

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 448  
3234219

BETWEEN

NATHAN CORRIGAN  
Applicant

AND

PRIME FOCUS SECURITY  
LIMITED (IN  
LIQUIDATION)  
First Respondent

AND

LEVI MENZIES  
Second Respondent

Member of Authority: Sarah Blick

Representatives: Javana Schiphorst and Daniel Church, counsel for the  
applicant  
No appearance for the first respondent  
Lawrence Anderson, advocate for the second respondent

Investigation meeting: 5 December 2023 in Auckland

Submissions and information received: 5 December 2023 at the investigation meeting  
25 March 2024 and 14 June 2024

Determination: 26 July 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The Authority found in earlier determinations that Nathan Corrigan was unjustifiably disadvantaged and dismissed by Prime Focus Security Limited (PFS) and awarded remedies and costs in his favour.<sup>1</sup> PFS was placed into liquidation by its director and shareholder Levi Menzies in September 2022, prior to the Authority's investigation meeting and determinations. The liquidator consented to the matter

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<sup>1</sup> *Corrigan v Prime Focus Security Limited (in liquidation)* [2023] NZERA 125 and *Corrigan v Prime Focus Security Limited (in liquidation)* [2023] NZERA 253.

continuing, but has not since paid the awards and costs when requested to do so by Mr Corrigan.

[2] Mr Corrigan seeks compliance orders requiring Mr Menzies to take “the necessary steps” to ensure PFS meets its obligation to make payment of the awards and costs, and for PFS to comply with the Authority’s two previous determinations. Mr Corrigan believes Mr Menzies placed PFS into liquidation to avoid any possible financial repercussions consequent on Mr Corrigan’s claims. Mr Corrigan has also sought to recover monies from Mr Menzies as a person involved in breaches pursuant to s 142W of the Employment Relations Act 2000 (the Act). He also seeks interest on the awards and costs.

[3] Mr Menzies resists the applications. He says the liquidation was unrelated to Mr Corrigan’s claims. Mr Menzies says he has ceased to have powers, functions or duties in terms of s 248 of the Companies Act 1993, and the Authority has no jurisdiction to make a compliance order against him. Mr Menzies further submits s 142W and s 142Y are not applicable.

[4] PFS through its liquidator has not sought to respond or be represented in the present application but has given consent for it to continue.<sup>2</sup>

### **The Authority’s process**

[5] Witness statements were received from Mr Corrigan and Brett Young, a security officer and website developer. A statement from a further PFS employee was received but he did not give evidence at the investigation meeting. That statement has not been taken into account. Mr Menzies also provided a witness statement. Each witness in attendance answered questions under oath or affirmation.

[6] Following the investigation meeting, the Authority issued directions requiring the liquidator to provide further financial information to the Authority. The liquidator did not provide information within the relevant timeframe, but eventually supplied financial documents after the Authority advised a compliance order in respect of the documents was being considered. Mr Corrigan and Mr Menzies through their representatives have since commented on that information.

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<sup>2</sup> Companies Act 1993, section 248(1)(c).

[7] As permitted by s 174E of the Act this determination does not record all the evidence and submissions received, and fully considered, during the Authority's investigation 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**

[8] The issues for investigation and determination are:

- (a) Should a compliance order be issued requiring Mr Menzies to take steps to ensure PFS can make payment of the amounts due to Mr Corrigan?
- (b) Should a compliance order be issued requiring PFS to comply with the Authority's earlier determinations?
- (c) Can/should the Authority grant the application for leave under s 142Y and s 142W of the Act?
- (d) Should interest be awarded on any amounts?

### **Background**

[9] The background to Mr Corrigan's personal grievances is set out in the Authority's determination dated 10 March 2023. For the purposes of this determination, it is sufficient to record the following information.

[10] Since PFS' incorporation in May 2020, Mr Menzies has been its sole director. Mr Menzies gave evidence that he opened up a role for his partner in PFS when they moved to Auckland in around 2021, and she became a shareholder in November that year. His partner was vacated as a shareholder in early August 2022. Mr Menzies acknowledges that at all times he was the decision-maker when it came to PFS' affairs and management of its employees, including Mr Corrigan.

