

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 189/08  
5118997

BETWEEN                      RASCHELLA LILEY  
   Applicant  
  
AND                                FASHION TRADERS GROUP  
   LIMITED  
   Respondent

Member of Authority:      Robin Arthur  
  
Representatives:            Tony Kurta for Applicant  
   No appearance for Respondent  
  
Investigation Meeting:     26 May 2008  
  
Determination:              26 May 2008

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**DETERMINATION OF THE AUTHORITY**

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[1]     The Applicant seeks a compliance order and a penalty against the Respondent for its failure to pay her an amount of compensation under terms of settlement agreed in mediation and certified by a Department of Labour mediator under s149 of the Employment Relations Act 2000 (“the Act”).

[2]     The Respondent did not lodge a statement in reply to this application. When contacted by a Senior Support Officer of the Authority, the Respondent’s director Tim Hence said he would not participate in a telephone conference on arrangements for the Authority’s investigation or attend an investigation meeting.

[3]     A Notice of Investigation Meeting and a Minute with a note on the potential consequences of not attending the investigation meeting were sent to the Respondent’s registered office and business address. I am satisfied from the information on the Authority file that the Respondent was properly notified of the investigation meeting. It was not present or represented at the notified time or after

waiting 15 minutes. No good cause for its absence was shown and I proceeded with the investigation meeting.

[4] The Applicant provided a sworn statement confirming that she had not received the amount of compensation that was to have been paid to her within seven days of the settlement agreement (“the agreement”) being made on 19 February 2008.

[5] The Applicant’s representative Tony Kurta confirmed that he had sent two written requests for payment after the expiry of the seven day period – by facsimile on 28 February and 3 May 2008 – and left two telephone messages on 3 May 2008.

[6] I am satisfied from the certificate of the mediator attached to the Record of Settlement that the effect of certification under s149 of the Act was explained to the parties and that they affirmed the agreement with that knowledge.

[7] The agreement is full, final and enforceable. The Respondent has failed to honour its obligation to pay the agreed compensation within the seven days.

[8] The Applicant is entitled to the compliance order she seeks. Accordingly the Respondent is ordered to comply with the agreement without further delay and by no later than by no later than Monday, 3 June 2008.

[9] The Respondent is also liable to a penalty under s149(3) of the Act for breaching an agreed term of settlement.

[10] The imposition of a penalty is necessary in this case not only to mark the Respondent’s blatant breach of the agreement but also to act as a deterrent to parties who enter settlement agreements but fail to honour the agreed terms. If such breaches are not penalised, the integrity of the mediation process, and the confidence which all parties are entitled to have in it, would be undermined.

[11] The Respondent’s withholding of payment appears deliberate with no good reason shown. The breach is intentional and I am satisfied that a penalty of \$1000 should be imposed under s133 and 135 of the Act. Exercising the discretion provided under s136 of the Act I further order the Respondent to pay \$500 of that penalty

directly to the Applicant and \$500 of that penalty to the Authority for transfer to the Crown Bank Account.

[12] The Applicant is also entitled to a reasonable contribution towards her costs in bringing this application and to reimbursement of her fee for lodging it. The Respondent is to pay \$400 as a reasonable contribution to the Applicant's cost and to pay a further \$70 to reimburse her for the lodgement fee.

[13] I note for the information of the parties that should the Respondent fail to comply with the Authority's orders, the Applicant may apply to the Employment Court for further orders against the Respondent. Such orders may include a fine of up to \$40,000, sequestration of the Respondent's property and imprisonment for a term up to 3 months: s138(6) and s140(6) of the Act. Alternatively the orders may also be enforced in the District Court under s141 of the Act.

### **Summary of orders**

[14] Within seven days of the date of this determination, the Respondent is to pay to the Applicant the following sums:

- (i) the compensation amount in the certified settlement agreement made between the parties on 19 February 2008; and
- (ii) a further \$500, being half of the penalty imposed under s149(4) and s135 of the Act; and
- (iii) a further \$470 in costs and reimbursement of her lodgement fee.

[15] The Respondent is also ordered to pay to the Authority, for transfer to the Crown Bank Account, the sum of \$500, being half of the penalty imposed under s149(4) and s135 of the Act.

Robin Arthur  
Member of the Employment Relations Authority