

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

CA 156A/08  
5138296

BETWEEN                      BAY AUDIOLOGY LIMITED  
Applicant

AND                              BERNARD MAGER  
Respondent

5138289

BETWEEN                      BAY AUDIOLOGY LIMITED  
Applicant

AND                              SYLVIA den BREEMS  
Respondent

Member of Authority:      Paul Montgomery

Representatives:            Marie Whisker, Counsel for Applicant  
Graeme Malone, Counsel for Respondents

Determination:              31 October 2008

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**DETERMINATION OF THE AUTHORITY**

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[1]     The Authority made interim orders on this matter on 22 October 2008. These orders replaced the earlier urgent interim orders issued on 8 October 2008. On 23 October 2008 the Authority received applications for compliance, for penalties and for disclosure from the applicant's counsel. An undertaking as to damages was provided on 30 October 2008.

[2]     The applicant alleges the respondents are in breach of the interim orders issued on 8 October and of the undertakings given at the close of the investigation meeting on 14 October 2008. Accordingly, it seeks an order the respondents comply with the Authority's interim orders as, it says, neither respondent can be relied on to abide by those orders.

[3]     Counsel also seeks penalties from the respondents and further, disclosure of a range of documents and any client records held by the respondents. In support of the applications, the applicant has provided two affidavits from people who attended appointments with the respondents. Emily Smith met with Ms den Breems at

Motueka for an appointment on 23 October 2008. That appointment was arranged on 16 October. Graham Reburn attended an appointment at which both respondents were present at the Richmond clinic on 17 October 2008. That appointment was made *towards the end of the week beginning 6 October*. Mr Reburn deposes that both respondents were at the clinic at the time of his visit and that a *three-way conversation* took place regarding types of hearing aids.

[4] Counsel for the respondents opposes the application for compliance essentially on the ground that no order is justified in the light of the evidence and submissions put to the Authority at the investigation meeting. Mr Malone submits that any compliance or discovery order might be justified only in respect to Mr Mager. Both respondents have provided affidavits setting out the circumstances around the appointments with Ms Smith and Mr Reburn and each confirms they will abide by the interim orders put in place.

[5] This matter is tentatively scheduled for substantive investigation in the week beginning 15 December 2008. Given my absence, I have briefed support staff and a Member who will shortly convene a directions teleconference to confirm dates and schedules.

[6] In light of the evidence before me in this application and given the assurances given by the respondents I decline to make any further orders. In respect of the disclosure issue, the application puts the respondents on notice prior to the substantive hearing. The disclosure issue and attendant matters can be canvassed in the course of the teleconference.

### **Determination**

[7] The applications are declined.

### **Costs**

[8] Costs are reserved.

Paul Montgomery  
Member of the Employment Relations Authority