

Note: This determination contains an order prohibiting publication of certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 122
3232159

BETWEEN WVS
Applicant

AND JOANNE ADLAM
Respondent

Member of Authority: Rowan Anderson

Representatives: Briar Webster, counsel for the Applicant
No appearance for the Respondent

Investigation Meeting: 6 August 2024 in Tauranga

Submissions and further information received: Up to and including 2 December 2024

Determination: 28 February 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] WVS carries on business in real estate and property management. Joanne Adlam commenced employment as an office administrator with WVS in 2003. As of 27 August 2020, when her employment ended, Ms Adlam was the Property Management Administrator in a suburban office of WVS's in the Bay of Plenty.

[2] WVS contends that over several years Ms Adlam misappropriated funds in breach of the contractual obligations contained in her individual employment agreement (IEA). WVS seeks damages relating to the quantum of the funds said to have been misappropriated, that being a total of \$869,112.

[3] Ms Adlam has not substantively responded to the claims, nor has she meaningfully engaged with the Authority's investigation.

Non-publication

[4] WVS sought interim non-publication orders as to the name and identity of the applicant company and its witnesses. On 24 June 2024, I made the interim non-publication orders sought. Those orders were recorded in a minute issued by the Authority. WVS seeks that those orders be made permanent.

[5] The principle of open justice is of fundamental importance and non-publication will ordinarily only be granted where specific adverse consequences could reasonably be expected to occur.¹

[6] WVS's primary contention is that non-publication orders are necessary due to a risk of reputational damage, including that arising from the extended period and nature of the alleged fraud. It is submitted that there is an enduring stigma associated with fraud and that the impacts are damaging notwithstanding corrective and preventative measures taken by WVS in circumstances where it is not culpable. WVS also points to repercussions that might impact financially, including in relation to new and prospective clients should WVS be identified. It submitted that the public interest in identification of WVS is limited, particularly in circumstances where there is no apparent ongoing risk and given no adverse findings are made against WVS.

[7] I consider that the specific adverse consequences are significant and in this particular case there are sound reasons for a departure from the starting point. The orders should be no wider than necessary. Here, I consider it appropriate that the name and identity of WVS's be subject to non-publication orders. I find the orders should also extend to the names and identities of the witnesses, excluding those that are or have not been employees of WVS. Non-publication has not been sought as to the name and identity of Ms Adlam.

[8] I make the following orders pursuant to clause 10 of schedule 2 of the Act:

- (a) a prohibition on the publication of the name and any identifying details of the applicant, WVS; and

¹ *Erceg v Erceg* [2016] NZSC 135.

(b) a prohibition on the publication of the names and any identifying details of all witnesses in the proceedings, with the exception of the witness from Fin Mat Partners Limited (Fin Mat) who does not have an employment relationship with WVS.

[9] A random generator has been used to refer to the applicant in these proceedings. WVS is a randomly generated name and does not resemble the name of the applicant. This is reflected in the intituling of this determination. The witnesses are referred to in this determination by alternative means, primarily by reference to their job titles.

The Authority's investigation

[10] The statement of problem was initially served on Ms Adlam by courier. Ms Adlam, on 30 May 2023, also responded to an email sent to the email address that was provided to the Authority by WVS. The email confirmed Ms Adlam's email address for the purposes of service. A further copy of the statement of problem was served the same day via email.

[11] On 14 June 2023, the Authority received a further email from Ms Adlam seeking an extension of time for the lodging of a statement in reply. An extension was ultimately granted until 30 June 2023. However, Ms Adlam did not lodge a statement in reply. A number of further attempts were made by the Authority to contact Ms Adlam to remind her that the statement in reply was due.

[12] As no statement in reply had been received, the parties were both contacted as to the timing of a case management conference. Ms Adlam did not respond, and a case management conference was scheduled for 23 August 2023. Notice of the case management conference was served on Ms Adlam both by courier and email. Ms Adlam then emailed the Authority on 22 August 2023 requesting that the date for the case management conference be changed so that she could attend. The case management conference was then rescheduled for 4 September 2023 with both parties confirming their availability.