[11] Mr Corrigan raised a personal grievance on 17 May 2022, and lodged his first statement of problem in the Authority on 22 June 2022. PFS did not agree to attend mediation, nor did it lodge a statement in reply. PFS' previous advocate subsequently engaged and replied to the Authority's email correspondence in relation to holding a case management conference, and on 6 September 2022 asked if the parties would be directed to mediation. The Authority responded mediation would be a matter discussed at the conference. A conference was confirmed for later in September 2022.

*PFS liquidated in September 2022*

[12] The next day on 7 September 2022, by special resolution as shareholder, Mr Menzies resolved to liquidate PFS and the liquidator was appointed. The liquidator later gave consent for the original matter to continue.

[13] At the investigation meeting in the present matter, Mr Menzies gave evidence that he made the decision to liquidate as a result of the amount of debt he was in and because PFS had an “overload” of work but staff would not accept the work offered. He said he had not expected PFS to take off as it did.

[14] At the investigation meeting Mr Menzies said PFS had a business capital loan that it could not pay back of \$90,000.

[15] Mr Menzies also gave evidence that the state of the business was affecting his health badly but did not elaborate or provide documentary evidence corroborating this. He stated the decision to liquidate had nothing to do with the Authority matter. He says he did not “steal” any money from PFS.

*First liquidator’s report*

[16] On 15 September 2022 the liquidator filed their first Liquidator’s Report with the Companies Office which records:

In the statement of affairs, the Director stated that director too [sic] excessive drawings from the business. The company has also incurred substantial debt and due to not sufficient working capital, it cannot trade out the debt.

The shareholder subsequently resolved to place the Company in Liquidation.

[17] The statement of affairs section in the report says Inland Revenue was a yet to be confirmed preferential creditor with an estimated \$150,000 for realisation, and there were yet to be confirmed creditors to the amount of \$16,268. At the investigation meeting, Mr Menzies denied taking excessive drawings from PFS or advising the liquidator that he had.

*Annual report to 31 March 2022 from Mr Menzies*

[18] Pursuant to a direction from the Authority, and prior to the investigation meeting, Mr Menzies’ advocate obtained an annual report for PFS for the year ended

31 March 2022. Mr Menzies' advocate says it shows PFS' financial difficulties predated Mr Corrigan's employment relationship problem and the original Authority application. When shown the annual report at the investigation meeting, Mr Menzies' advocate said it recorded \$70,000 had been introduced by Mr Menzies, and suggested this may have been the amount of the loan rather than the \$90,000. Mr Menzies was unsure but thought it may have been. There is no reference to a loan in the annual report, save for a small \$5,500 loan to a named individual, and a small car loan of around \$2,000.

[19] For the year end March 2022, total trading income was said to be \$319,565.31. The balance sheet in the report stated PFS had total current liabilities of \$130,719.57, and total equity of (\$74,284.34). It stated shareholders had introduced funds of \$70,088, and made drawings of \$93,759 as at 31 March 2022.

*Annual report and balance sheets from liquidator*

[20] The financial information from the liquidator received after the investigation meeting included an annual report for the year ending 31 March 2021, as well as two balance sheets and a profit and loss statement for 2022.

[21] The annual report for 2021 shows PFS' total trading income in 2021 was \$126,551 and gross profit for the year was \$115,746, with total equity of (\$13,114). It records Mr Menzies introduced funds of \$39,871 and took drawings of \$43,624.

[22] A profit and loss statement shows total trading income in 2022 was \$315,925 and gross profit for the year was \$274,963, with a net profit of (\$4,712). A balance sheet as at 31 March 2022 shows PFS had total assets of \$30,474, and total current liabilities of \$92,947. It shows "L Menzies" took drawings of \$93,709, having introduced funds of \$43,334. It records total equity of (\$17,547).

[23] A balance sheet as at 28 September 2022, after liquidation commenced, shows PFS had total assets of \$16,441, and total current liabilities of \$190,273. It shows "L Menzies" took drawings of \$194,588, having introduced funds of \$65,961. Total equity is recorded as (\$50,655). That balance shows a car loan of some \$40,000 more than was shown in the March 2022 balance sheet. A profit and loss statement for the month ended 30 September 2022 shows since April 2022 income and sales dropped progressively over time, but in August 2022 PFS made a gross profit of \$17,051 and

net profit of \$7,594. Wages and salary expenses went down from \$50,435 in April down to \$9,839 in August 2022.

