

**BUILDING INDUSTRY BARGAINING COUNCIL
(CAPE OF GOOD HOPE)**

Case Number: 20230704004

Date: 12 September 2023

In the matter between

Building Industry Bargaining Council

Applicant

And

IDW Construction CC

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION

1. The arbitration hearing was scheduled for 31 August 2023 at the Building Industry Bargaining Council office in Paarl. Mr. Aviwe Ncombo, the designated agent, represented the applicant, whilst the respondent, IDW Construction CC, was not present nor represented at the proceedings. The record showed that the respondent was notified of the proceedings by email and SMS on 16 August 2023. The record further showed that the email address and cell phone number provided were correct as last recorded by the Council.

ISSUE TO BE DECIDED

2. The alleged contraventions of the Building Industry Bargaining Council's Main Collective Agreement as set out in the details of contraventions (Annexure A) are to be determined.

SUBMISSIONS OF THE PARTIES

3. The agent, Mr. Aviwe Ncombo, submitted that the respondent's activities fall within the definition of the building industry. On 29 May 2023, the respondent contravened clauses 31 to 53 of the main collective agreement, whereby the respondent failed to contribute to the prescribed employee benefits.
4. Mr. Ncombo submitted that he conducted a site inspection on 29 May 2023 at ERF17597, King's View Estate, Stellenbosch. As a result of the non-compliance in respect of the non-purchasing of benefits, an email was sent to the respondent on 1 June 2023. A compliance order with reference number 20230704004 was issued to the respondent on 4 July 2023. A reminder email was sent on 5 July 2023. The respondent failed to adhere to the compliance order.
5. Mr. Ncombo further submitted that he found on the website of CIPC (Companies and Intellectual Property Commission) that the respondent was liquidated. The respondent never notified the Council of the liquidation. Mr. Ncombo requested that the respondent submit wage records to the Council for the period 1 November 2022 to 29 May 2023.
6. That the respondent failed to make any submissions.

ANALYSIS

7. When a company or closed corporation is liquidated, creditors of that insolvent estate must claim the monies that are due and payable to them from the Insolvent Estate. Only a liquidated claim that arose before, and existed at the date of sequestration, and which did not prescribe, may be claimed. A liquidated claim is a claim for an amount that is determined, i.e., certain, whether the determination is the result of an agreement, a judgment, a Court, or otherwise. A claim can be proved at any time before the final distribution of the estate.
8. In respect of the evidence submitted on behalf of the applicant, it appears that the respondent was already liquidated at the time this claim was submitted. There was however no other information submitted to confirm that the respondent was liquidated. I will proceed with the claim. The applicant must however note that the respondent was registered as a closed corporation, which is a juristic person. If such a juristic person no longer exists, it may not be compelled to comply with this award.

AWARD

9. Having considered the submissions, I order the following:

- a. The respondent is ordered to submit its wage records and or time sheets for the period of 1 November 2022 to 29 May 2023, within **14 days of receiving this award.**

A handwritten signature in black ink, appearing to be 'MB' with a flourish underneath.

BARGAINING COUNCIL COMMISSIONER: **MAUREEN DE BEER**