[13] A case management conference was held on 4 September 2023. WVS confirmed at the case management conference that they understood the New Zealand Police were investigating Ms Adlam in relation to the conduct that was also the subject of the matter in the Authority. Having regard to that, I raised the issue of the right against self-incrimination and cautioned Ms Adlam. Mr Adlam was encouraged to seek

advice and representation. The matter was then adjourned in order to provide Ms Adlam an opportunity to seek legal advice.

[14] On 18 October 2023, WVS confirmed that enquiries had been made and that the New Zealand Police had confirmed that there was an open investigation but that they were not in a position to advise whether they would lay charges against Ms Adlam.

[15] Following further unsuccessful attempts to contact Ms Adlam as to timing, a further case management conference was scheduled for 19 October 2023. Ms Adlam emailed the Authority on the morning of 19 October 2023 stating that she was still seeking legal advice and was not otherwise available to attend. Following that, the Authority confirmed that the case management conference would be rescheduled.

[16] The case management conference was rescheduled for 20 November 2023. Ms Adlam called the Authority on 20 November 2023 seeking an adjournment on the basis that she had just engaged a lawyer to provide her advice and act on her behalf.

[17] A case management conference was then held on 5 December 2023. Ms Adlam was represented by an employment advocate. The advocate advised that Ms Adlam, through their services, had access to legal counsel where necessary. I again noted the privilege against self-incrimination. However, with the agreement of the parties, the matter was referred for mediation. Dates for an investigation meeting were also discussed and it was agreed, should the matter not otherwise be resolved, that an investigation meeting would take place on 6, 7, and 8 August 2024 in Tauranga.

[18] On 3 January 2024, the Authority was advised that Ms Adlam's employment advocate was no longer acting for her.

[19] On 5 February 2024, WVS requested that the Authority schedule a further case management conference. It noted that it had been engaging with Mediation Services, was still content to attend mediation, but that Ms Adlam had not been engaging.

[20] A further case management conference was held on 22 February 2024. Ms Adlam did not attend and was not represented. A Minute was issued following the case management conference containing a summary of the matters discussed and relevant directions. It was noted that leave would be required to lodge any statement in reply. At the case management conference, I requested that WVS, given Ms Adlam did not

attend, lodge submissions as the issues of potential self-incrimination and prejudice to criminal proceedings, including as to whether the Authority's investigation should be subject to a stay. WVS lodged submissions, in accordance with the directions, on 15 March 2024.

[21] On 9 April 2024, I issued a further Minute. Ms Adlam was again encouraged to seek legal advice. The Minute confirmed, having earlier been foreshadowed and no objection having been received, that I had contacted the New Zealand Police and received a response advising that their investigation was at an early stage, that there would be a considerable amount of work to be undertaken if it did proceed, and that it was awaiting a response from WVS as to whether it wanted the New Zealand Police to proceed to investigate the matter. The parties were given an opportunity to provide any relevant response. Ms Adlam provided no response or submissions as to the relevant issues, including whether the Authority's investigation should be subject to a stay.

[22] On 8 May 2024, I issued a further Minute detailing a procedural decision that the Authority's investigation would proceed. The Minute noted, amongst other things, that Ms Adlam had not sought a stay and advised that the issue would be reconsidered if she were to do so.

[23] A further case management conference was then held on 20 May 2024 to discuss the Authority's investigation and set a timetable. Written directions for the exchange of documents and written statements were issued and served on Ms Adlam.

[24] An investigation meeting was scheduled for 6 and 7 August 2024 in Tauranga. Ms Adlam did not attend the investigation meeting, and it proceeded by way of formal proof in her absence. The second day was not required. I am satisfied that Ms Adlam was served with notice of the investigation meeting and with the relevant notices, directions, witness statements, and other documents relevant to the proceedings.

[25] Written witness statements were provided from:

- (a) a Property Manager employed by WVS, referred to in this determination the 'Property Manager';
- (b) a chartered accountant employed by WVS as Head of Finance, referred to in this determination as the 'CFO';
- (c) the General Manager for Property Development employed by WVS, referred to in this determination as the 'General Manager';

- (d) the Chief Executive Officer of WVS, referred to in this determination as the 'CEO'; and
- (e) Gavin Lammers, chartered accountant, director, and loss adjuster of Fin Mat.

