

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 123/09
5166006

BETWEEN SYNAPSYS NZ LIMITED
Applicant

AND STEPHEN GREGORY SMITH
Respondent

Member of Authority: Philip Cheyne

Representatives: Sarah Townsend, counsel for the Applicant
Stephen Smith, the Respondent in person

Phone Conference: 5 August 2009

Determination: 5 August 2009

DETERMINATION OF THE AUTHORITY

[1] This determination is issued by the Authority but with the consent of the parties following today's phone conference.

[2] Synapsys NZ Limited lodged a statement of problem alleging that Mr Smith breached express and implied terms of his employment agreement by misappropriating funds and property to a value of \$139,541.97 between May 2007 and October 2008. It is further alleged that when this conduct was discovered Mr Smith was interviewed, admitted this conduct and was dismissed. Mr Smith then wrote to the company apologising for his actions and enclosing cheques for \$19,000.00 as part repayment of the funds and property misappropriated by him. To remedy its employment relationship problem the company now seeks damages of \$120,541.97 being the balance of the misappropriated funds, damages of \$9,081.00 being costs and taxes incurred by the company directly resulting from Mr Smith's

breaches, interest on these sums, a penalty for breach of the statutory duty of good faith and legal costs.

[3] Mr Smith lodged a statement in reply in which he says *Information provided is true and correct*.

[4] There was a phone conference convened today. In light of Mr Smith's statement in reply, counsel submitted and Mr Smith accepted that mediation would not contribute constructively to resolving the employment relationship problem. I agreed with that view. We then addressed what needed to be done by way of further investigation. That resulted in both counsel and Mr Smith consenting to the following orders.

[5] Mr Smith is ordered to pay damages of \$120,541.97 to Synapsys NZ Limited.

[6] Mr Smith is ordered to pay damages of \$9,081.00 to Synapsys NZ Limited.

[7] Mr Smith is ordered to pay interest on these damages (\$129,622.97) to Synapsys NZ Limited at the rate of 4.75% per annum commencing on 5 December 2008 until the damages are paid in full.

[8] Mr Smith is ordered to pay a penalty of \$5,000.00 for his breach of s. 4 and s.4A(a) of the Employment Relations Act 2000. I was not asked to order that the penalty be paid to any specific person so it must be paid into the Authority and then into the Crown Bank Account. I should note that the sum consented to was \$10,000.00 but there is a statutory limit of \$5,000.00 for a single penalty against an individual. The penalty claim in the statement of problem is framed in the singular so I will limit the penalty order to the statutory maximum despite consent to a higher amount.

[9] Mr Smith is ordered to pay costs of \$1,000.00 to Synapsys NZ Limited.

Philip Cheyne
Member of the Employment Relations Authority