

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 46/10
5291421

BETWEEN IHC NEW ZEALAND INC
Applicant

AND LYNETTE MARY FIEBIG
Respondent

Member of Authority: P R Stapp

Representatives: John Hanning and Jonathan Scragg Counsel for
Applicant
John Langford Counsel for Respondent

Investigation Meeting: On the papers 11 March 2010

Determination: 12 March 2010

CONSENT DETERMINATION OF THE AUTHORITY

[1] The parties have agreed to settle all matters in the Employment Relations Authority that involve the proceedings filed in the Authority and all matters arising out of the breach of the respondent's duties. Both parties have requested the Authority to make orders by consent on the following terms:

- 1. The respondent accepts that she is liable to pay to the applicant damages for her breaches of the express and implied terms of the first and second employment agreements, in the sum of \$590,029.80, being the funds identified to date by the applicant as having been misappropriated by the respondent.*
- 2. The respondent accepts that she is liable to pay to the applicant interest on the amount due under clause 1 above at the rate of 5%pa from 29 May 2009 (being the date the respondent's employment with the applicant ended) until the date of payment.*
- 3. The respondent accepts that she is liable to pay to the applicant a penalty of \$5,000 in accordance with s.135(2)(a) of the Employment Relations Act 2000, for breaches of the express and implied terms of the first and second employment agreements.*

4. *The respondent accepts that she is liable to pay the applicant a penalty of \$5,000 in accordance with s.135(2)(a) of the Employment Relations Act 2000, for breach of her statutory duty of good faith.*
5. *The respondent accepts that she is liable to pay penalties referred to in clauses 3 and 4 above to the applicant in accordance with s.136(2) of the Employment Relations Act 2000.*
6. *The respondent accepts that she is liable to pay the applicant the sum of \$7,500 as a contribution towards the legal costs incurred by the applicant in these proceedings.*

Employment Relationship Problem

[2] The problem that the IHC Inc wanted the Authority to resolve involved:

- (a) The respondent's breaches of the express and implied terms of her employment agreements with the IHC; and
- (b) The respondent's breach of the statutory duty of good faith.

Issues

[3] The making of a consent order in respect of terms agreed to for the liability of damages, penalties, interests and costs.

The facts

[4] The applicant was employed by the IHC Inc from July 2003 until 29 May 2009 to perform various roles in the applicant's national fundraising office. On 29 May 2009, the respondent left the applicant's employment. From 2 June 2009, the respondent worked for the applicant on an intermittent basis as a fundraising contractor. The respondent's employment with the applicant was governed by the following written employment agreements:

- (a) From July 2003 to 30 August 2007, a written employment agreement dated 2 July 2003 (the first employment agreement). This agreement was varied by letters dated 20 October 2004 and 27 March 2007; and
- (b) From 31 August 2007 to 29 May 2009, a written employment agreement dated 31 August 2007 (the second employment agreement).

[5] An investigation was carried out and it was established that between 31 October 2006 and 25 May 2009 there had been 74 incidents where payments had been approved by the respondent in circumstances which amounted to a misappropriation of funds. The total identified to date by the applicant being misappropriated by the respondent is \$590,029.80.

[6] As a result of the respondent's conduct, the applicant has suffered loss and damage identified to date in the sum of \$590,029.80.

Determination

[7] I am satisfied that agreement has been reached between the parties to resolve the employment relationship problem.

[8] I am satisfied that:

- (1) The respondent accepts that she is liable to pay to the applicant damages for her breaches of the express and implied terms of the first and second employment agreements, in the sum of \$590,029.80, being the funds identified to date by the applicant as having been misappropriated by the respondent.
- (2) The respondent accepts that she is liable to pay to the applicant interest on the amount due under clause 1 above at the rate of 5%pa from 29 May 2009 (being the date the respondent's employment with the applicant ended) until the date of payment.
- (3) The respondent accepts that she is liable to pay to the applicant a penalty of \$5,000 in accordance with s.135(2)(a) of the Employment Relations Act 2000, for breaches of the express and implied terms of the first and second employment agreements.
- (4) The respondent accepts that she is liable to pay the applicant a penalty of \$5,000 in accordance with

s.135(2)(a) of the Employment Relations Act 2000, for breach of her statutory duty of good faith.

- (5) The respondent accepts that she is liable to pay penalties referred to in clauses 3 and 4 above to the applicant in accordance with s.136(2) of the Employment Relations Act 2000.
- (6) The respondent accepts that she is liable to pay the applicant the sum of \$7,500 as a contribution towards the legal costs incurred by the applicant in these proceedings.

[9] Therefore, by consent Lynette Mary Fiebig is to pay IHC Inc:

- (1) *The sum of \$590,029.80, being the funds identified to date by the applicant as having been misappropriated by the respondent.*
- (2) *Interest at the rate of 5%pa from 29 May 2009 (being the date the respondent's employment with the applicant ended) until the date of payment.*
- (3) *A penalty of \$5,000 in accordance with s.135(2)(a) of the Employment Relations Act 2000.*
- (4) *A penalty of \$5,000 in accordance with s.135(2)(a) of the Employment Relations Act 2000.*
- (5) *The sum of \$7,500 as a contribution towards the legal costs incurred by the applicant in these proceedings.*

[10] By consent I order that Lynette Mary Fiebig pay the penalties referred to in clauses 3 and 4 above to the IHC Inc in accordance with s.136(2) of the Employment Relations Act 2000.

[11] Furthermore I exercise my jurisdiction under clause 11 and clause 15 of schedule 2 of the Act in regard to interest and costs.

P R Stapp
Member of the Employment Relations Authority