

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 169
5142848

BETWEEN HOPI PALMER
Applicant
AND SBA PACIFIC LIMITED
Respondent

Member of Authority: M B Loftus
Representatives: Steven Zindel, Counsel for Applicant
Glenn Browne, for Respondent
Investigation Meeting: On the papers
Determination: 3 November 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Hopi Palmer, seeks an order requiring that the respondent, SBA Pacific Limited (SBA), comply with the terms of a mediated settlement entered into on 24 March 2009.

[2] SBA's view appears to be that the terms of settlement have been nullified by the passage of time.

The Investigation Process

[3] The application was initially filed on 24 January 2011, with SBA furnishing a statement in reply on 7 February. Unfortunately the matter did not progress further at that time due to disruption caused by Christchurch's 22 February earthquake and the fact the file was in an inaccessible building within the red zone cordon.

[4] Once action on the file recommenced, the respondent failed to participate in the process. Mr Browne is one of two directors and shareholders of the respondent. It was he who signed the settlement in question and he who was identified as SBA's representative on the statement in reply.

[5] Mr Browne did not participate in the telephone conference which was scheduled to deal with administrative issues surrounding the application in accordance with the Authority's normal processes and about which he was notified. He has not responded to messages left with SBA staff and he failed to reply to letters couriered to his residential address. The last letter advised that failure to lodge an affidavit in reply by 27 October would lead to the Authority considering and determining the matter on the papers before it.

[6] In the circumstances I consider it appropriate to continue. SBA is aware of the claim – indeed it has provided an initial response. Subsequent documents have been forwarded to it and telephone contact made but ignored. SBA can not avoid its responsibilities by simply ignoring them.

Background

[7] The background to the matter is relatively simple. Ms Palmer took a personal grievance against SBA. His claim was mediated on 24 March 2009. A settlement was entered into under the provisions of s.149 of the Employment Relations Act 2000 (the Act) and signed by Ms Hopi, Mr Browne and the mediator.

[8] The settlement required that SBA provide Mr Palmer with a positively worded reference and pay her the sum of \$2,500 as compensation under section 123(1)(c)(i) of the Act. Payment was to be made by instalments. A first payment of \$1000 was to be made by 31 March 2009 and that would be followed by two payments of \$750 each to be made by 30 April and 30 May respectively.

[9] The first payment was made but, according to Ms Hopi, she received neither of the two subsequent payments. Ms Hopi's then solicitor wrote to Mr Browne on 8 July demanding payment but received no response.

[10] No further action appears to have been taken until 17 January 2011 when Mr Zindel is said to have phoned Mr Browne and demanded payment within two days. Mr Browne appears to have asked for more time to pay but the request was denied. Payment failed to occur and, as a result, the application was prepared on 20 January 2011. As stated above, it was received by the Authority four days later.

[11] Mr Browne, in the statement in reply filed on behalf of SBA, states:

The problem as specified should have been resolved way back in 2009

Mr Steven Zindel phoned on 17/01/2011 demanding payment in full in two days or he'll take action. Mr Zindel stated its summer your busy period (what's that got to do with anything?!). This has been left too long.

This should have been resolved in 2009 we have moved on. There has been no contact, no statements, no letter, no reminders.

Determination

[12] The Authority has the power to order compliance with a settlement entered into under s.1409 or the Act (see ss.137 and 151).

[13] I am satisfied the settlement was entered into. Ms Palmer's assertion of non-payment is not denied - indeed the content of SBA's statement in reply implies that it has validity and I conclude that to be the case.

[14] SBA's response is essentially that too much time has passed, especially given a failure to pursue the matter.

[15] That is a totally inadequate response. The suggestion that Ms Palmer has failed to pursue the matter is factually incorrect - there is evidence of two such attempts but in any event there is a far greater onus upon SBA to honour the agreement it entered into. The suggestion that the matter has waited too long is also flawed. The statutory indicator is that parties have up to 6 years to enforce monetary agreements and claims (refer s.11(1) of the Limitation Act 2010).

[16] The application made no mention of the reference and therefore no order is made in respect thereof.

Orders

[17] For the reasons given the following orders are made:

- a. The respondent, SBA Pacific Limited, is to comply in full with the terms of settlement entered into on 24 March 2009; and
- b. It must therefore pay to the applicant, Ms Hopi Palmer, the sum of \$1,500.00 (fifteen hundred dollars); and
- c. Payment is to be made to the trust account of Zindels, Barristers and Solicitors, no later than 4.00pm on Thursday 17 November 2011.

Costs

[18] I reserve the issue of costs. I ask that the parties try to resolve the issue but failing that, and in the event that Ms Palmer wishes to seek costs, she is required to file her application within 28 days of this determination. A copy shall be served on the respondent who is to file any response within 14 days of the application.

M B Loftus
Member of the Employment Relations Authority