

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 76
5417206

BETWEEN

1. Tony Adams
2. Kenneth Allen
3. Christine Apperley
4. Nicholas Dalton
5. Pietro Elenio
6. Kathleen Gruschow
7. Justine Harwood
8. Simon Karipa
9. John Kidd
10. Terence O'Connor
11. Chaye Pettigrew
12. Sven Purre
13. Lloyd Singleton

Applicants

AND

MCDOUALL STUART
SECURITIES LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Andrew Scot-Howman and subsequently Jonathan Haig,
Counsel for the Applicants
Jaesen Sumner and subsequently Michael Leggat,
Counsel for the Respondent

Investigation Meeting: Telephone conference and on the papers 4 September
2013 at Wellington

Date of Determination: 4 September 2013 – Re-issued 15 August 2017

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Each of the applicants has claimed that they are each owed arrears of remuneration not paid by McDouall Stuart Securities Limited. McDouall Stuart Securities Limited initially disputed the amounts claimed from each of the applicants

and opposed any order relating to the claim. Following an earlier telephone conference between the parties' representatives, McDouall Stuart Securities Limited, through its representatives, filed a summary of calculations of outstanding payments dated 14 August 2013 for each of the applicants. The applicants have accepted the sums as calculated by McDouall Stuart Securities Limited.

The issues

[2] There are two issues. First what the applicants are owed has been conceded by the applicants on the basis of a summary of outstanding payments provided by the respondent (filed on 14 August 2013 under cover of an email from the respondent's lawyers).

[3] Second there is an issue about how the amounts owing are to be paid.

The decision by the Authority to proceed

[4] The applicants have requested a determination to avoid any delays in getting paid. McDouall Stuart Securities Limited opposed this on the grounds that there is some agreement with the applicants for payments to be made with them each forfeiting the full amounts.

[5] During the course of the telephone conference I decided to proceed with making a determination in this matter. The decision has been given without a recording and the reasoning and details will be more fully provided in issuing the written determination. My reasons for proceeding are.

- i. That there is no longer any dispute on McDouall Stuart Securities Limited's figures of the sums of remuneration payable to each applicant. This is supported by the summary of the amounts payable for each applicant provided by McDouall Stuart Securities Limited.
- ii. That today was the first time that the respondent has raised an issue about there being some agreement from the applicants to forfeiture an amount for a payment to be made to each of them. No details were provided. The summary of money outstanding does not support this claim. The claim has never been properly pleaded in the statement in reply and never raised as a defence at any earlier stage before the Authority.

- iii. That any claim on any issue as to arrangements and/or agreement for payment can be pursued in enforcement actions.

[6] I accept Mr Scott Howman's request to proceed to avoid any delay in this matter.

The facts

[7] Each of the applicants was employed by McDouall Stuart Securities Limited. McDouall Stuart Securities Limited owes each applicant arrears of remuneration. Demands have been made for the payment of the amounts, but McDouall Stuart Securities Limited has failed to pay. The amounts outstanding are as follows:

1	Tony Adams \$78,541.48 gross
2	Kenneth Allen \$28,004.68 gross
3	Christine Apperley \$11,264.89 gross
4	Nicholas Dalton \$36,874.12 gross
5	Pietro Elenio \$37,256.10 gross
6	Kathleen Gruschow \$23,298.54 gross
7	Justine Harwood \$15,775.66 gross
8	Simon Karipa \$25,414.40 gross
9	John Kidd \$222,855.85 gross
10	Terence O'Connor \$80,113.35 gross
11	Chaye Pettigrew \$111,749.29 gross
12	Sven Purre \$49,556.96 gross
13	Lloyd Singleton \$80,912.36 gross

Orders of the Authority

[8] McDouall Stuart Securities Limited is to make the following payments to:

1	Tony Adams \$78,541.48 gross
2	Kenneth Allen \$28,004.68 gross

3	Christine Apperley \$11,264.89 gross
4	Nicholas Dalton \$36,874.12 gross
5	Pietro Elenio \$37,256.10 gross
6	Kathleen Gruschow \$23,298.54 gross
7	Justine Harwood \$15,775.66 gross
8	Simon Karipa \$25,414.40 gross
9	John Kidd, \$222,855.85 gross
10	Terence O'Connor \$80,113.35 gross
11	Chaye Pettigrew \$111,749.29 gross
12	Sven Purre \$49,556.96 gross
13	Lloyd Singleton \$80,912.36 gross

[9] I reserve the claims for interest on the above amounts because no details have been calculated and I am not clear about the claimed timeframe for any interest claimed. Costs are reserved.

[10] This leaves the outstanding issue about how the above amounts are to be paid where there appears to be no agreement. The suggestion has been made for further discussions to take place by the applicants and they have indicated that they are willing for discussions to be held with the possibility of mediation and including confidentiality on the arrangements. I note that McDouall Stuart Securities Limited is in agreement to meet with the applicants in mediation. I would commend these further discussions and mediation to the parties in an endeavour to try and resolve the remaining issue.

James Crichton
Member of the Employment Relations Authority