[26] On 7 August 2024, I issued a further Minute recording that I had requested WVS provide two additional documents. The Minute noted that oral submissions were not made, and that written submissions would be exchanged instead. Directions were issued that included providing an opportunity for Ms Adlam to lodge any submissions.

[27] WVS lodged written submissions, including as to non-publication, on 30 August 2024. Ms Adlam did not lodge any submissions.

[28] Notwithstanding Ms Adlam's lack of engagement and non-attendance at the scheduled investigation meeting, I considered it appropriate that Ms Adlam be provided an additional opportunity to provide any response. The relevant documents, including a Minute dated 29 October 2024, were served on Ms Adlam (in person) on 18 November 2024. The Authority was provided confirmation of the same on 19 November 2024, which included confirmation that Ms Adlam was personally served with the relevant documents and had acknowledged her identity.

[29] The Minute dated 29 October 2024 provided an additional 14 days from the date of service for Ms Adlam to provide any reply or response. The Minute confirmed that, if no response was received, the Authority would conclude its investigation and proceed to issue a determination. No response was received from Ms Adlam by, or indeed after, 2 December 2024, and the Authority's determination was reserved.

[30] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[31] WVS claims that Ms Adlam breached the express and implied terms of her employment agreement by various unauthorised and fraudulent actions involving the processing of payments in the course of her employment. The express terms said to have been breached include clauses 1 and 5 of her most recent individual employment

agreement (IEA). WVS contends that Ms Adlam also breached her duty of good faith and obligations to deal with her employer's money faithfully and to not appropriate it for her own use without consent.

[32] WVS seeks an order requiring that interest be paid on the sums due and also seeks a contribution towards the costs of representation in taking these proceedings.

Evidence and factual findings

[33] WVS carries on business in real estate and property management. Ms Adlam was first employed as an Office Administrator by WVS in 2003. She moved into the role of Property Management Administrator in approximately January 2010 signing an IEA at that time. Ms Adlam was based in a suburban office of WVS in the Bay of Plenty. WVS had a head office in another location.

[34] The staff at the office in which Ms Adlam worked comprised of five property managers, Ms Adlam, and three personal assistants to the property managers. The General Manager describes Ms Adlam's role as involving the key duties of administering and managing the trust accounting and that the role carried with it a high level of trust due to the control over rental incomes, trust accounting systems and payment schedules. The relevant associated tasks of the role included:

- (a) importing and receipting rents;
- (b) paying owners;
- (c) inputting creditor invoices and paying creditors;
- (d) making payments from internal software; and
- (e) setting up payments in WVS's trust account.

[35] Ms Adlam was a long-serving trusted employee who held significant responsibilities, including as to the receipting of bond payments from tenants and the payment of the same to the Bond Centre.

[36] The Property Manager gave evidence as to events preceding August 2020 which gave them cause for suspicion as to Ms Adlam. This included discovering a bond lodgement letter at a rental property which had been vacated whereas such correspondence would ordinarily be sent when a bond is lodged at the commencement of a tenancy. Additionally, there were some other instances of bonds not having been lodged at the Bond Centre as they should have been.

[37] Concerns were first raised concerning Ms Adlam following the Property Manager becoming aware in August 2020 that the Bond Centre was claiming it did not hold a bond for a tenant even though the bond should have been lodged by Ms Adlam prior. The tenant had contacted the Property Manager about a problem with the bond by text message and by email on 17 August 2020. The relevant email was later deleted from the Property Manager's inbox by Ms Adlam in an apparent attempt to prevent her actions being discovered. However, this was done without Ms Adlam realising that the Property Manager was working late and had already seen the email. The matter was then brought to the attention of the General Manager on 18 August 2020.

