

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 24/09

File Number: 5147654

BETWEEN

HMA Limited
Applicant

AND

Matthew Peck
Respondent

Member of Authority: Denis Asher

Representatives: Karen Fox for the company
No appearance by or for Mr Peck

Investigation Meeting Wellington, 25 February 2009

Determination: 5 March 2009

DETERMINATION OF THE AUTHORITY

The Problem

[1] The company seeks enforcement of a record of settlement it entered into with Mr Peck.

Background

[2] A mediated record of settlement signed by the parties and a Department of Labour mediator on 20 October 2008 provided for Mr Peck paying to the company the sum of \$1,100 by way of 5 monthly instalments of \$200, and

one final payment of \$100, by direct credit at the end of each month commencing November 2008.

- [3] No payments were made and by way of a statement of problem filed on 23 December 2008 the company asked for a compliance order.
- [4] No statement in reply was received from Mr Peck.
- [5] An investigation was set down for Wednesday 25 February 2009. Mr Peck was not present at the commencement of the investigation. I telephoned and spoke to him. He told me he had not paid because he did not have the company's account details and he had no money. However, he advised he would pay \$200 by 4 March 2009 and another \$200 by 11 March. I explained to Mr Peck that if he did not meet his undertaking a compliance order would be sought by the company and almost certainly issued, and that his debt to his previous employer would only get worse. The company agreed to adjourn its compliance application to give Mr Peck an opportunity to make payment.

Applicant's Position

- [6] To date Mr Peck has made no payments to the company. Ms Fox's evidence was that she spoke to Mr Peck on 11 February 2009: he claimed not to have the company's account details – she forwarded the details to the respondent.
- [7] By telephone today the company confirmed Mr Peck had made no payments despite his undertakings to the Authority on 25 February: Ms Fox asked the Authority to proceed and issue a compliance order.

Respondent's Position

- [8] Mr Peck has not been in touch with the company in respect of his failure to make payment.

Findings

- [9] The respondent is in breach of his record of settlement.

[10] No explanation has been provided by Mr Peck in respect of his failure to meet an undertaking that was the basis of the Authority suspending its investigation into that breach.

[11] Mr Peck's conduct goes to the heart of good faith.

[12] There is no reason not to grant the company's application for a compliance order.

Determination

[13] Mr Peck is directed to comply with the record of settlement he entered into with the company and to pay to it no later than close of business on Thursday 20 March 2009 the sum of \$800 (eight hundred dollars) being the sum outstanding as of that date per the payment schedule set out in the record of settlement.

[14] Mr Peck is also to pay the company its filing fee of \$70.

[15] I repeat my advice to the respondent: failure to pay will only result in this matter becoming a greater debt. Powers available to the courts to enforce compliance include fines, sequestration (i.e. seizing) of property and imprisonment.

Denis Asher

Member of the Employment Relations Authority