instalments of \$500.00 from 15 January 2014 to 28 February 2014 with the first payment being made on 15 January 2014;
- One payment of \$1,000.00 due by 7 March 2014;
- One payment of \$1,000.00 due by 14 March 2014;
- One payment of \$1,000.00 due by 21 March 2014; and
- One payment of \$935.90 due by 31 March 2014.

*Payment of the Remainder*

[11] The remainder of the Settlement amount of \$3014.10 is to be paid by weekly instalments of \$500.00 by direct credit transfer to Ms Bradley's bank account with the first instalment commencing on 1 April 2014 and continuing until payment is made in full.

[12] DMI will provide Ms Bradley with a Certificate of Service within 7 days of the date of this determination.

[13] DMI is ordered to pay Ms Bradley the filing fee of \$71.56.

[14] Compliance with the schedule of payments, provision of a Certificate of Service and payment of the filing fee, will be a full and final settlement of all outstanding matters between the parties.

[15] There will be no order for interest or penalties against DMI provided that DMI makes the agreed payments. In the event that DMI defaults on the agreed payment schedule, Ms Bradley reserves the right to seek interest and penalties.

[16] For the information of DMI, failure to comply with an order such as this one made by the Authority under s 137 of the Act may provide a basis for an application to be made by Ms Bradley to the District or Employment Court for enforcement of the order. Under s140 of the Act, where the Employment Court is satisfied that any person has failed to comply with a compliance order made under s137, the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

**Costs**

[17] No order is sought as to costs.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**