

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 179/07  
File Number 5072642

BETWEEN                      Michael Hollands  
   Applicant  
  
AND                                Jam Marketing Pty Ltd  
   Respondent

Member of Authority:      Dzintra King  
  
Representatives:            Applicant In Person  
   No appearance for Respondent  
  
Investigation Meeting:      15 June 2007  
  
Determination:               15 June 2007

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**DETERMINATION OF THE AUTHORITY**

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[1]      The issue for determination is the employment status of the applicant. The respondent says he is a contractor.

[2]      Ms Tina Jacobsen, a director of the respondent, indicated that she would not be attending the Investigation (she is Australia) but that she would make herself available by telephone. I tried both the landline and her mobile number and was unable to contact her. I have therefore based my determination on the evidence received from the applicant.

[3]      The respondent markets time shares and the applicant was employed as a sales consultant.

[4]      In the Statement in Reply the respondent asserted that Mr Hollands had asked to be employed as a contractor. Mr Hollands said he had raised the issue but that Ms Jacobsen had told him the company's accountant did not favour that.

[5] No employment agreement was signed. The sole document produced was one titled "Employee Information" with a space for "Employee Signature" at the bottom. At the top appear the handwritten word "Contractor", presumably written by Ms Jacobsen.

[6] I am satisfied that there was no intention to enter a contract for services. Even had there been, the other indicia point towards a contract of service.

[7] Mr Hollands had to work hours set by the company. The potential clients were obtained by a telemarketer or by people coming in off the street. Mr Hollands had no control over the client base not could he select which people he wanted to deal with.

[8] Payment was on the basis of a \$500 per week payment with commission payable on any sales.

[9] Mr Hollands did not submit invoices and made no claims for expenses. He worked solely from the company's premises.

[10] He did not supply any tools and was under the control of the respondent who provided training for him.

[11] Mr Hollands was an employee, not a contractor.

[12] Costs are reserved. As there is a personal grievance pending I will at this stage leave the issue of costs until the personal grievance has been determined.

Dzintra King

Member of the Employment Relations Authority