*Mr Menzies engages Mr Young to set up a new website*

[24] About six weeks after PFS went into liquidation, on 21 October 2022 Mr Menzies was in contact with Mr Young. Screenshots of text messages show a mutual contact put them in touch, saying Mr Menzies “wants a website for a security company sole trader”. Mr Young has worked as a security officer and gave evidence that he is trained in digital marketing and creates websites.

[25] Mr Young says he found out from Mr Menzies that the latter wanted a new website for a new security business called “L & L Security” (L&L). Mr Young says he quoted an amount to make the app, and started creating one, receiving instructions from Mr Menzies about what he wanted. Mr Menzies denies L&L had anything to do with PFS, but acknowledges engaging Mr Young to create website. The “L & L” stands for he and his wife’s first names.

[26] The text messages show Mr Menzies sent Mr Young an image with the name “L&L Security” with the words “this is my logo” on 25 October 2022. By 29 October 2022, Mr Young had set up a website domain and shared it with Mr Menzies. Mr Young has provided screenshots of various stages of creating the website between 29 October 2022 and January 2023.

[27] Mr Menzies gave evidence that he took a break after PFS went into liquidation and then started to use the name L&L when using his individual licence (or certificate of approval) and subcontracted to another security firm.

[28] By January 2023, the text messages show Mr Young asked Mr Menzies for the “best contact number” for the website, who in response sent him the same 0800 number PFS had used for clients. Mr Young also asked for some content for the website, and on 19 January 2023 in response Mr Menzies sent him the link to PFS’ “About Us” page on its website, saying it was his old company. Mr Young asked if he could use images from the PFS website, to which Mr Menzies said he could not use the image with him in uniform on the site. Mr Young stated he would “just use text and modify it” to which Mr Menzies said “Just take my name out please”.

[29] It is clear from the text messages and oral evidence at the investigation meeting that by early February 2023 the two men were considering going into business together, along with a third individual (referred to in this determination as “S”). Mr Young says he came up with an initial concept and name of “XM Security Group”, under which the three of them would operate their own entities.

[30] On 1 February 2023 Mr Menzies told Mr Young he had “my logo guy coming up with concepts” and on the same date asked what Mr Young thought of him “opening the new business account tomorrow at Kiwibank/BNZ?”. Also on the same date, Mr Menzies sent Mr Young a screenshot of an email addressed to Mr Menzies dated 19 January. The email was from a company that provides electronic safety solutions for workers and outlined costs for a lone worker security device and its associated costs, totalling over \$2,500.

[31] On 13 February 2023 Mr Menzies asked Mr Young what he thought of them “buying my old website platform and just edit it”. Mr Young believes Mr Menzies ultimately did buy PFS’ website. Mr Young referred to having searched for and reviewed PFS’ web page on the Wayback Machine website as confirmation of this, although the evidence before the Authority is not clear whether Mr Menzies in fact purchased it.<sup>3</sup>

[32] On 22 March 2023 Mr Young text Mr Menzies further about the content of the website including the link to PFS’ “About Us” website page to which Mr Menzies responded “I’d appreciate it you didn’t use content from old website” and to remove reference “XM Security” from the website. At the investigation meeting Mr Menzies said he was concerned about the L&L and PFS websites having the same content because he was “trying to leave the past in the past”. Mr Young confirmed he only ever worked on a website for L&L and not on a website for XM Security. When questioned about the content of the L&L website, Mr Menzies differentiated the two, them having different logos and colours. He acknowledged some of the words were the same but it was “reworded”.

[33] Mr Young provided the Authority with screenshots of the website pages he created for L&L, containing marketing and contact information and descriptions of the

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<sup>3</sup> See <https://web.archive.org/>. The Wayback Machine is a digital archive of the World Wide Web and other information on the Internet. It takes “snapshots” of website pages as at certain dates and archives them.

services it would provide – this included guard house duty, mobile security patrols, static security, hospitality and events security. At the investigation meeting Mr Young advised he had made the website live for the day of the investigation meeting. The parties and I perused the website and asked questions about its content.

