

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 89
5444159**

panjat	BETWEEN	ABHISHEK THAPLIYAL Applicant
	AND	NORAJANE COLOS First Respondent
		E-ADVANCE LIMITED Second Respondent (Struck Off)

Member of Authority:	Eleanor Robinson
Representatives:	Oliver Christeller, Counsel for Applicant Norajane Colos, Advocate for Respondents
Investigation Meeting:	On the Papers
Determination:	13 March 2014

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 13 November 2013 a Record of Settlement (the Settlement) was signed under s. 149 of the Employment Relations Act 2000 (the Act). The parties to the Settlement were the Applicant, Mr Abhishek Thapliyal, and the Respondents, Ms Norajane Colos and E-Advance Limited.

[2] The Settlement was signed by Mr Thapliyal and Ms Colos, sole Director of E-Advance Limited. The Record was also signed by a Mediator employed by the Ministry of Business, Innovation and Employment.

[3] The issue which had been brought before the Authority by Mr Thapliyal is that the Respondents have not complied fully with clauses 2 and 3 of the Settlement, which state:

2. The Respondent shall pay the compensatory sum of in terms of section 123(1)(c)(i) of the Employment Relations Act 2000. This amount will be paid to the Applicant by way of direct credit as follows:

- i) \$1,100 by or on 13 December 2013; and
- ii) \$1,200 by or on 13 January 2014; and
- iii) \$275 by or on 13 February 2014.

3. The Respondent will pay the Applicant, by way of direct credit any outstanding salary and leave entitlements calculated to be \$925 (PAYE will be deducted from this amount) by or on 13 February 2014.

[4] The Settlement further provided at clause 4:

Norajane Colos and the Respondent are jointly and severably liable to make the payments set out in clauses 2 and 3 of this agreement.

[5] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood the agreed terms:

- a. were final, binding and enforceable; and
- b. could not be cancelled; and
- c. could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[6] Mr Christeller, on behalf of Mr Thaplityal, stated that the Respondents had made no payments in accordance with the terms of the Settlement.

Compliance Order

[7] I am satisfied that the Respondents have not complied with the terms of the Settlement.

[8] Ms Colos attributed the reason for non-payment of the outstanding sums to the poor financial situation of the Second Respondent.

[9] From the evidence available to the Authority, I am satisfied that the Respondents have breached clauses 2 and 3 of the Settlement

[10] I determine that the Respondents have failed to comply with clauses 2 and 3 of the Settlement.

[11] **In order to effect compliance with clauses 2 and 3 of the Settlement, I therefore order Ms Colos to pay Mr Thapliyal, no later than 14 days from the date of this determination, the outstanding amounts under clauses 2 and 3, these being:**

- i) the sum of \$2,575.00, in accordance with clause 2 of the Settlement, and**
- ii) the sum of \$763.12 net in accordance with clause 3 of the Settlement .**

Costs

[12] Costs are reserved. The parties are encouraged to agree costs between themselves. If they are not able to do so, the Applicant may lodge and serve a memorandum as to costs within 28 days of the date of this determination. The Respondents will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

Eleanor Robinson
Member of the Employment Relations Authority