

Massage parlour operator and accountants penalised

3 November 2020

The Fair Work Ombudsman has secured total court penalties of \$19,100 after a Victorian massage parlour operator admitted it underpaid a Chinese worker \$13,522 and provided false records to inspectors.

The Federal Circuit Court has ordered penalties of \$8,500 be paid by Austop Natural Therapy and Supplies Pty Ltd, which formerly operated massage parlours trading as 'Yin's Chinese Traditional Massage' in Bacchus Marsh and Ballarat.

The company's sole director Yusen Yin and company secretary Wenhua Liu, who are a couple, were each penalised \$2,800 for their involvement in the underpayments.

The Court has further ordered the company's accounting firm, Keith Golding & Associates Pty Ltd, to pay a \$5,000 penalty for its involvement as an accessory in the company's false-records breaches.

Fair Work Inspectors investigated after contact from the worker, who was in Australia on a subclass 462 Work and Holiday Visa. Between December 2016 and July 2017, Austop paid the employee a percentage of the price of each massage she performed at its Ballarat business, rather than hourly rates of pay as she was entitled to under the Hair and Beauty Industry Award 2010.

This resulted in underpayment of the employee's minimum hourly rates, overtime rates, weekend and public holiday penalty rates, superannuation and annual leave entitlements. The company also failed to ensure the employee did not work on more than six consecutive days in breach of the award, and failed to issue any pay slips.

Austop Natural Therapy and Supplies and Keith Golding & Associates each breached workplace laws by providing inspectors with records (including pay slips created by Keith Golding & Associates) they knew to be false or misleading.

Fair Work Ombudsman Sandra Parker said the agency prioritised requests for assistance from migrant workers.

"We know migrant workers can be particularly vulnerable due to language or cultural barriers and may not be aware of their workplace rights. Failing to provide pay slips can make matters even worse as workers will lack the clarity they need about their pay," Ms Parker said.

"All employees in Australia have the same rights at work, regardless of citizenship or visa status, and we encourage anyone with concerns about their pay to contact us."

"This case also highlights that the Fair Work Ombudsman will use accessorial liability laws to hold professional services firms to account where they are involved in breaching workplace laws. Third parties such as accountants should be aware that they can be ordered by a court to pay penalties if found to be involved in contraventions," Ms Parker said.

Judge Alistair McNab said the underpayments were significant, and the conduct of the accounting firm required deterrence.

"...[T]he Fourth Respondent [accounting firm] was providing professional services which in effect encouraged the First Respondent [Austop Natural Therapy and Supplies] to authorise the Fourth Respondent to produce false documents to the Applicant [FWO]," he said.

"I have imposed higher penalties in respect of record keeping and payslip provision contraventions because a failure to comply with those provisions makes it very difficult for an employee to determine what their rate of pay is and whether they are being properly paid."

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