

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 132A/07  
5047385**

BETWEEN      ROGER McRAE  
                         Applicant  
  
AND              THE \$2 SHOP LIMITED  
                         Respondent

Member of Authority:      Leon Robinson  
  
Representatives:          Applicant In Person  
                                 John Haigh QC for Respondent  
  
Determination:              2 July 2007

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**DETERMINATION OF THE AUTHORITY**

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[1] The applicant Mr Roger McRae ("Mr McRae") applies to the Authority for a compliance order in respect of a Record of Settlement signed by a mediator on 9 August 2006 ("the Record of Settlement").

[2] The \$2 Shop Limited asked that I make enquiries of Mr McRae which were directed at exposing criminal conduct by him. It was submitted that such conduct would have precluded any settlement agreement that awarded any compensation to Mr McRae. It is also submitted that such matters are a relevant consideration in the exercise of the discretion to grant compliance and that the Authority's equity and good conscience jurisdiction enables it to temper section 149(3) of the *Employment Relations Act 2000* ("the Act").

[3] I declined to make the enquiries sought and advised the parties of the same, because I considered that section 149(3) of the Act makes clear the Record of Settlement cannot be cancelled. The legislative amendment establishing this provision is founded on clear policy to give greater certainty of outcome in mediated settlements. Section 149(3) is uncompromising not only so as to discourage an aggrieved party from seeking perceived better resolution on enforcement but also because the prospect of cancellation would render such agreed settlements largely redundant.

[4] I regard Mr McRae's advice of 1 June 2007 as demonstrative of his clear aversion and objection to the enquiries sought by The \$2 Shop Limited and I recognise that he has a privilege against self-incrimination and a right to silence in this regard. I have also considered Mr Haigh's further advice of 21 June 2007.

[5] I decline to make the enquiries sought in relation to inchoate allegations, and therefore there is no foundation for me to take allegations of improper conduct into account in exercising the discretion as to whether to grant compliance. I conclude that I must act to uphold and recognise the integrity of the Record of Settlement and prevent this matter from remaining unresolved any further. I also decline to adjourn the matter.

[6] I am satisfied that Mr McRae has met his obligations under the Record of Settlement. I am further satisfied that has made demand of The \$2 Shop Limited seeking compliance with the Record of Settlement.

[7] I am satisfied that The \$2 Shop Limited refuses to comply with the Record of Settlement and that the situation of non-compliance continues today.

[8] **I order The \$2 Shop Limited to comply with the Record of Settlement signed by a mediator on 9 August 2006, and to do so by 30 July 2007.**

[9] As Mr McRae is not represented by professional advocate, there will be no order for costs.

Leon Robinson  
Member of Employment Relations Authority