

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 130
5312199

BETWEEN COMPUTER CONCEPTS
 LIMITED
 Applicant

AND STEPHEN COPPARD
 Respondent

Member of Authority: Robin Arthur

Representatives: Phil James for Applicant
 Respondent in person

Submissions received: 23 March 2011 from Applicant and Respondent

Determination: 1 April 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] Authority determination [2011] NZERA Auckland 106 ordered Stephen Coppard to repay certain amounts of money to Computer Concepts Limited with interest. The parties were encouraged to agree any issue of costs, with leave reserved to seek determination of costs by the Authority if they were unable to agree.

[2] By memorandum of counsel CCL advised no agreement was reached on costs and sought orders for costs of \$2000 and a contribution to the expense incurred of \$945 for airfares of two witnesses.

[3] The sum of \$2000 had been indicated to the parties, on a preliminary basis only, as a likely award under the Authority's usual daily tariff. The investigation meeting took two-thirds of a day and there was nothing in it which required an upward or downward adjustment of the notional daily rate.

[4] Mr Coppard's reply to the costs application indicated that he had sought unsuccessfully to reach agreement on a scheme for instalments to pay money owed to CCL, including costs. However CCL, as it was entitled to do, did not agree to the relatively low amounts and lengthy period for instalments that he had proposed. Mr Coppard's reply advised the Authority that he had "*started proceedings re insolvency*".

[5] The online Insolvency Register shows Mr Coppard was adjudged bankrupt on 25 March 2011. Accordingly no determination of costs on the proceedings in the Authority may now be made: see s76(1) of the Insolvency Act 2006.

[6] Had I been able to award costs, an order would have been made for Mr Coppard to pay CCL \$2500 as a reasonable contribution to its costs and expenses for the Authority proceeding: clause 15 of Schedule 2 of the Employment Relations Act. Such an order would have applied standard costs principles, including taking account of Mr Coppard's financial circumstances.¹ From his evidence at the investigation meeting the Authority was aware Mr Coppard had financial commitments for a large family but was presently employed on a base annual salary of \$100,000, with provision for commission up to a further \$100,000. Those circumstances would not have been sufficient to excuse him from an order to pay costs to CCL at the modest tariff rate of \$2000. He would also have been required to contribute \$500 to the expense of the airfares for two CCL witnesses who had to travel from Christchurch to attend the investigation meeting in Auckland.

[7] However, in the circumstances of Mr Coppard's bankruptcy, no order for costs is made.

Robin Arthur
Member of the Employment Relations Authority

¹ *PBO Ltd v Da Cruz* [2005] 1 ERNZ 808.