

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 553
5437050

BETWEEN

MATHEW BUCHAN
Applicant

A N D

ELITE SPRAYPAINTING
LIMITED
First Respondent

PAUL CHAMBERLAIN
Second Respondent

Member of Authority: Rachel Larmer

Representatives: David Prisk, Advocate for Applicant
No appearance by First and Second Respondents

Investigation Meeting: 03 December 2013 at Auckland

Date of Determination: 03 December 2013

DETERMINATION OF THE AUTHORITY

- A. Elite Spraypainting Limited is ordered within 7 days of this determination to pay Mathew Buchan:**
- (a) \$4,111.56 outstanding from the Authority's determination of 12 April 2013¹;**
 - (b) \$200 towards his actual legal costs for this application;**
 - (c) \$71.56 to reimburse his filing fee for this application.**
- B. Mr Paul Chamberlain is ordered to take the necessary steps to cause the payments that Elite Spraypainting Limited has been**

¹ [2013] NZERA Auckland 127.

ordered to make (see A above) to occur within 7 days of the date of this determination.²

Employment relationship problem

[1] In a substantive determination dated 12 April 2013³ the Authority ordered Elite Spraypainting Limited (Elite Spraypainting) to pay Mr Buchan a total of \$9,111.56 within 28 days of the date of that determination.

[2] Mr Buchan has subsequently received only \$5,000 (\$3,000 on 6 June 2013, \$1,000 around 23 July 2013 and \$1,000 on 22 October 2013) leaving a balance owing of \$4,111.56.

[3] Mr Chamberlain (sole director of and 99% shareholder in Elite Spraypainting) has made a number of arrangements with Mr Buchan to pay the amounts owed but has failed to make the payments as agreed.

[4] Mr Buchan seeks an order from the Authority that Elite Spraypainting complies with the Authority's determination of 12 April 2013.⁴ He also seeks an order under s.137(4) of the Employment Relations Act 2000 (the Act) that Mr Chamberlain be ordered under s.137(2) of the Act to cause Elite Spraypainting to make the payments to Mr Buchan that the Authority orders should be made.

No appearance by Respondents

[5] Neither respondent filed a Statement in Reply or applied for leave to file a Statement in Reply out of time. I am satisfied that Mr Buchan's Statement of Problem was served on the first respondents at its registered office on 29 October and on Mr Chamberlain at his home on 31 October 2013. The Authority's Notice of Meeting was also served at the registered office on both respondents on 25 November 2013 with Mr Chamberlain signing for the receipt of the service documents.

[6] Neither respondent attended the Authority's investigation meeting today.

² Section 137(3) of the Act.

³ Ibid 1.

⁴ Supra.

Outcome

[7] Mr Buchan gave evidence on oath that he was still owed \$4,111.56 of the amount awarded to him on 12 April 2013. His evidence was not contradicted. I am satisfied that Elite Spraypainting is unlikely to pay the balance of the money owing to Mr Buchan unless a compliance order is issued.

[8] Accordingly, Elite Spraypainting is ordered to comply with the Authority's 12 April 2013 determination by paying to Mr Buchan or his nominee \$4,111.56 within 7 days of the date of this determination.

[9] Under s.137(4) of the Act the Authority may make a compliance order against a person who is a party by ordering them to do any specified thing for the purpose of preventing further non-observance of or non-compliance with its determination.⁵

[10] Mr Chamberlain is the sole director and 99% shareholder of Elite Spraypainting. Mr Chamberlain is the person who has organised for the \$5,000 which has been paid to be paid to Mr Buchan. It is therefore within his power to cause Elite Spraypainting to pay the amounts owed to Mr Buchan. There was no evidence that Mr Chamberlain no longer has the power to take steps to cause Elite Spraypainting to make the payments as ordered.

[11] I therefore consider it appropriate to issue a compliance order under ss.137(2) and (4) of the Act. Accordingly, Mr Chamberlain is ordered to take the necessary steps to cause Elite Spraypainting to pay Mr Buchan the \$4,111.56 outstanding from the Authority's 12 April 2013 determination. This is distinct from which a situation in which Mr Chamberlain is personally liable to pay the amount.

[12] Mr Chamberlain is to cause Elite Spraypainting to comply with the Authority's 12 April determination within 7 days of the date of this determination.

Costs

[13] Mr Buchan as the successful party is entitled to a contribution towards his costs. I am satisfied upon production of a receipt that Mr Buchan has incurred costs of \$500 plus GST for this application. Elite Spraypainting is ordered to pay Mr

⁵ Section 137(2) of the Act.

Buchan \$200 towards his actual legal costs together with \$71.56 to reimburse his filing fee for this application.

Rachel Larmer
Member of the Employment Relations Authority