[34] The text messages show that by the end of March and early April 2022, both men had become very frustrated with each other and ended their contact. The messages show Mr Young advising he was providing Mr Menzies with access to the website, and the latter complaining he could access it. Mr Young says he only ever received a part payment from Mr Menzies for his work, after which Mr Menzies sought his money back.

[35] Mr Menzies acknowledges he, Mr Young and S were “toing and froing” with a business that would encompass three separate entities, but that he and S chose to go their “own way”. Mr Menzies did not register L&L as a company, rather, on 27 April 2023 Mr Menzies, his wife and S incorporated the company XM Security Group Limited (XMS). Mr Menzies gave evidence that he wanted to give a business another go after having a break as a sole trader through L&L. During cross-examination Mr Menzies said he wanted to see if things would be any different with a new company. He ultimately chose to use the XMS name because he did not want his name plastered on a website knowing he was going to receive bad feedback from people if he did.

[36] By 6 July 2023, S ceased to be a director and shareholder, with Mr Menzies and his wife remaining. At the investigation meeting Mr Menzies gave evidence that XMS is just he and his wife, and it is mainly contracting and “taking it slow” and not doing events or static security guard work. However, the XMS website says it does that type of work as well as construction site security, home security, personal protection, and security alarms and response.

#### *Authority’s earlier determinations*

[37] The earlier substantive investigation meeting was held in December 2022. Neither PFS nor Mr Menzies were in attendance. The Authority issued its substantive determination on 10 March 2023, finding Mr Corrigan had personal grievances and ordering PFS to pay:

- (a) \$5,885 gross as reimbursement of lost remuneration;

- (b) KiwiSaver contributions and annual holiday pay on that amount;
- (c) \$20,000 in compensation; and
- (d) \$1,000 as a penalty (with \$500 payable to Mr Corrigan).

[38] On 18 May 2023 the Authority awarded \$6,000 as a contribution to Mr Corrigan's costs, and the Authority application fee of \$71.56.

### **Relevant law**

[39] Under s 137 of the Act the Authority has a broad discretion to order compliance with a range of matters including determinations issued by the Authority:

#### **137 Power of Authority to order compliance**

(1) This section applies where any person has not observed or complied with—

...

(b) any order, determination, direction, or requirement made or given under this Act by the Authority or a member or officer of the Authority.

(2) Where this section applies, the Authority may, in addition to any other power it may exercise, by order require, in or in conjunction with any matter before the Authority under this Act to which that person is a party or in respect of which that person is a witness, that person to do any specified thing or to cease any specified activity, for the purpose of preventing further non-observance of or non-compliance with that provision, order, determination, direction, or requirement.

...

[40] A compliance order may be made against a person who was not an original party to an Authority application for the purpose of ensuring compliance with an earlier determination by the original party. In cases where an employer company has failed to pay a sum of compensation to an employee, the Authority may order a director to use their position of control to ensure that the liability is met by the employer company.<sup>4</sup>

[41] In *McLennan v Internet Productions Ltd (in liq)* the Employment Court considered whether a compliance order could be made under s 55 of the Employment Contracts Act 1991 where a defendant company was in liquidation.<sup>5</sup> The Court considered the Labour Court decision in *Lawrence Publishing* and the discretion given to the Employment Tribunal under s 55 (the predecessor provision to s 137) and commented:<sup>6</sup>

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<sup>4</sup> *Northern Clerical Workers IUOW v Lawrence Publishing Company of NZ Ltd & Ors* [1990] 1 NZILR 717 (LC).

<sup>5</sup> *McLennan v Internet Productions Ltd (in liq)* [2003] 1 ERNZ 282 (EmpC), emphasis added.

<sup>6</sup> At [35].

