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Sharma v Xtreme Nutrition and Training Limited (Auckland) [2017] NZERA 19; [2017] NZERA Auckland 19 (23 January 2017)

Last Updated: 6 March 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 19
3000085

BETWEEN AMIT SHARMA Applicant

AND XTREME NUTRITION & TRAINING LIMITED Respondent

Member of Authority: Vicki Campbell

Representatives: Amit Sharma in Person

Moe Moses for Respondent

Investigation Meeting: On the papers

Submissions Received: 6 January 2017 from Applicant

13 January 2017 from Respondent

Determination: 23 January 2017

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

A. The parties are ordered to comply with clauses 3 and 9 of the

Record of Settlement dated 19 May 2016.

Employment relationship problem

[1] On 14 November 2016 Mr Sharma lodged an application in the Authority claiming Xtreme Nutrition & Training Limited (Xtreme Nutrition) had breached a Record of Settlement (ROS) entered into between himself and Xtreme Nutrition on 19

May 2016. To remedy the alleged breach Mr Sharma seeks a compliance order and in submissions seeks the imposition of penalties.

[2] During a case management call with the parties on 20 December 2016 the parties agreed for the Authority to determine this matter on the papers currently before the Authority.

Background

[3] Mr Sharma and Xtreme Nutrition attended mediation on 19 May 2016 and entered into a final, binding and enforceable ROS which was signed by a Mediator employed by the Ministry of Business, Innovation and Employment on 30 May 2016.

[4] In his statement of problem Mr Sharma claims that through the ROS the parties agreed that there would be a 50/50 ownership of the shares in a company called Cheaper Online and that Mr Sharma would receive an employment agreement and a partnership agreement. Mr Sharma says that Xtreme Nutrition has not meet these obligations.

The Record of Settlement

[5] The ROS has been signed by Mr Sharma and Mr Moe Moses (on behalf of Xtreme Nutrition). The parties to the ROS are stated as being Mr Sharma and Xtreme Nutrition.

[6] While not stated in his statement of problem I have concluded Mr Sharma is seeking compliance with the following clauses:

2. Moe Moses will purchase 50% of Cheaper Online Ltd trading as My Supps for \$100,000

3. A partnership agreement will be drawn up between the parties on the structure of the business arrangement.

4. Cheaper Online Ltd will employ Amit Sharma with an employment agreement agreed between the parties.

...

7. Xtreme Nutrition & Training Ltd and Cheaper Online Ltd will not open stores within 25km of each other apart from the existing ones.

...

9. The parties agree not to make any disparaging remarks or talk ill of the other to any third party including on social media.

[7] Mr Moses is the sole director and shareholder of Xtreme Nutrition and Mr Sharma is the sole director and shareholder of Cheaper Online Limited. Neither Mr Moses personally, nor Cheaper Online Limited as a separate legal entity are parties to the ROS. This creates problems when making compliance orders. The Authority does not have jurisdiction to order compliance against individuals or other legal entities that are not a party to the agreement.

[8] A further concern about the actions required under the ROS is that there are no timeframes stipulated in the ROS as to when certain actions will be completed.

[9] I have reviewed the documents provided by the parties and have reached the conclusion that matters between the parties were not only employment relationship problems but also problems arising out of separate commercial relationships.

[10] Given the difficulties with the ROS which I have outlined, I am prepared to order compliance on the following basis.

[11] The parties, being Mr Sharma and Xtreme Nutrition & Training Limited, are ordered to comply with clauses 3 and 9 of the ROS dated 19 May 2016. These are the only clauses in the ROS that impact on the parties. All other clauses involve third parties who are not actual parties to the ROS.

[12] In his submissions Mr Sharma sought the imposition of penalties against Xtreme Nutrition. I am not satisfied this is a matter in which penalties should be imposed.

[13] There has been no application for costs.

Vicki Campbell

Member of the Employment Relations Authority