[38] The General Manager and CFO made initial enquiries on 18 August and found that WVS's internal software recorded that the bond had been paid by the tenants on 13 February 2019, and that it had been paid to the Bond Centre on 1 March 2019. The General Managers evidence is that Ms Adlam was responsible for paying the bond to the Bond Centre. After speaking to the Property Manager, including about the email that was deleted, The General Manager then raised the issue with the CEO and continued to investigate.

[39] The administrator for each office would be sent, from the Bond Centre, lists referred to by WVS as 'reconciliations' that recorded active bonds and could be used to reconcile the same with WVS's records contained on its internal software. A copy of the relevant reconciliation relating to the office at which Ms Adlam worked was then obtained, after some difficulty as the Bond Centre would only send the reconciliation to Ms Adlam's email address as being the one on record, and it became apparent there was a significant discrepancy.

[40] The subsequent investigation involved seeking details of payments from both the relevant bank and the Bond Centre. On 20 August 2020, the General Manager emailed Ms Adlam, and the administrators from other offices, requesting they provide their reconciliations. This followed a routine request in July in response to which Ms Adlam had confirmed it would be provided but had not actually sent the reconciliation through. Ms Adlam then sent through a document purporting to be the reconciliation. That document was compared to the reconciliation from the Bond Centre, and it was apparent that there were significant discrepancies, with Ms Adlam's version recording a significant number of bonds as having been lodged which did not appear on the

original from the Bond Centre. It was then decided that a meeting would need to be held with Ms Adlam.

[41] The General Manager called Ms Adlam on 21 August 2020 and told her she, and the CFO, needed to speak with her about the reconciliation. The General Manager and CFO then met with Ms Adlam at the office a short time later. The General Manager's evidence is that Ms Adlam said words to the effect of "it is what you think it is", cried, and "said that she has been stealing money and that she was going to prison". The General Manager says that when asked how much she had stolen, that Ms Adlam either said \$60,000 or \$90,000. There was some discussion that involved Ms Adlam accepting she could no longer continue working for WVS.

[42] In the following days, the General Manager communicated with Ms Adlam by text, including receiving the following text messages from Ms Adlam, a copy of which were provided to the Authority:

U can ring me whenever I don't want yo hide anymore [sic]

...

I can't get my statements at the post shop – I've rung & they are sending me all the deposits from my account I only have screen dumps from all transactions – shall I send them via email to you & when the statements come in the mail I'll drop them off?

...

Ok I'll do now & also you need to print off all of our rent here as I charge cheque entries to pay my rent.

...

From cheque entries of bond money, I receipted & did a cheque entry to cover money for rent & deposits into my bank account....

[43] A further meeting was held on 24 August 2020. Ms Adlam attended with her husband. The General Manager, CEO, and CFO all attended. The evidence from the CFO and General Manager is that Ms Adlam:

- (a) Talked about how she had initially made a mistake but that then because she did not get caught, she carried on with it.
- (b) Confirmed she had altered landlord accounts for her benefit.
- (c) Confirmed that she had set up a different bank account (the 'ghost account') that she used from February 2018 onwards to pay herself money from WVS. She provided the account number at the meeting.
- (d) Confirmed that she usually received around eight bonds per month, two of which she would use to pay her rent or would pay into her 'ghost account'.
- (e) Confirmed that she had manually manipulated bond lodgement documents.

[44] On 25 August 2020 ASB, WVS's bank, provided the CFO a spreadsheet confirming that between 1 January 2015 and 24 August 2020 payments from WVS accounts to Ms Adlam's 'ghost account' totalled \$159,653.48. WVS board members were subsequently notified by the CEO.

[45] A further meeting was held with Ms Adlam on 27 August 2020. The General Manager's evidence is that they told Ms Adlam at the meeting that the loss relating to the Bond Centre was thought to be around \$600,000 to \$700,000. Ms Adlam suggested at the meeting she thought it could not possibly be that much but was resigned to the fact it was more than she had thought. Ms Adlam agreed at the meeting to offset holiday pay that she would otherwise have been paid on termination of employment and confirmed she was looking to sell a vehicle to help repay WVS. Ms Adlam was issued a letter terminating her employment at that meeting.

