

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Joseph Peter Nagels (Applicant)

**AND** Ian Ralph Robbie (Respondent)

**REPRESENTATIVES** Joseph Nagels In person  
No appearance by respondent

**MEMBER OF AUTHORITY** Dzintra King

**INVESTIGATION MEETING** 21 November 2005

**DATE OF DETERMINATION** 12 December 2005

**DETERMINATION OF THE AUTHORITY**

Mr. Nagels seeks the payment of unpaid commissions from the respondent.

Upon reading the documents supplied to me and hearing from Mr. Nagels it became apparent that it was unclear whether Mr. Nagels was an employee or a contractor. In addition to hearing from Mr. Nagels, I subsequently contacted Mr. Mike Isaac, a director of SUNZ Ltd.

Mr. Nagels has a business card that identifies him as Sales manager for SUNZ Solar and Water Heating. He worked for Mr. Ian Robbie who traded as SUNZ BOP/Waikato. Mr. Nagels supplied his own vehicle, computer, printer, postage and claimed for these expenses. He did not have regular office hours and worked from his home much of the time, where he had an office. He would make all the arrangements to contact and visit clients himself and set his own schedule. He said although Mr. Robbie would sometimes tell him to go and see a client how and when it was done was up to him. He took no sick leave and no annual leave. Mr. Nagels was also able to contract other people to do work and said he could have got someone to come and work with him but he would have had to pay that person.

All the indications are that Mr. Nagels was not an employee but a person in business on his own account. He was a contractor and the Authority does not have jurisdiction. If Mr. Nagels wishes to seek his unpaid commissions he will need to file an application with the Disputes Tribunal.

Dzintra King  
Member of Employment Relations Authority