

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 134/09

5276038

BETWEEN RDP Group Limited
Applicant

AND Russell Murphy
Respondent

Member of Authority: Denis Asher

Representatives: Paul McBride for the Company
Charles McGuinness for Mr Murphy

Investigation Meeting: Wellington, 16 September 2009

Determination: 17 September 2009



CONSENT DETERMINATION OF THE AUTHORITY

[1] During today's investigation the parties advised they had reached a conditional settlement in respect of all matters before them and sought an adjournment. As foreshadowed, the parties confirmed the following day that they had settled their employment relationship problem. They asked the Authority to record it as a consent determination. I accept the parties' request. I record here that the further investigation set down for 9 October is no longer required.

[2] I hereby determine that the parties' agreement as attached is incorporated into this consent determination.



A handwritten signature in black ink, appearing to read "DA", written over a horizontal line.

Denis Asher
Member of the Employment Relations Authority



Application to Employment Relations Authority
Section 158, Employment Relations Act 2000

5276038

BETWEEN **RDP Group Limited**

Applicant

AND **Russell Murphy**

Respondent

CONSENT MEMORANDUM



Person acting: Paul McBride
21-23 Blair Street
P.O. Box 19001, DX SP 21007
Wellington
Phone: 04 801 5427
Fax: 04 801 5428
Email paul@mdjlaw.co.nz

Subject to the Authority's decision, the parties request that a Consent Order is issued in the following terms:

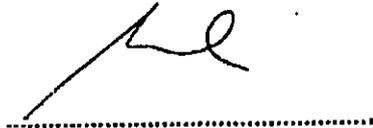
1. The Applicant employed the Respondent in a printing sales role until (at earliest) a date in August 2009. That date is disputed.
2. During his employment, the Respondent breached the duty of fidelity that he owed to the Applicant, by operating another printing company.
3. Proceedings have been brought in the Authority by the Applicant in respect of those breaches.
4. On 7 August 2009, undertakings were given to the Authority by the Respondent, in lieu of the grant of an interim injunction.
5. A further application has been brought alleging breach of the undertaking. Evidence has been provided in relation to that.
6. In resolution of all issues arising from the employment relationship to date, the following compliance orders are now made by consent:
 - (i) With 14 days, the Respondent will pay to the Applicant, the sum of \$25,000 plus GST (if any) in respect of costs incurred by the Applicant;
 - (ii) The Respondent and/or Print-Tastic Ltd ("*Print-Tastic*") will forthwith assign to the Applicant all outstanding invoices for work undertaken by Print-Tastic down to the date of these orders, being not less than \$21,104 plus GST. The Applicant will be entitled to receive all moneys in respect of all such invoices;
 - (iii) The Respondent will settle all accounts with third party suppliers in respect of all such invoices;
 - (iv) Within 14 days, the Respondent will repay to the Applicant all of the net remuneration that he has been paid by the Respondent in respect of the period from 21 August 2009,

together with one additional week's net remuneration. The Respondent will co-operate fully with any steps required for the Applicant to recoup any PAYE in respect of these sums;

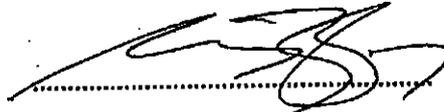
- (v) In recognition of his breaches, and in part payment of restitution/damages, the Respondent will make no claim to any commission or holiday pay which might, but for these orders, have been payable to him;
- (vi) For a period of six months from the date of these orders, the Respondent will not by himself, his servants or agents, contact, solicit, or undertake any business with any customer or potential customer of the Applicant's. In this clause:
 - i. "Customer" means any person who has undertaken any business transaction with the Applicant.
 - ii. "Potential customer" means any person who had been in contact with the Applicant (whether or not initiated by the Applicant) with a view to their potentially becoming a customer (as defined), provided that "Potential customer" in this clause does not include Michael Poole, Ross Marriott or Presentation Solutions Ltd.
- In each case within the 12 months immediately prior to 21 August 2009.
- (vii) The Respondent is released from the undertakings that he gave to the Authority dated 7 August 2009.
- (viii) The Applicant waives the restraint of trade provision contained in clause 7.4 of the employment agreement. In its place, the restriction on transactions in clause (vi) is to apply.
- (ix) The Respondent is otherwise bound by the continuing terms of the employment agreement, including (without limitation) those relating to confidential information.

- (x) The Applicant otherwise withdraws these proceedings.
- (xi) Save as provided by these orders, no further orders as to costs are made.
- (xii) The parties agree that, for present purposes, the employment ceased on 21 August 2009.

DATED at Wellington this 17th day of September 2009.



P A McBride
Counsel for the Applicant



C McGuinness
Counsel for Respondent