

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 4
5515800

BETWEEN CAITLIN EAST
Applicant

AND NOHANCY LIMITED T/A
DEVONPORT 7 DAY
PHARMACY
Respondent

Member of Authority: Vicki Campbell

Representatives: Allan Silberstein for Applicant
Asma Shousha for Respondent

Investigation Meeting: On the papers

Determination: 8 January 2015

DETERMINATION OF THE AUTHORITY

- A. Nohancy Limited trading as Devonport 7 Day Pharmacy is ordered to pay to Ms East the sum of \$1,700 without deduction within seven (7) days of the date of this determination.**
- B. Costs are reserved.**

Employment relationship problem

[1] Ms Caitlin East seeks an order for compliance in relation to payments due under a Record of Settlement (settlement agreement) made in mediation with her former employer, Nohancy Limited trading as Devonport 7 Day Pharmacy (Nohancy).

[2] Nohancy does not dispute the payments are owed to Ms East but seeks an order from the Authority that the amounts due under the settlement agreement be made by instalment.

[3] The parties attended a case management conference call on 9 October 2014 and agreed that further mediation would serve no productive purpose. The parties consented to the matter being determined on the papers based on the information lodged in the Authority and the submissions made by the parties.

Issues

[4] The issue requiring determination is whether the financial position of Nohancy requires an order for payment by instalments.

Background

[5] The parties attended mediation on 31 July 2014 and reached an agreed settlement of the employment relationship problems between them. The settlement was recorded in a Record of Settlement and signed by a Ministry of Business, Innovation and Employment Mediator pursuant to section 149 of the Employment Relations Act 2000 (the Act).

[6] The settlement agreement provided for payments to be made to Ms East on three dates the final payment being due and payable on 6 September 2014. The Settlement agreement also provided for immediate payment in the event that Nohancy defaulted on its obligations to pay in accordance with the agreed payment schedule.

[7] Only one payment has been received by the applicant and that amount was significantly short of the expected imbursement.

[8] Section 183(4A) of the Act empowers the Authority to exercise its discretion to order payments by instalment. The Act is clear that instalments may be ordered only where the employer's financial position requires it. The discretion should not be exercised just to convenience the employer.

[9] Ms Asma Shousha is the sole director and shareholder of Nohancy. Ms Shousha has provided the financial statements for the period 2012 and 2013 to support

her application that the Authority exercise its discretion and order the remaining payments be made by instalments.

[10] I am not satisfied the financial information provided by Ms Shousha is sufficient to establish Nohancy's financial position requires the payment by instalments of the money due.

[11] According to the financial information provided by Ms Shousha the fiscal position of the company has been precarious throughout the two year period to which the financial information applied. That means that when the parties met in mediation and agreed to a schedule of payments the company's fiscal position was the same or similar as it is today.

Determination

[12] The public interest in having terms of a settlement agreement, made and certified in mediation, honoured by the parties to that settlement agreement favours an order for compliance. Nohancy should have completed its side of the bargain by no later than 6 September 2014. Due to the time taken to finalise submissions from the parties Nohancy has gained a further four months to pay the amount due.

[13] The Act states that settlement agreements certified pursuant to section 149 are final, binding and enforceable. It is appropriate for the compliance order sought to be made.

[14] Pursuant to the Settlement agreement the full amount of the settlement is now due and payable. Nohancy Limited trading as Devonport 7 Day Pharmacy is ordered to pay to Ms East the sum of \$1,700 without deduction within seven (7) days of the date of this determination.

Further non-compliance

[15] The Authority's orders may be the subject of a further application for compliance in the Employment Court which is empowered to impose penalties for continuing non-compliance which include imprisonment, fines and the sequestration of property.

Costs

[16] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Ms East shall have 14 days from the date of this determination in which to file and serve a memorandum on the matter. Nohancy shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Vicki Campbell
Member of the Employment Relations Authority