

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David Slattery (Applicant)
AND Marine Projects Limited (Respondent)
REPRESENTATIVES Syd Jackson, Advocate for Applicant
Peter Heald, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
DATE OF DETERMINATION 22 February 2005

DETERMINATION OF THE AUTHORITY

[1] The applicant employee David Slattery (“Mr Slattery”) seeks to recover arrears of wages in the form of commission in the sum of \$28,370.00 together with interest and costs against his former employer Marine Projects Limited trading as Oliver Marine International (“Marine Projects”).

[2] Mr Slattery returned to New Zealand from the United States in February 2002. He commenced employment with Marine Projects in March 2002 as its Sales Manager based at Auckland. His role was to sell and promote Oliver Marine Boats in New Zealand.

[3] Mr Slattery said that he wrote to the Managing Director on 7 March 2003 requesting an employment agreement. He says that he received an agreement on 10 March 2003 but he was unhappy with the 5% commission rate on the sale price of a boat. There were further discussions between the parties.

[4] On 17 June 2003 Mr George Oliver Marine Project’s Operations Manager (“Mr Oliver”) attended on Mr Slattery with a revised employment agreement. Mr Slattery signed this agreement dated 19 April 2002 and Mr Oliver said he would need to take it away to talk to Mr Heald. The agreement was not signed by Marine Projects. Annexed to the agreement was a schedule setting out remuneration details as follows:-

Retainer: A retainer of \$1666.66 Gross paid monthly

Commission: New Boats

A commission is payable of 50% of the GST exclusive amount between the dealer price and the GST exclusive selling price on all new boats and any optional extras to be paid in 2x equal payments as per the building contracts.

i.e 1st Payment paid on receipt of clients order and deposit

2nd and final Payment paid on Clients final Payment on boat

[5] Mr Slattery was involved over a considerable period of time in the sale of a boat to a Mr and Mrs Birley.

[6] In the first week of February 2003, Mr Slattery discussed the projected sale with Peter Heald the Managing Director of Oliver Marine International (“Mr Heald”). Mr Slattery asked Mr Heald how much he would earn from the sale to Mr and Mrs Birley. Mr Heald told Mr Slattery he would secure at least \$60,000.00.

[7] Contrary to that advice, on 7 March 2003 Mr Heald advised Mr Slattery that the shareholders of Marine Projects had agreed to pay Mr Slattery \$5,000.00 commission for the Birley sale “as a good will gesture”. This sum was subsequently paid to Mr Slattery.

[8] Mr Slattery advised Mr Heald in an email that the proposed \$5,000.00 payment was not acceptable. Mr Slattery stated that the terms of his employment entitled him to \$33,370.00 being 50% of the GST exclusive amount between the dealer price and the GST exclusive selling price on all new boats and any optional extras.

[9] Mr Slattery’s email further stated that he had not agreed to vary the commission term of his employment agreement and he had not had any discussions with Mr Heald in which a variation had been agreed.

[10] Mr Slattery was adamant that he was the person responsible for the sale to Mr and Mrs Birley and he was instrumental in the sale. I find Mr Slattery a credible and persuasive witness and I therefore accept his evidence of the employment agreement reached with him and the terms of his remuneration. I rely on enquiries I made of Mr Oliver and communicated to the parties for their comment. I accept too that Mr Slattery is entitled to commission on the sale of the boat to Mr and Mrs Birley and that the payment made to him of \$5,000.00 is corroborative of that fact. The detail of Mr Slattery’s calculation was not disputed.

[11] Marine Projects Limited is ordered to pay to Mr Slattery the gross sum of \$28,370.00 within 28 days of the date of this Determination.

[12] I decline to exercise my discretion to award interest on the judgment sum. The parties are encouraged to resolve costs between them but failing such agreement, either party may approach the Authority to have the matter determined.

Leon Robinson
Member of Employment Relations Authority