

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 180  
5624167

BETWEEN                      BROOKE HANNINGTON  
   Applicant  
  
AND                                DMI HOMESTAGERS  
   LIMITED  
   Respondent

Member of Authority:      Vicki Campbell  
  
Representatives:            Keshila Fayen for Applicant  
   Dinah Malyon for Respondent  
  
Investigation Meeting:      On the papers before the Authority  
  
Determination:                8 June 2016

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**DETERMINATION OF THE AUTHORITY**

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- A.      DMI Homestagers Limited is ordered to comply with the Record of Settlement dated 7 April 2016 and pay the sum of \$1,500 to Ms Hannington within seven (7) days of the date of this determination.**
- B.      DMI Homestagers Limited is ordered to pay a penalty to Ms Hannington in the sum of \$1,000 within seven (7) days of the date of this determination.**
- C.      DMI Homestagers Limited is ordered to contribute to Ms Hannington's costs by paying Ms Hannington the sum of \$271.56 within seven (7) days of the date of this determination.**

**Employment relationship problem**

[1] Ms Brooke Hannington seeks an order for compliance in relation to a payment due under a Record of Settlement (the Settlement) made in mediation with DMI Homestagers Limited (DMI).

[2] DMI has failed to file a statement in reply and has not applied for leave to respond or reply to the matter. The parties were notified on 27 May 2016 that unless either party objected I would determine this matter on the papers before the Authority. Ms Hannington has asked that the matter be determined on the papers and confirmed that she had received \$1,000 as part payment of the sum specified in the Settlement.

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence received from Ms Hannington but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

**The issues**

[4] The issues requiring determination are whether:

- a) a compliance order should be made;
- b) penalties should be imposed and if so the quantum of the penalty.

**Application for compliance**

[5] On 7 April 2016 Ms Hannington and DMI reached an agreed resolution of all matters between them. The agreement was recorded in the Settlement and signed by a Ministry of Business Innovation and Employment mediator pursuant to section 149 of the Act.

[6] The Settlement required DMI to pay to Ms Hannington the sum of \$2,500 under section 123(1)(c)(i) of the Act within seven (7) days of the date of the Settlement, that is, by 14 April 2016. There is no dispute that DMI has not paid the full amount specified in the Settlement. Ms Hannington has advised the Authority that \$1,500 remains outstanding.

[7] Ms Dinah Malyon, on behalf of DMI has advised that the outstanding amount will be paid in two payments being \$1,000 to be paid on 10 June and the remaining

\$500 to be paid on 17 June 2016. This arrangement has not been agreed to by Ms Hannington who was entitled to the full payment by 14 April 2016.

[8] The parties have entered into a final binding and enforceable settlement under section 149 of the Act. Ms Hannington has applied under section 137(2) of the Act for the Authority to order DMI to comply with all of its obligations under the Settlement.

[9] I am satisfied that DMI entered into the Settlement voluntarily in the full knowledge of its obligations to pay the specified sum by the specified date. Despite knowing of its responsibilities DMI has failed to meet its obligations.

[10] I consider this an appropriate matter in which to exercise the Authority's discretion to order compliance and the application is granted. DMI Homestagers Limited is ordered to comply with the Record of Settlement dated 7 April 2016 within seven (7) days of the date of this determination by paying the outstanding balance of \$1,500 in full.

#### **Further non-compliance**

[11] 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.

#### **Penalties**

[12] Ms Hannington seeks the imposition of a penalty against DMI for its breach of the Settlement pursuant to section 149(4) of the Act. The maximum penalty the Authority can impose on a company is \$20,000.<sup>1</sup> The imposition of a penalty under section 149(4) of the Act is at the discretion of the Authority.

[13] It is generally accepted that a penalty should be imposed for the purpose of punishment and deterrence. DMI entered into an agreement to pay Ms Hannington \$2,500. Despite a number of communications from Ms Hannington, DMI failed to meet its obligations until after the Authority became involved. Even then, only part of the agreed amount was paid to Ms Hannington.

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<sup>1</sup> The Employment Relations Act 2000 section 135(2).

[14] It is important that the Authority sends strong messages to parties entering into Records of Settlement, that failure to adhere to them will not be tolerated. Parties who breach Records of Settlement can expect to face financial consequences for their breaches.

[15] The breach was for payment to Ms Hannington in settlement of matters raised by her and in relation to her employment relationship with DMI. Ms Hannington has been deprived of the money promised to her by DMI for at least seven weeks.

[16] Taking all the circumstances into account including the nature of the breach I consider an appropriate penalty to be \$1,000. Section 136 allows the Authority to order that whole or part of any penalty recovered be paid to any person.

[17] The full settlement amount was to be paid to Ms Hannington personally. Given that she has been deprived of that money I am satisfied this is an appropriate case in which to order the whole of the penalty be paid directly to Ms Hannington.

[18] DMI Homestagers Limited is ordered to pay a penalty of \$1,000 directly to Ms Hannington within seven (7) days of the date of this determination.

### **Costs**

[19] Ms Hannington is entitled to be reimbursed the filing fee on this application. Ms Hannington was represented in this matter and the Authority has evidence of the costs incurred by her in pursuing DMI for payment of the agreed settlement amount. It is appropriate that Ms Hannington receive a contribution to the costs incurred which I set at \$200.

[20] DMI Homestagers Limited is ordered to pay to Ms Hannington's a contribution to her costs in the amount of \$271.56 within seven (7) days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority