

Director fined \$24,000 over underpayments at “chaotic” Adelaide business

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Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

A Federal Magistrate has described as “chaotic” the manner in which an Adelaide company director ran his business after finding that he had knowingly underpaid staff more than \$70,000 in wages and superannuation.

Federal Magistrate Stuart Lindsay yesterday imposed a penalty of \$24,280 against Adelaide man Andrew Sitarenos, whom he says has had a “singularly unsuccessful career as a small businessman”.

The Fair Work Ombudsman prosecuted Sitarenos following an investigation into underpayment of staff at his Wingfield-based poultry processing and retail business, Uncle Tom’s Quality Smallgoods.

Legal action against Sitarenos’ private company, Melland Pty Ltd, was stayed after it went into liquidation.

Sitarenos admitted that his company underpaid seven staff more than \$45,000 in wages – amounts ranging from \$143.49 through to \$17,354.38.

A further four staff were owed more than \$26,000 in unpaid superannuation.

In a 24-page penalty decision handed down yesterday, Federal Magistrate Lindsay says “it is clear that the conduct of the business was chaotic.”

He goes on: “Wages were rarely paid on time or in full, record-keeping was haphazard, creditors, including WorkCover, were regularly unpaid and there was difficulty in meeting orders on behalf of clients.

“The picture that emerges ... is of an entrepreneur who was manifestly unable to confront in an orderly and clear and decisive way the chronic cash flow and administrative problems in his business.”

Federal Magistrate Lindsay found that Sitarenos had knowingly mismanaged his business and failed to observe his workplace obligations.

“The conduct was deliberate and extended over a period of a year. The employees affected, with the exception of (one) were unskilled and their income relatively modest,” he said.

“The way in which Sitarenos conducted the business was chaotic and his failure to meet his wage obligations on time obviously led to uncertainty and disadvantage on the part of the employees.

“I accept that but for the intervention of the authorities, the chaotic conduct of the business would have continued unabated.”

Federal Magistrate Lindsay found that Sitarenos had exploited the loyalty of his staff, promising them on a number of occasions that their outstanding entitlements were forthcoming – but his promises and commitments were not fulfilled.

“Sitarenos wanted me to accept that he had little or no money in the bank, but I assume he must have some capital (or access to it) because he has started up another business at Klemzig packing tea under the aegis of his new company.”

Federal Magistrate Lindsay found that specific deterrence for Sitarenos’ conduct was necessary, saying “he is likely to be tempted to fall into these bad management practices affecting his employees again.”

Imposing the penalty of \$24,280, Federal Magistrate Lindsay said it should “serve as a salutary reminder of the consequences of him doing so.”

Acting Fair Work Ombudsman Mark Scully says the penalty re-enforces the message to employers that deliberate underpayment of employees is a serious matter and the Courts are taking a dim view of such conduct in cases brought forward by the Agency.

Mr Scully says the case also illustrates that where appropriate, the Fair Work Ombudsman will not hesitate to bring to account

company directors for their actions when the employing entities are wound up.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au A free interpreter service is available on 13 14 50.

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