

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 429
5516494

BETWEEN	HUIZHEN (JANE) WANG Applicant
AND	MICHAEL LEVERTOFF First Respondent
AND	NZ ACCOUNTING.COM LIMITED Second Respondent

Member of Authority:	Robin Arthur
Representatives:	Applicant in person First Respondent in person Hohipere Williams for the Second Respondent
Investigation:	On the papers
Determination:	17 October 2014

DETERMINATION OF THE AUTHORITY

- A. Under s137 of the Employment Relations Act 2000 Michael Levertoff and NZ Accounting.Com Limited (NZACL) are ordered to comply with the terms of a settlement agreement made with Huizhen (Jane) Wang on 25 July 2014 and to pay Ms Wang the sum of \$2800 within 14 days of the date of this determination.**
- B. Mr Levertoff and NZACL must also reimburse Ms Wang the sum of \$71.56 for the fee she paid to lodge her application in the Authority.**

Employment relationship problem

[1] Jane Wang applied to the Authority for an order requiring Michael Levertoff and NZ Accounting.Com Limited (NZACL) to comply with settlement terms agreed

in mediation by the parties. The agreement was certified by a mediator under s149 of the Employment Relations Act 2000 (the Act) on 25 July 2014. Its terms required payment to Ms Wang of \$2800 by 22 August 2014. Her application to the Authority stated the payment was not made to her by the due date. She also sought reimbursement of the fee she paid to lodge her application for a compliance order in the Authority.

[2] Ms Wang has today confirmed by telephone and email to the Authority that she has not received the payment due to her.

[3] The settlement agreement terms said the payment would be made by “*Michael Levertoff and/or NZ Accounting.Com Ltd*” so both were liable for the payment due to Ms Wang. The “*and/or*” phrase meant that one or other of the respondents could pay the whole amount due or they could share the payment – an arrangement known in legal terms as joint and several liability.

Notification of the respondents and their responses

[4] The Authority served Ms Wang’s application on both Mr Levertoff and NZACL at various addresses but neither lodged a statement in reply. Courier records on the Authority file show a copy of Ms Wang’s application was delivered to the present registered office of NZACL in Opua on 3 September 2014. A copy sent to the last known physical address for Mr Levertoff (in Hamilton) was returned undelivered.

[5] Further attempts were made on 8 October 2014 to contact both Mr Levertoff and NZACL through four different addresses. An Authority Minute was sent to those addresses advising that if there was no response from either or both respondents by 16 October 2014 a determination of the Authority would be issued without further investigation.

[6] On 16 October Mr Levertoff sent an email to the Authority stating he did not have the funds to make the payment. He also wrote that he was “*railroaded*” into agreeing to the payment to Mr Wang. By email on 16 October the present director of NZACL, Hohipere Williams, also contacted the Authority. She advised that she had held the role of managing director of NZACL since 25 August 2014. She also stated she was both unaware of and uninvolved with this matter before then.

[7] Companies Office records indicated the directorship and shareholding of NZACL changed in late August 2014. Mr Levertoff resigned and Ms Williams was appointed as director while NZACL's shareholding was transferred from another company owned by Mr Levertoff to one in which Ms Williams was a shareholder.

Obligations of respondents

[8] Neither Mr Levertoff's claim of being "*railroaded*" into agreement or Ms Williams' declared lack of knowledge of the agreement change the liability of either respondent for the payment due to Ms Wang. At the time Mr Levertoff signed the agreement he was a director of NZACL.

[9] The certification of the settlement agreement by a Ministry of Business mediator confirmed the parties had asked her to sign their agreement and, before doing so, she had explained the legal effect to them of doing so. The agreement, as certified by the mediator, included signed confirmation from Ms Wang and Mr Levertoff that they fully understood:

- (i) The settlement is final, binding and enforceable; and
- (ii) The terms cannot be appealed or reviewed; and
- (iii) The terms cannot be cancelled.

[10] As a matter of law the change of ownership or control of NZACL did not change its liability as a registered legal entity for the obligation to Ms Wang entered into on its behalf by its director at the time of the 25 July settlement agreement. If Ms Williams was not aware of the obligation when the change of shareholding and directorship occurred, that is a matter between her and Mr Levertoff but does not negate NZACL's joint and several liability with him to Ms Wang.

Orders necessary

[11] The email responses of 16 October from Mr Levertoff and Ms Williams confirmed that no useful or required purpose would be served by further investigation

and the orders sought by Ms Wang could and should be made.¹ Accordingly I have made the orders labelled A and B set out at the head of this determination.

[12] Failure to comply with those orders would render Mr Levertoff and NZACL liable to further orders in the Employment Court (which can include imprisonment, fines of up to \$40,000, and sequestering of the property of the person in default).² Alternatively Ms Wang could seek enforcement of the order by the District Court.³

Robin Arthur
Member of the Employment Relations Authority

¹ Sections 157, 160(1)(f), 160(2), 173(2) and 173(3) of the Employment Relations Act 2000 (the Act).

² Sections 138(6) and s140(6) of the Act.

³ Sections 141 and 151(2)(b)(ii) of the Act.