

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 91
5322615

BETWEEN DEV KUMAR SIDANA
 Applicant

AND ANIL SECURITIES LIMITED
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
 Anil Bhatia, advocate for Respondent

Investigation Meeting: 8 March 2011

Determination: 10 March 2011

DETERMINATION OF THE AUTHORITY

Application for compliance order

[1] Mr Dev Sidana has applied to the Authority under s 137 of the Employment Relations Act 2000 for an order requiring Anil Securities Ltd to comply with a determination given by the Authority.

[2] On 2 August 2010 under AA344/10 the Authority ordered Anil Securities Ltd to pay Mr Sidana the sum of \$2,907 arrears of wages and to do so within 14 days of the date of service upon it of the written determination. Anil Securities Ltd was also ordered to pay Mr Sidana \$70, in reimbursement of the filing fee paid to make his application to the Authority.

[3] About two months after the Authority's decision was issued to the parties Mr Sidana applied for a compliance order, claiming that Anil Securities Ltd had not paid him the money he was entitled to under the determination.

[4] Following service of that application Anil Securities Ltd through its sole director and shareholder, Mr Anil Bhatia, became involved. Previously they had not taken any part at all in the matter

[5] Mr Bhatia and Mr Sidana attended an investigation meeting held by the Authority on 8 March 2011. There is no dispute that Anil Securities Ltd has not paid Mr Sidana the monies ordered by the Authority. Mr Bhatia gave a number of reasons why that was, going to the merits of Mr Sidana's claim upheld by the Authority. Mr Bhatia on behalf of his company had not attended the original investigation meeting to oppose Mr Sidana's claims

[6] Mr Bhatia's position is that his company did not take part in this matter because it had not been aware of the application made by Mr Sidana in September 2009, and it had not been aware of the investigation meeting subsequently held or of the determination that was issued by the Authority in August 2010.

[7] Whatever lack of knowledge Mr Bhatia may have had was entirely his own fault. The Authority's support staff put considerable time and effort into serving Anil Securities Ltd with the application and with the notice of investigation meeting subsequently issued.

[8] The address for service given by Mr Sidana and used by the Authority was 19 Opanuku Road, Henderson Valley, Waitakere. A search of the Companies Office online files had shown that address to be both the registered office and the address for service of Anil Securities Limited. It was also the address given for Mr Anil Bhatia, the sole shareholder of the company.

[9] Now having become aware of the compliance application Mr Bhatia has sought to explain to the Authority that documents served at the address of 19 Opanuku Road would not have reached him after August 2009 when he shifted from that address in the Waitakeres. Mr Bhatia has also sought to explain that at some point he applied to change the registered office to that of his new address in Te Atatu.

[10] The latest search by the Authority of the Companies Office files, on 8 March 2011, shows exactly the same address, 19 Opanuku Road, Henderson Valley, Waitakere, as the current registered office and address for service of Anil Securities Ltd. It shows the same address for Mr Bhatia, the sole shareholder of the company. When this was pointed out to Mr Bhatia he protested that there must have been a

mistake and that the Companies Office was requested by him to change the registered office.

[11] The Authority and those who have dealings with Anil Securities Ltd are not mind readers. They are entitled to rely on the information contained in the public records of the Companies Office. It was Mr Bhatia's responsibility as a director of Anil Securities Ltd, a company he owns, to ensure that the addresses given for the registered office and for service remained up-to-date. The public is entitled to rely on information in the record.

[12] Anil Securities Ltd has not applied to have the Authority's investigation reopened, as the company could have done under the Employment Relations Act 2000. The order of compliance sought by Mr Sidana is opposed by Mr Bhatia. It is a discretionary order but not to grant it would severely disadvantage Mr Sidana who has done everything required of him by the Authority to have his application investigated and determined. To not grant the order would effectively leave it unenforceable in the Authority which, in my view, would be an unjust outcome. The company should not obtain an unfair advantage through the neglect of its director and owner.

[13] If Anil Securities Ltd was not aware of the Authority's August 2010 determination within 14 days of it being issued, the company certainly did become aware of it by the end of November 2010, when Mr Bhatia wrote to the Authority with regard to that determination which had reached him.

Compliance order

[14] I am satisfied that Anil Securities Ltd has not complied with the terms of the Authority's determination of 2 August 2010. It is just for an order to be made requiring the company to comply with that determination.

[15] Anil Securities Limited is ordered to pay Mr Dev Sidana \$2,907 arrears of wages and \$70 in reimbursement of the filing fee. Mr Sidana had not sought interest on that money. The company is also to pay \$71.56 to Mr Sidana, the fee on the application for the compliance order.

[16] Anil Securities Ltd is to comply as ordered above within 14 days of service of this determination. Service will once again be effected at 19 Opanuku Road, Henderson Valley, Waitakere, because that is the address Anil Securities Ltd has

continued to hold itself out as having for its registered office and for service, but because Mr Bhatia has advised that he lives at 12A Waikura Drive, Te Atatu Peninsular, service of this order will also be made at that address.

[17] For the information of Mr Bhatia, failure to comply with an order such as this one made by the Authority under s 137 of that Act may provide a basis for an application to be made by Mr Sidana to the Employment Court for enforcement of the order. Under s 140 of the Act, where the Court is satisfied that any person has failed to comply with a compliance order made under s 137, the Court may order remedies, including a fine not exceeding \$40,000 and/or the seizure of property and for the proceeds of sale to be distributed to the person enforcing the Authority's order.

A Dumbleton
Member of the Employment Relations Authority