

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 95/10
5277224**

BETWEEN MICHELE DEBRECENI
Applicant

AND APOLLO MARKETING &
ADVERTISING LIMITED
Respondent

Member of Authority: Leon Robinson

Representatives: Helen Wendelborn for Applicant
Roy Kingsnorth and Kim Hughes for Respondent

Investigation Meeting: 16 December 2009

Determination: 03 March 2010

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Ms Michele Debreceni ("Ms Debreceni") claims she was unjustifiably dismissed from her employment with the respondent Apollo Marketing & Advertising Limited ("Apollo"). Apollo says the dismissal was justified.

[2] The parties did not attend mediation because Apollo was not able to commit itself to a mutually convenient session within a time period acceptable to the Authority.

The facts

[3] Apollo is a limited liability company incorporated on 30 January 2007. Its shareholders and directors are Mr Roy William King ("Mr King") and Ms Lyn Cathrine King ("Ms King"). It operates and markets an internet website known as *Adultspace* advertising a range of adult sexual services including strippers, escorts and massage parlours.

[4] Ms Debrececi was employed by Apollo as a business account manager commencing on 9 December 2008. Ms Debrececi recalls signing an individual employment agreement. She reported to Apollo's manager Ms Kim Hughes ("Ms Hughes"). She worked closely with the office junior Sophie King who is Mr Kings' niece ("Sophie").

[5] Ms Debrececi's duties included generating and managing client accounts including credit control management. She spent her time making telephone calls, attending on and managing relationships with prospective clients, and organising client photographs. She worked with other employees coordinating client graphic web design work. She was responsible for monitoring client payments and the accounting administration of such payments. She was required to produce daily and weekly reports to Ms Hughes.

[6] In May 2009, Ms Hughes became aware that Ms Debrececi had placed her own advertisements on the *Trade & Exchange* website advertising sexual email and explicit photography services. Ms Hughes was concerned that such activity would conflict with Apollo's operation and in particular, its client *Fantasemail* which advertised a sexual email service.

[7] Ms Hughes also learned that *Fantasemail* was not in fact a genuine customer but was in fact created by Ms Debrececi. Ms Hughes also learned that the model for the *Fantasemail* advertisement banner was Ms Debrececi's daughter. Ms Hughes further learned that 396 photographs had been taken of Ms Debrececi's daughter and were stored on Apollo's computer system. About 100 of those photographs had been copied to CD and removed by Ms Debrececi.

[8] On 8 May 2009 Ms Hughes and Ms King confronted Ms Debrececi with what Ms Hughes had learned. Ms Debrececi admitted that *Fantasemail* was not a client but was her. She said that Sophie knew of the activity and that she (Ms Debrececi) had therefore assumed that Ms Hughes knew too. Ms Debrececi said that she had used

the *Fantasemail* advertising banner as a sales tool. Ms Hughes told her that persons who clicked on the banner would already be a visitor to the *Adultspace* website.

[9] Ms Hughes carried out further enquiries. She learned that Ms Debrececi had recorded four payments by *Fantasemail*.

[10] On 12 May 2009 Ms Hughes met again with Ms Debrececi. Ms Hughes told Ms Debrececi there would be a meeting on 14 May 2009 where matters would be discussed in more depth. Ms Hughes explained that Ms Debrececi could bring a representative, and that that matter could result in her dismissal. Ms Hughes informed Ms Debrececi she was suspended on full pay until the meeting.

[11] The Authority finds that Ms Debrececi asked Ms Hughes whether legal proceedings would be dropped if she resigned. Ms Hughes advised that was not a decision she could make and that she intended to gather more information around *Fantasemail*. Ms Debrececi asked what her final pay would be. Ms Hughes said she would look into it. She told Ms Debrececi to leave the office, to think about the situation and contact her before the meeting if she felt the need to do so. She asked Ms Debrececi for her telephone and office keys.