...One sound, indeed compelling, reason to refuse to exercise a discretion is that to do so might conflict with or adversely affect the operation of other law. Here, at the time the compliance application was made to the Tribunal, Internet Productions Ltd was in liquidation. The **control of the company** had thereby **moved** from Mr Taylor to the liquidator **by operation of law**. The financial **obligations of the liquidator were governed by the relevant provisions of the Companies Act**. Mr Taylor could not, in law, influence the operations of the company in liquidation, at least not to the extent of requiring it to pay the money it owes to Ms McLennan. Nor, even if the Tribunal had taken the course adopted by the Labour Court in the *Lawrence Publishing* case of requiring a non-party to advance sufficient funds to the liable party to enable it to pay the debt, could this have assisted Ms McLennan in being paid. **Monies received by the company in liquidation will be for distribution by the liquidator according to priorities set by law** which would not ensure their remission in full (perhaps even at all) to Ms McLennan. She is an unsecured creditor in the liquidation. Company law does not, however, permit her to be treated as a preferential creditor which it would have to do if the liquidator were to pay her her full entitlement.

[42] The Court considered Ms McLennan's case went further than the *Lawrence Publishing* line of cases, and in effect was asking the Court to direct one person to meet the debts of another person.<sup>7</sup> It went on to state it was common ground that the affairs of the only surviving liable party were conducted by a liquidator whose obligations were defined in statute and who was, in any event, not a party to the proceedings.<sup>8</sup> The Court concluded s 55(2) did not permit the Tribunal or Court to direct the director of the defendant company to personally pay the sums owed by his companies to Ms McLennan.

[43] In *Allen Chambers Ltd v Pelabon* the Employment Court agreed that the compliance jurisdiction as exercised in *Lawrence Publishing* under s 207 of the Labour Relations Act 1987 was materially identical to the Authority's compliance jurisdiction under s 137 of the Act.<sup>9</sup> *McLennan* found this was also the case with s 55 of the Employment Contracts Act.

[44] In terms of considerations when exercising the discretion under s 137 of the Act, the Court in *Pelabon* commented there is likely a need to focus on the structures within which the parties' activities occur, and the control exercised by them over the liable party.<sup>10</sup> The proximity and connections between the parties was relevant to the inquiry, including the ability and power of the parties to put the employer company in funds if

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<sup>7</sup> At [36].

<sup>8</sup> At [43].

<sup>9</sup> *Allen Chambers Ltd v Pelabon* [2019] NZEmpC 4, at [41]-[42].

<sup>10</sup> At [47].

they decided to do so, or were ordered to do so.<sup>11</sup> The Court also noted in that case, it was in the interests of justice for the Authority to have exercised its powers under s 137 as it did, noting Mr Pelabon's employee status and the long overdue sums.<sup>12</sup>

[45] Mr Corrigan cites the Authority's determinations in *De Sousa & Ors v Bayside Fine Food Limited (in liq) & Ors* in support of his application for compliance orders.<sup>13</sup> That case involved an application for compliance orders in relation to two directors of an employer company, which was in liquidation. The Authority declined to make compliance orders against the directors. In considering relevant factors, the Authority commented it was clear the directors were "not hiding behind the company entity to purposely avoid the applicants' claims", nor it was a situation where the directors had moved assets in the face of the applicants' grievances or subsequent award for their own benefit or to deprive the applicants of those awards.<sup>14</sup>

## **Discussion**

[46] Mr Corrigan seeks an order requiring Mr Menzies to take the necessary steps to ensure that PFS complies with the Authority's orders, by putting monies into the PFS for the purpose of meeting most, if not all, of the awards. He says Mr Menzies was the only controlling agent of the company, its sole director, sole share shareholder at the time of liquidation, and sole decision-maker regarding all of Mr Corrigan and other employees' employment matters. This was clearly the case.

[47] Mr Corrigan also submits the liquidation arose due to Mr Menzies taking excessive drawings from the business – or "siphoning" funds from PFS to purposely avoid Mr Corrigan's claims. He differentiates this from *De Souza* where the Authority said the employer company never had the financial means to meet the applicants' awards, Mr and Mrs Dehlsen were not hiding behind the company entity to purposely avoid the applicants' claims, and had advanced funds to the company as a result of its failure.

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<sup>11</sup> At [42].

<sup>12</sup> At [58].

