

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 390
5428467

BETWEEN

DONALD GIBBS
Applicant

AND

CITY SALES LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
Stephen Langton for Respondent

Investigation: On the papers

Determination: 30 August 2013

DETERMINATION OF THE AUTHORITY

- A. The status of Donald Gibbs as an independent contractor in providing sales services to City Sales Limited is confirmed by the terms of the contract under which he was engaged and s51(2) of the Real Estate Agents Act 2008.**
- B. The Employment Relations Authority has no jurisdiction to determine Mr Gibbs claim that commissions and bonuses remain due to him.**

[1] In a statement of problem lodged in the Authority Donald Gibbs said he worked for City Sales Limited (CSL) from 14 January 2013 until 20 May 2013 but was not paid commissions and bonuses due to him for certain sales made.

[2] He lodged a copy of the sales contract under which he was engaged to work for CSL. The contract included a term, under the heading "*Nature of Relationship*"

that stated “[t]he contractor is engaged as an independent contractor under a contract for services and not as an employee, joint venture or partner of the company”.

[3] By statement of reply CSL stated that the Employment Relations Authority did not have jurisdiction to consider Mr Gibbs’ claim. It is correct.

[4] Under section 6 of the Employment Relations Act 2000 (the Act) the Authority has jurisdiction to investigate whether a person was engaged to work as an employee or an independent contractor. The statute requires the Authority to consider the real nature of the relationship and not to treat what the people involved say – including what is written in their contract or agreement – as determining the issue. However s6(4) of the Act allows for a provision in the legislation governing real estate agents to override that general rule. Under s51(2) of the Real Estate Agents Act 2008 any written agreement between an agent and a salesperson that expressly states their relationship is one of employer and independent contractor is declared to be conclusive.

[5] Accordingly I must find Mr Gibbs relationship with CSL was as an independent contractor and not as an employee. As a result the Authority has no jurisdiction to determine his claim. Instead the appropriate forum to pursue his claim – if disputed by CSL – is the Disputes Tribunal, or – if not disputed – the District Court and its procedures for debt recovery.

Robin Arthur
Member of the Employment Relations Authority