

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 162
5349877

BETWEEN TRUDY GUTHRIE T/A YOU
HAIR SALON
Applicant

A N D SANDRA JOY BOWEN
Respondent

Member of Authority: Helen Doyle

Representatives: Sandra Bowen in person
Shayne Boyce, Advocate for Trudy Guthrie

Applicant's submissions: 16 September 2011

Respondent's submissions: 26 September 2011

Date of Determination: 25 October 2011

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 30 August 2011 I did not find that the provision relating to competition and confidentiality in an unsigned employment agreement presented to the respondent about two months after she commenced her employment was enforceable. I did not find that there was a breach by the respondent of her duty of fidelity during the time she was employed by the applicant. I then considered whether there was evidence that the respondent had in her possession a written list of clients of the respondent and their telephone numbers in breach of her obligations of confidentiality. The high point of the evidence about that was that the two clients who were telephoned, after the respondent's employment ended, by her had unlisted numbers. It was found that supported it was more likely than not that the respondent had taken a note down at least of those two client's numbers in breach of the duty of confidentiality. Both clients had stayed with the applicant for haircuts. I did not make an order that the respondent reimburse the applicant for advertising costs. I did make an order that the applicant was entitled to be reimbursed for two haircuts that the respondent undertook for a family member and a friend in the sum of \$70.

[2] The orders made were described in the determination as the most sensible way to deal with the employment relationship problem. They were that the respondent either deliver up to the Authority by 6 September 2011 any written client list or client information she had in her possession that was the property of the applicant, or, formally advise the Authority in writing that she does not have in her possession any client list or client information and that the respondent not use the information from any client list or client information that was the property of the applicant. The Authority reserved its position on any further orders pending receipt of that information.

[3] The respondent duly provided an affidavit sworn on 14 September 2011 deposing that she had no written client list or information belonging to the applicant. The affidavit followed earlier written advice received of a less formal nature from the respondent on 6 September 2011.

[4] I reserved the issue of costs in my determination. I have now received a submission as to costs from Ms Boyce on behalf of the applicant and a response from the respondent.

[5] Ms Boyce submits that costs should be awarded to the applicant who incurred legal costs totalling \$2,371.50 inclusive of GST. Ms Boyce submitted that the applicant seeks a full recovery of legal costs because the Authority cannot condone flagrant and wilful breaches of confidentiality, or a reasonable contribution to the costs incurred.

[6] Ms Bowen said in a to the point email that she cannot help towards costs as she has just started her own business and shifted to Nelson and this is a huge financial strain leaving her with zero funds. She also wrote that the distress this has put her through has affected her whole personality.

[7] There is a general principle that costs follow the event. The applicant had some limited success. The Authority was prepared to make the orders that it did and reserved any further orders consequent on what was received from the respondent. The respondent provided an affidavit to the effect she had none of the applicant's property and that was as far as the matter could be taken. There was no evidence or basis on which any further orders could be made. There was an award made for two

haircuts that the respondent undertook. Request for payment for these had not been made earlier.

[8] Balanced against that the respondent was successful in claiming that the employment agreement provisions were not enforceable and that there were no breaches of obligation whilst employed. She was not ordered to pay the advertising costs.

[9] In the exercise of my discretion, standing back and carefully considering the matter, having regard to the usual principles that apply to costs, I am not minded to make an award in this case in favour of the applicant.

[10] I order costs to lie where they fall.

Helen Doyle
Member of the Employment Relations Authority