[46] On 29 September 2020, Ms Adlam attended another meeting with the General Manager. The General Manager says the meeting was to discuss a repayment plan and that Ms Adlam said at the meeting that she had nearly sold a jet ski for \$14,000. The General Manager's evidence is that they informed Ms Adlam that their understanding from ASB records was that Ms Adlam had been taking money since 2009.

[47] On 11 November 2020, Ms Adlam sent a text message to the General Manager in which she acknowledged she had "done wrong" and was ashamed. That was followed by an email on 12 October 2020 in which Ms Adlam expressed remorse, said she wanted to pay the money back but would need time to sell her belongings, and that she didn't want to go to jail.

[48] WVS subsequently investigated the matter further. The Ministry of Business, Innovation and Employment (MBIE) was contacted in relation to the Bond Centre payments. The initial investigations related to bond payments for vacating tenants. Where those bonds had not been paid to the Bond Centre by WVS corrections, were made by credit card and tenants advised. It was discovered that bond forms had been manipulated.

[49] In November 2020, Fin Mat was engaged by WVS's insurer to assist with assessing the loss caused by Ms Adlam's actions. Fin Mat conducted a review of WVS's insurance claim, with the final review resulting in an agreed loss of \$881,240.96 as the likely loss as a result of "Ms Adlam's defalcations".

[50] The losses that are claimed by way of damages are:

- (a) \$789,307.70 in relation to bond monies that were either not paid or were underpaid attributable to Ms Adlam's actions;
- (b) \$34,310 in relation to reversed tenant payments diverted by Ms Adlam to her own 'ghost' account, primarily by using fake invoices;
- (c) \$47,350.10 which is addressed in the Fin Mat Report as "defalcations on property owners' accounts".
- (d) \$4,836.28 in relation to funds recovered by WVS's debt collection agents but redirected by Ms Adlam to her, or a family member's, rental account, and used to make payments to cover bonds that were the subject of other fraudulent activity;
- (e) \$5,436.88 in fraudulent changes made by Ms Adlam to the accounts of owners'.

[51] WVS claims that the total sum owed is \$869,112 once account is taken for holiday pay that was withheld by them with Ms Adlam's agreement, that being \$12,129. I find that the loss claimed in relation to each category are proven and are attributable to the unauthorised misappropriation of funds by Ms Adlam for her personal use.

[52] Mr Lammers gave evidence as to the review conducted by Fin Mat and the final report that was produced. Mr Lammers peer reviewed the final report for a colleague that has since retired. He reviewed all the correspondence in the file relating to the matter and analysed the spreadsheets and workings prepared for the report. A sample review of the supporting documentation was also undertaken. The production of the report involved validating the claim made by WVS, including each aspect of the supporting documents, and querying unsubstantiated entries. The process included scrutiny of supporting documents including bond lodgement forms, WVS's bank statements, credit card records, reports generated by WVS's accounting system, and property owners' and tenants' accounts.

[53] The final report compiled by Fin Mat summaries the methods used by Ms Adlam as follows:

Typically, tenancy bonds, along with rent, are paid by incoming tenants into the insured's Property Management Trust Account. The tenancy bonds are then required to be paid over to the government's Bond Centre within 23 days of receipt.

Ms Adlam's role was to pay the tenants' bonds to the Bond Centre. She would do this in batches of 6 to 10, usually on a weekly basis, however she was in fact holding back payment of one or two bonds each time. She would then use the bond money to pay her own rent or for other purposes.

When tenants gave notice they were exiting a tenancy Ms Adlam would check whether she had lodged their bond with the Bond Centre or not. If she had not she would use the new incoming bonds to pay the existing tenant's bond. Any query regarding bonds would normally be directed to Ms Adlam who would simply explain it away. In this way the defalcations acted like a type of "Ponzi scheme" with the amount of the discrepancy growing over the years and becoming more difficult for Ms Adlam to keep track of and hide.

Matters came to somewhat of a head in August 2020 when more tenants were leaving, (due to the impact of Covid-19), than were coming in meant there was a shortfall in funds to repay the existing tenants' bonds. Adlam then started also using incoming rent money to make up the difference, particularly from accounts that were paid up in advance.