<sup>13</sup> *De Sousa & Ors v Bayside Fine Food Limited (in liq) & Ors* [2021] NZERA 471 Auckland and *De Sousa & Ors v Bayside Fine Food Limited (in liq) & Ors* [2022] NZERA 253 Auckland.

<sup>14</sup> At [13] and [20].

[48] I have considered the evidence and factors present in this matter, most of which distinguish it from the circumstances of *McLennan* and *De Souza*. The Authority finds compliance orders should be issued for a number of compelling reasons.

[49] Firstly, the Tribunal's decision appealed in *McLennan* records that there was no agreement by the liquidator or an order of the High Court pursuant to s 248 of the Companies Act to continue the Tribunal proceedings against the company, and Ms McLennan could not enforce her right under the Tribunal's judgment except by way of proof of debt in the liquidation.<sup>15</sup> As there was no basis for the action to continue against the company, the Tribunal dismissed the application for a compliance order against it.<sup>16</sup> There is no indication in the Court's judgment that agreement for the challenge to commence or continue was given by the liquidator, so one can deduce agreement was not given. In the present matter, the liquidator agreed for the substantive matter and this application to continue. The Authority therefore has the ability to make orders in relation to PFS, including a compliance order.

[50] Second, in *McLennan*, both the Tribunal and Court felt it necessary to make clear there was no evidence to suggest the respondent director was hiding behind a corporate structure or the liquidation was a sham or there not was a genuine business failure. The Authority also considered such evidence relevant in *De Souza*. In my view, the presence or absence of such evidence is relevant, and in the circumstances of this case, it points towards issuing a compliance order in relation to Mr Menzies.

[51] The financial information provided by the liquidator shows that in the five months of the 2022-2023 financial year before the liquidation on 7 September 2022, Mr Menzies took drawings of \$194,588. These drawings are clearly excessive when contrasted with those as at 31 March 2022 (of \$93,000) and 31 March 2021 (of \$43,000), and align with the comment in the Liquidator's First report that excessive drawings was a factor in the decision to liquidate. Mr Menzies' evidence regarding a loan of either \$70,000 or \$90,000 is simply not supported by the documentary evidence.

[52] The profit and loss statement for 30 September 2022 shows while income and sales dropped between April and August 2022, in August PFS it was still making a net profit of \$7,594 after operating expenses including the reduced wages and salary

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<sup>15</sup> *McLennan v Internet Productions Ltd* EMT Auckland AT127/02, 16 July 2002 at [7].

<sup>16</sup> At [14].

expenses were accounted for. It appears PFS was perhaps necessarily “downsizing” due to a lack of “manpower”, but it was profitable at a point just prior to liquidation.

[53] The timing of events is also relevant and cannot be ignored. On 7 September 2022 Mr Menzies, as sole decision maker, resolved to appoint a liquidator just a day after the Authority’s first case management conference date was confirmed. It heralded the start of my investigation, and the timing is unlikely to have been a coincidence.

[54] The evidence is clear that Mr Menzies then quickly pivoted from PFS towards L&L. By 21 October 2022, a few weeks later, Mr Menzies engaged Mr Young to set up a new website. Although Mr Menzies has attempted to differentiate between PFS and L&L, saying he was trading as L&L as a sole trader, the website pages have similar content and the same service offerings as PFS.<sup>17</sup> Mr Menzies even planned to use the same contact number for PFS.

[55] If this were not enough, by February and March 2023, Mr Menzies had clear plans to pursue XMS, which came into fruition by April 2023 when he incorporated that company. Again, Mr Menzies has attempted to differentiate PFS and XMS, but their website pages have substantially similar content and service offerings as PFS.<sup>18</sup> Mr Menzies continues to operate XMS.

[56] The most recent liquidator’s report from 22 April 2024 says Inland Revenue has not filed a preferential claim, despite the statement of affairs indicating it was an unconfirmed creditor. Further, there are no secured creditors listed and there are three unsecured creditor claims totalling \$7,901. An amount of \$5,227 is said to be held in the liquidator’s trust account. The report says the liquidator has ascertained that the shareholder’s current account is overdrawn, and they have sent a notice but settlement has not been reached. It says distribution to the creditors is dependent upon the quantum of the recovery from the overdrawn shareholder’s account.