[12] There was a further meeting on 18 May 2009. Ms Hughes, Mr King, Ms Debrececi and her representative attended. Ms Debrececi said she had developed *Fantasemail* as a sales tool to help her break through market sectors that were less sex orientated eg pubs, clubs, and hospitality. She said her activities were known to Ms Hughes. She said too that she had intended to promote her daughter in gaining promotional and modelling work.

[13] Ms Debrececi continued to maintain her activities were a sales tool. Ms Hughes remained intrigued as to why Ms Debrececi had documented *Fantasemail* as a paying client, how there could be any financial gain for *Adultspace* and, why Ms Debrececi had documented further developments for *Fantasemail*. Ms Debrececi was also asked why *Fantasemail* was removed from the website yet she had continued to operate it

personally on the Trade & Exchange website. Ms Debrececi could not satisfy her employer of those matters.

[14] Ms Debrececi maintained that the employee Sophie had assisted her and had guided her with respect to pricing and paying for *Adultspace* time and resource. She said that her daughter had agreed to cut Sophie's hair in return for the photographs that were taken. The meeting was terminated when Ms Debrececi became upset and refused to continue. She was informed that a decision would be made as to further discussions.

[15] By letter 20 May 2009 Apollo wrote to Ms Debrececi inviting her to comment on matters it remained concerned about. She was invited to respond by midday 22 May 2009.

[16] Ms Debrececi responded in writing through her advocate by letter faxed at 1.42pm on 22 May 2009.

[17] Ms Hughes phoned Ms Debrececi's advocate at 3.12pm that same day and advised that Ms Debrececi was dismissed.

The merits

[18] The test of justification is prescribed at Section 103A of the *Employment Relations Act 2000* ("the Act"). That section provides:-

103A. Test of justification

For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[19] In essence, Ms Debrececi continued to maintain that *Fantasemail* was a "sales tool" for Apollo. But Apollo was entitled to reject that explanation.

[20] Firstly, the Authority finds she had never told her employer what she was doing. On 8 May 2009 Ms Debrececi admitted to Ms Hughes that she had assumed that because Sophie was aware of her activities, that Ms Hughes knew too. That was acknowledgement that Ms Hughes was never told by Ms Debrececi of what she (Ms Debrececi) was doing. Ms Debrececi never sought Ms Hughes' approval or permission to carry out such activities.

[21] Ms Debrececi had used her employer's time and resources to pursue her own private activities for her own personal gain. She had not been authorised to do so.

[22] As well, the evidence plainly demonstrated that Ms Debrececi had set up *Fantasemail* as a genuine customer when in fact it was not. She never disclosed that it was her own initiative.

[23] She had also documented business transactions with it as though it were a genuine customer. That was plainly inconsistent with her explanation that it was a sales tool for Apollo. She was unable to explain why there had been business transactions if she made her employer aware that *Fantasemail* was a sales tool.

[24] But Ms Debrececi continued to maintain *Fantasemail* was a sales tool and it was plainly obvious that persons clicking on the *Fantasemail* banner would already be on the Adultspace website.

[25] For these reasons, the Authority finds that Apollo was right to reject Ms Debrececi's various explanations as not credible and entirely without foundation. It is the Authority's view that a fair and reasonable employer would quite properly have taken the same view. It is also the Authority's view that Apollo was quite justified in forming a view that Ms Debrececi's established activities seriously undermined the trust and confidence it could repose in her. In all the circumstances, Apollo justifies its decision to terminate Ms Debrececi's employment.

The determination

[26] The Authority determines that Apollo's actions and how it acted were what a fair and reasonable employer would have done. **The Authority finds that Ms Debreceni does not have a personal grievance and there will be no formal orders.**

The costs

[27] Apollo has successfully defended the application against it. If it has incurred any costs of professional representation and it wishes to make application for a contribution to those costs, it must submit a memorandum to the Authority for consideration within 28 days of this Determination. Ms Debreceni will have 14 days thereafter to reply.

Leon Robinson
Member of Employment Relations Authority