

**IN THE DISTRICT COURT  
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE  
KI ŌTAUTAHĪ**

**CRI-2019-009-009141  
[2020] NZDC 5267**

**THE COMMERCE COMMISSION**  
Prosecutor

v

**OCEAN CONTRACTING LIMITED**  
Defendant

Hearing: 27 February 2020  
Appearances: S Carter for the Prosecutor  
D Jackson for the Defendant  
Judgment: 27 February 2020

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**NOTES OF JUDGE R E NEAVE ON SENTENCING**

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[1] It seems to me that making allowance for the various factors which I will set out in full in writing, that a starting point of \$150,000 for the global affect of these series of representations is appropriate. I do regard this as less serious than Sales Concepts Limited for example.

[2] I agree with Mr Jackson that a global figure for matters such as good character, the company's co-operation and its attempts to remediate the situation once matters finally came to their attention is appropriate and a smaller figure should also be included for the fact that they are accepting the need to make reparation over and above that they have already done. Combined effect of those is 17½ percent. I have not taken into account the effects of reputational damage, but I could arguably have done so in respect of that as well. That brings me down to a shade just under \$124,000, they

will get a credit for the guilty plea of a quarter, the exact sums are somewhat more complicated but essentially just a shade over \$90,000 would be the net figure.

[3] I am required to take into account the company's financial position. It has enough to keep ticking over but I do note its ability to service a reasonably significant loan and reduce it. I propose, therefore, a fine which makes allowance for the scale of the company, the significance of the fine to them, it is very much that final *Hanham v Philp* approach to the overall scale of the fine.<sup>1</sup> It will give them an opportunity to pay off the fines over a period of time probably at a lesser rate than they are currently repaying the loan now but at a rather greater figure than that suggested by Mr Jackson.

[4] In my view a figure of \$75,000 plus reparation is appropriate. That can be paid over five years which will give them \$15,000 a year which will actually leave them once that loan is paid, better off than they are now but still be at a level which is significant to mark the seriousness of the offending but also scale the penalty to the means of the company and by setting the starting point at \$150,000 I hope also that sends a message that the seriousness with which these matters will be treated. These brief remarks will be included in the judgment but the full reasons will be delivered in writing as and when I have time to do so.

[5] I will attach the reparation payments to the respective charging documents that relate to those particular complainants.

[6] I will issue a reserve judgment in due course.

[7] When the remarks are typed up they can be supplied to the Commerce Commission, no doubt they will want them for whatever precedent value they see fit.



R E Neave  
District Court Judge

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<sup>1</sup> *Department of Labour v Hanham & Philp Contractors Ltd* (2009) 9 NZELC 93,095; (2008) 6 NZELR 79 (HC).