[57] The Court in *McLennan* considered in effect it was being asked to direct one person to meet the debts of another person. *Lawrence Publishing* and *Pelabon* are clear that where third persons have been bound by compliance orders, it was not to make

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<sup>17</sup> As shown on the Wayback Machine website.

<sup>18</sup> As shown on the Wayback Machine website. Stark examples are using the same value statements, and the same images of Mr Menzies in black uniform with “Prime Focus Security” and its logo photoshopped out on the XMS website.

payment from their own pockets, but to take steps in their power to ensure the liability was met by the person upon whom liability falls. Here, were it not for Mr Menzies taking excessive drawings from PFS in the period prior to liquidation, PFS appears to have had the financial means to meet Mr Corrigan's subsequent awards. The Authority is not finding Mr Menzies' personal assets should be used in satisfaction of the determinations, nor that Mr Menzies is liable for the debts of the company. Mr Menzies has deprived PFS of the means to pay them by his actions. It is within his power to put PFS in a position where it could pay the money owed to Mr Corrigan for the purpose of preventing further non-compliance with the Authority's determinations.

[58] It will then be for the liquidator to exercise their powers and distribute the monies according to priorities set by law. This may mean Mr Corrigan does not recover the full amounts awarded by the Authority. This is the risk he has taken in making an application of this kind in these circumstances, but in my view, this does not militate against the Authority making compliance orders in circumstances where there remains a prospect of some recovery.

[59] Finally, in my view the evidence and timeline shows Mr Menzies has removed significant funds from PFS, liquidated at least in part due to Mr Corrigan's claims, and restarted a similar business a short time later. The evidence points away from him acting in good faith or this being a case of genuine business failure. The liquidator has then allowed these proceedings to continue, and the sums owed to Mr Corrigan, a former employee, are overdue to be paid. Overall, the Authority considers the interests of justice favour exercising powers under s 137.

### **Sections 142Y and 142W of the Act**

[60] Mr Corrigan also says he seeks compliance orders against Mr Menzies "to comply with the wage arrears orders made in the determinations, pursuant to section 142W of the Act". The Authority did not make orders for recovery of arrears of wages or other money due to breaches of employment standards, so s 142Y does not apply. Rather, the amounts ordered were for personal grievance remedies, a penalty and legal costs. The Authority agrees with Mr Menzies that there is no basis to make findings under ss 142Y or 142W of the Act. That application is declined.

## **Interest**

[61] Mr Corrigan is seeking interest on the awards, costs and application fee. It is appropriate where a person has been deprived on the use of money to make an award of interest. Mr Menzies is ordered to calculate and pay interest to PFS on those sums within 21 days of the date of this determination. Interest is to be calculated from the date of this determination until Mr Menzies makes full payment to PFS. The Ministry of Justice Civil Debt Interest Calculator should be used to calculate the interest.<sup>19</sup>

## **Outcome**

[62] Pursuant to s 137(2) of the Act, the Authority orders as follows:

- (a) Within 21 days of the date of this determination Levi Menzies is ordered to take the necessary steps to ensure Prime Focus Security Limited receives:
  - (i) \$5,885 as reimbursement of lost remuneration plus KiwiSaver contributions and annual holiday pay on that amount;
  - (ii) \$20,000 in compensation;
  - (iii) \$6,071.56 in costs and the Authority application fee;
  - (iv) \$500 as a penalty; and
  - (v) Interest on the above amounts.
- (b) Within 28 days of the date of this determination Prime Focus Security Limited is ordered to pay Nathan Corrigan the sums at [62](a), or such lesser amount according to priorities set by law.

[63] Prime Focus Security Limited through its liquidator is given leave to apply for such further reasonable time to comply as is required in the remainder of the liquidation process.

## **Costs**

[64] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[65] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Corrigan may lodge, and then should serve, a memorandum on costs

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<sup>19</sup> <https://www.justice.govt.nz/fines/civil-debt-interest-calculator/>.

within 28 days of the date of this determination. From the date of service of that memorandum Mr Menzies will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[66] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>20</sup>

Sarah Blick  
Member of the Employment Relations Authority

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<sup>20</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)