

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 170/08
5102693

BETWEEN RICHARD STANNERS
 Applicant

AND CFGNZ LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Wayne Kerr, Counsel for Applicant
 Jeff Goldstein, Counsel for Respondent

Investigation Meeting: 11 November 2008 at Christchurch

Determination: 19 November 2008

DETERMINATION OF THE AUTHORITY

[1] Richard Stanners lodged a statement of problem in February 2008 identifying CFGNZ Limited as the respondent in respect of his personal grievance. A statement in reply was lodged saying that Mr Stanners never had a contractual relationship with CFGNZ Limited and that the contractual relationship that did exist between Mr Stanners and another entity called Substrate Assessment NZ Limited (SANZ) was never employment as an employee. Relevant documents were provided.

[2] There was a conference to make arrangements for the investigation in Christchurch. Counsel were to get instructions and confer after the conference about the correct identity of the respondent, indications at that point being that the contractual arrangements under which Mr Stanners had earlier worked were with a company called National Roof Assessors NZ Limited; and at the relevant time were with SANZ. Given agreement the Authority would have simply amended the named respondent. Other arrangements to investigate whether or not Mr Stanners was an employee were made.

[3] There were exchanges between counsel about the respondent's identity but no application to amend the statement of problem resulted. The time for lodging and exchanging material and documents went past without that being done so CFGNZ

Limited applied to have the statement of problem in its current form struck out. During a further phone conference on 5 November 2008 I directed that the scheduled investigation meeting would be limited to dealing with whether the proceedings against CFGNZ Limited should be struck out.

[4] At the meeting I heard evidence from Mr Stanners to the effect that SANZ was his employer but he also said that CFGNZ Limited was his employer. At one point this was on the basis of CFGNZ Limited being the parent company of SANZ but at another point it was because Mr Forde re-engaged him for work some time after the termination of the documented contractual relationship between National Roof Assessors NZ Limited (a company now struck off) and Mr Stanners. Mr Forde is a principal of CFGNZ Limited. I note that he is not a respondent nor has it been suggested at any earlier point that he contracted in his personal capacity with Mr Stanners.

[5] Mr Forde and the shareholders of SANZ are the shareholders of CFGNZ Limited and Mr Forde is its sole director. I am told that there is an agreement for CFGNZ Limited to manage SANZ. This is no reason to attribute to CFGNZ Limited the rights and responsibilities of SANZ.

[6] There were two signed written contracts between Mr Stanners and National Roof Assessors NZ Limited. The second of these is in the form of a contract for services for 2 years. Before its expiry the relationship ended. Later Mr Stanners recommenced a relationship. Sometime later Mr Stanners was provided with a contract between himself and SANZ for *MANAGEMENT CONSULTANTS SERVICES*. He never signed it but continued to work and receive payment in accordance with the contract. By email on 14 June 2007 Mr Forde raised with Mr Stanners the lack of a signed agreement. There was a further email from Mr Forde on 3 July 2007 offering to meet but instructing him not to make any further sales for or enter the business premises of SANZ. The signature line of the first email reads:

Cavan

Cavan Forde

Chairman of Directors

CFGNZ LTD

[7] The only issue for determination at present is whether, on the balance of probabilities, CFGNZ Limited was party to a contractual relationship with Mr Stanners. I find that it was not.

[8] There is no reliable evidence to prove that when the relationship was re-established Mr Stanners thought he was contracting with CFGNZ Limited. Rather, the available material shows that Mr Stanners thought he was contracting with SANZ. That is reinforced by the pay advice slips in the name of SANZ received by Mr Stanners while the relationship subsisted, his own tax records and the proffered but unsigned written agreement. Mr Forde's emails refer in several places to the present respondent but they also refer to several other companies that Mr Forde is associated with. The emails do not prove contractual relationships between Mr Stanners and those other companies just as they do not prove a relationship with the present respondent. CFGNZ Ltd has always said the correct respondent is SANZ and even Mr Stanners says that his employment was with SANZ.

[9] For these reasons I find that Mr Stanners never had any legal relationship with the present respondent. Whatever the nature of the relationship it was with SANZ. The present proceedings are at an end.

Costs

[10] Mr Goldstein seeks costs. In reply, Mr Kerr says that the proceedings were initiated in good faith; that Mr Stanners still considers that CFGNZ Limited is the proper respondent; and that he intends to challenge the determination and asks for costs to be reserved pending the challenge. I accept the point about good faith but for the reasons given find that there was never any contractual relationship between Mr Stanners and CFGNZ Limited. Costs normally follow the event and the Authority usually sets costs regardless of an intended challenge. There is no reason here to depart from that approach.

[11] The investigation meeting lasted about 1 hour. Mr Stanners was the only witness. Little was required of CFGNZ Limited except the statement of problem and counsel's several attendances. An appropriate order of costs is \$500.00. Mr Stanners is ordered to pay that sum to CFGNZ Limited.

Philip Cheyne
Member of the Employment Relations Authority

