

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 89
3000599

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Applicant
AND	FREEMIND ENTERPRIZE LIMITED First Respondent
AND	GURMAIL LALLY Second Respondent

Member of Authority: Vicki Campbell

Representatives: Alastair Dumbleton for Applicant
Gurmail Lally for First and Second Respondents

Investigation Meeting: On the papers

Submissions Received: 20 March 2017 from Applicant
23 March 2017 from First and Second Respondents

Determination: 31 March 2017

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Freemind Enterprize Limited and Mr Gurmail Lally are ordered to comply with the determinations of the Authority issued on 26 May 2016 and 5 July 2016 within 14 days of the date of this determination.**
- B. Costs are reserved.**

Employment relationship problem

[1] A Labour Inspector of the Ministry of Business, Innovation and Employment (Labour Inspector) seeks compliance orders against Freemind Enterprize Limited (Freemind) and Mr Gurmail Lally.

[2] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from the Labour Inspector, Freemind and Mr Lally, 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.

Background

[3] On 26 May 2016¹ I issued a determination requiring Freemind to pay to the Labour Inspector arrears of holiday pay of \$153,522.27 plus interest on that sum and to Mr Hardeep Singh Pannu arrears of minimum wages of \$7,821.40 plus interest. I declared Mr Lally to be jointly and severally liable for paying the Labour Inspector and Mr Pannu the arrears and interest.

[4] In addition to the arrears Freemind was ordered to pay penalties of \$65,000 in total for breaches of the Employment Relations Act, the Holidays Act 2003 and the Minimum Wage Act 1983.

[5] The total arrears, interest and penalties were to be paid by 23 June 2016.

[6] In a second determination, issued by consent, dated 5 July 2016² I ordered Freemind and Mr Lally to pay legal costs of \$8,750 and disbursements of \$1,141.

[7] On 27 March 2017 the sum of \$28,000 was deposited into the Crown Bank Account by Freemind. The Labour Inspector has applied under section 137(2) of the Act for compliance orders to be made in relation to the outstanding balance for the arrears, interest and penalties.

¹ [2016] NZERA Auckland 165.

² [2016] NZERA Auckland 227.

Determination

[8] The Labour Inspector has established to my satisfaction that Freemind and Mr Lally have failed to fully comply with my determinations dated 26 May 2016 and 5 July 2016. I have today, checked the Companies Register and note that Freemind Enterprize Limited continues to be a registered New Zealand company and Mr Lally continues to be recorded as its sole director and the major shareholder of the company.

[9] A check of the LINZ register indicates that Mr Lally purchased two properties both located on the same street and next door to each other. The first property was purchased by Mr Lally and a Navdeep Singh Kullar on 24 September 2003. Ownership of the first property was transferred to Mr Lally solely and then to Mr Lally and his wife until it was finally transferred to Rajwinder Kaur Lally (Mr Lally's wife) and Navdeep Singh Kullar on 4 August 2016.

[10] The second property was purchased by Mr Lally and Kuldip Kaur Lally on 1 June 2006. On 4 August 2016 ownership of the property was transferred to Rajwinder Kaur Lally and Navdeep Singh Kullar.

[11] In a statement lodged with the Authority on 23 March 2017 Mr Lally advised the Authority that he has sold his house last year and after payment of his mortgage and all other costs was left with \$49,270. No documents have been provided to the Authority to support Mr Lally's statement that he sold either of his two properties although a transfer of ownership was made.

[12] Mr Lally also told the Authority in his statement of 23 March 2017 that he had paid the sum of \$28,900 to the Labour Inspector before lodging his statement. No funds were deposited, until 27 March 2017 when Mr Lally deposited \$28,000 into the Ministry of Business Innovation and Employment Trust Bank Account.

[13] Freemind Enterprize Limited and Mr Gurmail Lally are ordered to comply with the determinations of the Authority issued on 26 May 2016 and 5 July 2016 within 14 days of the date of this determination.

[14] The Authority's order 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

[15] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so the Labour Inspector shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Freemind and Mr Lally 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.

[16] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards, bearing in mind that this matter did not necessitate hearing and was dealt with on the papers.

Vicki Campbell
Member of the Employment Relations Authority