

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 126/10
5299137

	BETWEEN	HOLLYWOOD BAKERY (HOLDINGS) LTD Applicant
	AND	QIANG LI first respondent
	AND	LING ZHANG second respondent
Member of Authority:	James Wilson	
Representatives:	David Liu for the applicant No appearance for the respondents	
Investigation Meeting:	17 March 2010 at Auckland	
Oral submissions	17 March from the applicant	
Determination:	17 March 2010	

DETERMINATION OF THE AUTHORITY

Application for compliance

[1] On 15 March 2010, the applicant, Hollywood Bakery (Holdings) Ltd (Hollywood Bakery) filed an application asking the Authority to issue a compliance order requiring the respondents to comply with a non-publication order made by the Authority. On 16 March 2010, at 12.45 pm a copy of this application was personally served on the first respondent, Qiang Li, by an Authority Support Officer. Mr Li was at the same time served with a direction that he attends a case management meeting at the Authority offices at 3 pm on 16 March 2010 to discuss a timetable for the Authority's investigation of the application for compliance. Unfortunately the second respondent, Ling Zhang, was not able to be served with these documents. Mr Li, who had previously acted for Ms Zhang and acknowledged to the Authority Support officer that he continued to do so, refused to accept service on her behalf.

[2] The case management meeting was attended by Mr Liu for Hollywood Bakery but neither of the respondents attended. Following the meeting I directed that the Support Officer:

- a. Set down an investigation meeting for 2pm on 17 March 2010 at the Authority's Auckland Offices.
- b. Formally serve the respondents with a notice of that meeting and advice that the Authority required that they file their statements in reply by 1pm on 17 March 2010

[3] The Support Officer, as directed, at 4.12 pm on March 16, 2010, served Mr Li with the notice of meeting and a memorandum advising him of the time frame for filing a statement in reply. Mr Li again refused to accept service on behalf of Ms Zhang

[4] Neither respondent attended the scheduled Investigation meeting. I am satisfied that Mr Li was aware of the meeting and he has offered no reason why he could not attend.

Background

[5] In a determination dated 31 July 2009 (AA 258/09: Robin Arthur, Member), the Authority recorded:

Order for non-publication of certain document

[8] During the investigation meeting I made an order for the non-publication of a document provided by the company to the Inland Revenue Department, being an IR 281 form and an accountant's letter and appendices dated 22 April 2009.

[9] I made this order under clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act) to protect, at the company's request, commercially sensitive information, and Ms Zhang's request, personal information relating to her. I note that the document was addressed to IRD which now has that information and may act on its contents as appropriate.

[10] I record that I explained to Mr Li that non-publication in this context meant that he could not give a copy of the document to anyone else or tell anyone else its contents. My explanation was translated from English to Mandarin. I also wrote on the face of his copy of the document that it was subject to a non-publication order.

And in a subsequent determination (258A/09, 12 August 2009)

[7] I confirm that Mr Li was told that the non-publication order meant that the document could not be shown to or its contents spoken about to any other person apart from Ms Zhang or her representative. While Mr Li, by his memorandum of 25 July, confirms he has since shown the document to a lawyer, I am not satisfied on the basis of that information alone that a breach of the order has occurred.

[8] If the document was shown to that lawyer in the course of providing advice to or for Ms Zhang, I consider this was within the scope of the restrictions set by the order. I accord Mr Li the benefit of the doubt that this was the case.

[9] Accordingly no further orders are required at this stage. I emphasise however that the non-publication order remains in place. Mr Li and Ms Zhang would be in breach of that order if they were to show or speak about the contents of the document to anyone other than a legal representative for the purpose of advice or proceedings.

[6] Hollywood Bakery have provided photographic evidence and sworn oral evidence that the documents that the Authority ordered should not be published is being displayed on a billboard erected by Mr Li in Queen St, Auckland. This display has been continuing for several days. Mr Li has chosen not to attend the Authority's meeting, or to provide any explanation for this apparent breach of the Authority's non publication order.

[7] I am completely satisfied on the evidence presented that the Authority's non publication order, as outlined in Determination AA 258/09, has and continues to be breached. I am also satisfied that Mr Li is responsible for this breach in that he is personally responsible for erecting and maintaining the billboard and displaying the

document that the Authority ordered should not be published. The Authority, in its determination of 12 August 2009, clearly and unequivocally explained to Mr Li that *he would be in breach of that order if (he) were to show or speak about the contents of the document to anyone other than a legal representative for the purpose of advice or proceedings.*

Compliance order

[8] In terms of section 137(1)(b) of the Employment Relations Act, the first respondent , Qiang Li, is order to immediately comply with the non publication order set out in the Authority’s determination AA 258/09 of 31 July 2009. For the sake of clarity: Mr Li is ordered to immediately remove the documents covered by that order from the billboard situated outside 280 Queen St Auckland and refrain from displaying it any other place, or otherwise publishing or showing this document to any other person other than a legal representative for the purpose of advice or proceedings.

Costs

[9] Costs are reserved. Hollywood Bakery have indicated that they will be seeking a costs on this application. Assuming they wish to pursue the question of costs they should file submissions within 28 days of this determination. The respondents will then have 14 days in which to reply.

James Wilson

Member of the Employment Relations Authority