She also created fictitious invoices for property maintenance work which she would pay herself, and latterly it was found that she had taken debt recovery monies, knowing that in most cases these accounts would not be followed up.

[54] I accept the evidence provided by each of the witnesses that gave evidence. The evidence given is supported by contemporaneous notes and records in many cases and in addition significant financial details were provided to the Authority. I also find that the evidence provided to the Authority on behalf of WVS, including that relating to the Fin Mat reports, shows that appropriate adjustments and deductions were made to the sums claimed where evidence could not be provided to substantiate the relevant claims.

[55] Ms Adlam has had ample opportunity to contest the evidence presented by WVS and has not done so. Ms Adlam has not lodged a statement in reply, she did not attend the investigation meeting or give evidence, and she has not otherwise contested any of the evidence provided by WVS, including as to sums claimed by WVS that are said to have been misappropriated by Ms Adlam.

Did Ms Adlam breach the terms of her individual employment agreement (IEA), implied terms, and/or the statutory duty of good faith?

[56] It is alleged by WVS that Ms Adlam breached her contractual and statutory obligations through the actions described elsewhere in this determination and that significant loss has been suffered as a result. WVS contends that Ms Adlam abused WVS's trust and confidence by systematically manipulating payments to the Bond Centre for her personal benefit.

[57] In terms of Ms Adlam's relevant express contractual obligations, I summarise them as follows:

- (a) Clause 1 of Ms Adlam's 2010 IEA contains an express obligation on Ms Adlam to act in good faith.
- (b) Clause 5(a) of the 2010 IEA and clause 3(a) of the 2003 IEA required Ms Adlam to exercise all due care and diligence in carrying out her duties and functions.
- (c) Clause 3(b) of the 2003 IEA and clause 5(b) of the 2010 IEA required Ms Adlam not to enter into any commitment or incur any liability on behalf of WVS without consent.
- (d) Clause 5(c) of the 2010 IEA and clause 3(c) of the 2003 IEA required Ms Adlam to promote the interests of WVS and not to do anything with the intent of detrimentally affecting the goodwill and reputation of the company.

[58] In each case, she breached those obligations by fraudulently and deceptively misappropriating WVS's money, and money held on trust by WVS, for her own use.

[59] I also am satisfied that Ms Adlam's actions fundamentally breached her duty of good faith and an implied term to act with honesty and integrity in relation to WVS's assets and property, including obligations to deal with WVS's money faithfully, to act in good faith, and not to appropriate WVS's money for her personal use.²

Damages

[60] Having accepted the evidence before the Authority, I conclude that the uncontested evidence establishes that Ms Adlam's actions were in breach of her employment agreement and that the losses suffered by WVS are directly attributable to Ms Adlam's breach of contract.

[61] Further, having accepted the evidence that was provided by WVS, and noting the absence of any contest as to the sums claimed, I conclude that damages in the sum of \$869,112 should be awarded. That sum comprises the amounts relating to each category of misappropriation I have found to be made out, minus the sum withheld in relation to Ms Adlam's leave entitlements.

² *Mason Engineers (NZ) v Hodgson* [2011] NZEmpC 147 at [19].

[62] Ms Adlam is ordered to make payment to WVS, within 28 days of this determination of \$869,112.

[63] It is appropriate that an order be made requiring payment of interest in accordance with the Interest on Money Claims Act 2016³ using the Civil Debt Interest Calculator.⁴ I order that interest be paid from the date of this determination until the sum due is paid in full.

Summary of orders

[64] Ms Adlam is ordered to make payment to WVS, within 28 days of this determination of \$869,112. Interest is to be calculated and paid on that sum in accordance with the orders made.

Costs

[65] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[66] If the parties are unable to resolve costs, and an Authority determination on costs is needed, WVS may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Adlam will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

Rowan Anderson
Member of the Employment Relations Authority

³ Interest on Money Claims Act 2016, s 10.

⁴ Interest on Money Claims Act, s 12 and 13.