

**In the matter of an appeal against a decision made by the
Gangmasters Licensing Authority (GLA)**

Appeal Reference 55/E/RV

Extrastaff Ltd

(Appellant)

v

The Gangmasters Licensing Authority

(Respondent)

Appointed Person

Ms G Sage

Written Determination

**Decision and summary statement of reasons Of the Appointed Person in
relation to the above matter:**

Upon consideration of the correspondence before me and of the written submission produced by the Respondent dated the 23 March 2009 and the Appellant's response dated the 29 March 2009, the Respondent's reply dated the 16 April 2009 and the Appellant indicating it did not wishing to respond; it is the decision of the Appointed Person that the appeal of the Appellant be dismissed on the terms agreed between the parties by an agreement dated and signed by their legal representatives dated the 23 January 2009.

Summary Statement of Reasons

1. This is an application made by the Appellant dated the 17 March 2009 to proceed to an appeal hearing following the adjournment of the previous hearing listed for the 27 January 2009 which was adjourned sine die on terms agreed between the parties.
2. The Respondent by a letter dated the 23 March 2009 objected to the Application on the basis that terms of agreement had been reached between Counsel for the Appellant and solicitor for the Respondent and that it was not open to the Appellant to "renege on the agreement and to reinstate the appeal". The Respondent maintained that the agreement reached was binding and the attempt to reinstate the appeal amounted to an abuse of process.
3. In reply the Appellant submitted on the 29 March 2009 it was maintained that the Appellant had not withdrawn the appeal it had been adjourned on the understanding that that the Appellant would apply for a fresh licence and the condition precedent for the appeal being withdrawn was the determination of that application, as there had not been a completed determination of a "fully fledged application" the appeal was "still very much afoot and the Appellant is entitled to have the matter adjudicated upon by the AP". It was the Appellants argument that in order to deal with the case justly the appeal should be allowed to continue and it was submitted that no extra expense would be incurred by the parties as the adjournment of the appeal had changed nothing. It was also argued on behalf of the Appellant that it was important to hear the appeal due to the "stain" caused by the revocation decision on the Appellant in its business dealings. The Appellant also maintained that the significance of the appeal was of benefit to the Appellant and that the Appellant has now received benefit of legal advice of a person who has experience of GLA appeals.
4. The Respondent's response was dated the 16 April 2009 and referred to the specific terms of the agreement reached between the parties dated the 23 January 2009. It explained that the purpose of the agreement was to allow the Appellant to continue acting as a Gangmaster until the determination of the new licence application. The Appellant determined the licence application when they decided to withdraw from the process. It was contended by the Respondent that to allow the Appellant to continue with the appeal would not be "dealing with the matter justly under the "overriding objective" as it would have the effect of allowing the Appellant to "manipulate the agreement in order to obtain an extension of the licence". It would also not assist in dealing with matters expeditiously or fairly. The fact that the Appellant has changed its legal advisers has no relevance, the issue "simply requires a consideration of

the terms of the agreement". The parties were both legally represented at the time and the licence application was determined when it was withdrawn. In accordance with the terms of the agreement of the 23 January 2009 the Appellants were to write to the Secretariat within 7 days of the withdrawal of the application and on their failure to do so it is submitted by the Respondents that the appeal stands withdrawn.

5. The Appellant was invited to respond to the Respondents submission dated the 16 April but indicated by an email to the Secretariat dated the 30 April 2009 that it did not wish to do so "at this stage".

The Chronology

6. The facts of this case are agreed and they are as follows:

- a. On the 11th of July, 2008 the Appellant was given notice that their licence was to be revoked without immediate effect
- b. The Appellant put in their notice of appeal against the revocation of the licence on the 4th of August, 2008 and the Respondent put in their submissions in respect of the appeal on the 5th of August, 2008.
- c. The matter was listed for a hearing on the 27th of January, 2009
- d. The parties were both legally represented the Respondent by Solicitors and the Appellants by Solicitors and Counsel, Mr Charalambides. The parties entered into without prejudice discussions and on the 23rd of January, 2009 an agreement was reached on the following terms:

"1. Within 14 days of the 27th of January, 2009 Extra staff will submit an application for a new Gangmaster's Licensing Authority licence

2. The Gangmaster's Licensing Authority will process that application with all due expedition

3. Within seven days of the determination of the new licence application whether that application is successful or unsuccessful the Appellants will write to the Secretariat withdrawing their Appeal against revocation of the original licence"

On the morning of the 26 of January 2009 the contents of this agreement was communicated to the Appointed Person on the telephone by the Secretariat, with a request that the hearing listed for the 27th of January be adjourned on the basis that terms had been

agreed between the parties. On the basis of the terms of that agreement, the Appointed Person agreed to the joint request that the hearing scheduled for the 27th of January be adjourned Sine Die. Directions were set down by the Appointed Person that the Appellant was to provide an update by noon of the 10th of March, 2009 as to whether the terms of the agreement had been complied with in order for the matter to be dismissed.

