

Note: An order for the payment of a penalty appears at p 3 of this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 260/10
5302079

BETWEEN

BARRY SPALDING
Applicant

AND

BANKSIA HOLDINGS
LIMITED and IVAN HEYS
Respondents

Member of Authority: R A Monaghan

Representatives: H Twentyman, counsel for applicant
No appearance for respondents

Investigation Meeting: 28 May 2010

Determination: 31 May 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Barry Spalding seeks an order that Banksia Holdings Limited and Ivan Heys comply with the terms of a mediated settlement made and recorded under s149 of the Employment Relations Act 2000.

[2] A penalty is also sought under s 149(4) of the Act for the associated breaches of the terms of settlement.

Preliminary matter

[3] No statement in reply was filed, and the Authority has not received any communication from Mr Heys or Banksia Holdings Limited. Neither Mr Heys nor the company appeared or was represented at the investigation meeting. I am satisfied they were served with the statement of problem and notice of investigation meeting.

[4] Since no good cause has been shown for the respondents' failure to appear or be represented at the investigation meeting, I proceed in their absence under clause 12, Schedule 2 of the Employment Relations Act.

Determination

1. Compliance order

[5] The record of settlement cited Banksia Holdings Limited and Ivan Heys as the 'respondent'. Clause 2 of the record read as follows:

"Banksia Holdings Limited and Ivan Heys shall pay to Barry Spalding the compensatory sum of \$2,500 at the rate of \$100 per week with the first payment due by the 9th October 2009 in terms of section 123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid to the applicant by way of direct credit."

[6] Payments duly commenced, and were maintained into December 2009, when there was an interruption. One further payment was made on 15 January 2010, but no further payments have been received. Mr Spalding has received a total of \$1,100 of the agreed sum of \$2,500, and seeks an order for the payment in one lump sum of the remaining \$1,400.

[7] Had the payment schedule been observed, all payments would now have been made. Accordingly it is appropriate to make an order for compliance through an order for payment in the lump sum sought.

[8] I therefore order Banksia Holdings Limited and Ivan Heys to comply with the terms of the record of settlement by:

- a. making a lump sum payment of \$1,400 to Barry Spalding; and
- b. making the above payment within 7 days of the date of this order.

2. Penalty

[9] In the circumstances I regard the failures to make the weekly payments payable under the record of settlement as a single breach of the settlement. There

was an indication that financial difficulties were raised with Mr Spalding as reasons for the failures, although there was no evidence before the Authority of the truth of that. There was also an indication that the business in which Mr Spalding was employed has been sold.

[10] Breaching a settlement agreement is a serious matter. Banksia Holdings Limited and Ivan Heys are therefore ordered jointly and severally to pay a penalty in respect of the breach in the sum of \$750.

Costs

[11] Banksia Holdings Limited and Ivan Heys are further ordered to reimburse Mr Spalding for the filing fee of \$70.

[12] If counsel wishes to make any further submission regarding costs there shall be 28 days from the date of this determination in which to file such submission.

R A Monaghan

Member of the Employment Relations Authority