- e. As nothing was heard from the Appellant on the 10th of March, the Secretariat, upon instructions from the Appointed Person, wrote to the parties by e-mail on the 11th of March to request an update as to the progress of the new application. The Respondent confirmed that the new application was at the application stage.
- f. The Appellant wrote to the Respondent with a copy to the Secretariat a letter dated the 17th of March 2009 in the following terms:

"as you will be aware Extrastaff Ltd's appeal against the GLA's licence revocation was due to be heard on 27 January 2009 but was adjourned sine die on the basis of an agreement brokered between the parties. In particular, one of the terms was that Extrastaff would apply for a fresh licence and on the determination of that application whether it was granted or not, the appeal would thereafter be withdrawn. As things stand the appeal is therefore extant, and having joined the Association of Labour Providers and taken further legal advice, Extrastaff wants to pursue the appeal to a full hearing before the Appointed Person.

In the circumstances, Extrastaff hereby gives notice that it formally seeks to withdraw the application for a fresh licence forthwith, and therefore the proposed inspection (which we understand was due to take place this Thursday the 19th of March) will be unnecessary and we would be grateful for your written confirmation that the inspection will not now take place".

It was confirmed in the letter that Extrastaff had no workers operating in the GLA sector.

The issues

- 7. The sole issue before the Appointed Person is whether the Appellant can reinstate the appeal process. If there is a binding agreement the Appellant cannot withdraw unilaterally from the agreement and pursue the appeal

unless they can show grounds that would make the agreement reached invalid.

8. The Respondent maintains that that to do so would be an abuse of process. The initial appeal had been disposed of effectively by the agreement in January 2009 and to allow life to be breathed back into the appeal would be an abuse of court process and would not be in line with the overriding objective in dealing with the case justly expeditiously and fairly.
9. It is the Appellants case that there has not been a final determination of "a fully fledged application". They maintain that the appeal is very much afoot and the Appellant is entitled to have the matter adjudicated upon. It is their case that in order for there to be a determination as set out in the terms of the agreement "it was necessary for the Appellant to cease the process-in other words, to actually prevent a determination which would have the effect of leading to the appeal being formally withdrawn". The Appellant maintained in order to deal with the matter justly the appeal should be allowed to continue. They maintained that there was no extra cost involved with the matter being listed for hearing and that it would be proportionate to deal with the appeal giving the importance to the Appellant in terms of the 'stain' caused by the revocation which will in due course would be advertised by the GLA. It was submitted that the Appellant now had the benefit of advice from the Associate of Labour Providers and to Counsel that had experience of GLA appeals (whereas their previous Counsel did not).

Decision

10. Firstly I will deal with the issue relating to whether or not a valid the settlement has been brokered between the parties. It is noted from the chronology that at all times the Appellant was legally represented by Solicitors and Counsel. Although it is noted that Counsel chosen by the Appellant may not have been experienced in dealing with GLA matters, there is no suggestion that the parties were in any way misled by their legal representative. Counsel was acting on their client's instructions and the terms of settlement were agreed. The adjournment was granted after the parties communicated the terms of this agreement by telephone and it was on the basis of this agreement that the adjournment was granted subject to the Appellants reverting back to the Secretariat by the 10th of March.
11. It was noted that the Appellant then applied for a new licence in accordance with the terms of the agreement reached and the Respondent also acted in compliance with the terms of the agreement reached by processing the application with due expedition and the inspection was due to take place on the 19th of March 2009. Both parties therefore appeared to take action to comply with the terms of the agreement and from the evidence available they

showed that they considered themselves bound by it. There was nothing to suggest that the terms of agreement reached were in some way invalid or that they should be set aside for any reason. It was also noted that the terms of the agreement were beneficial to the Appellant as it allowed the Appellant to continue trading whilst the new application was being processed.

12. The Appellant's decision to withdraw the application for a fresh licence and to cancel the inspection was taken with the benefit of legal advice despite the fact that it prevented the Respondent from processing the application. The Appellant now maintains that the decision to withdraw the application allows them to reinstate their appeal because they state that **"given that as a matter of law, the fact and common sense the application process has not been completed by a final determination of the GLA of a fully fledged application, the appeal is still very much afoot"**. The reason why the application process cannot be completed was due to the fact that the Appellant had withdrawn from the process, making it impossible for the Respondent to make a determination of that application. The Respondent was incapable of taking any action under the agreement as the Appellant has withdrawn from the process. The Appointed Person does not know how what the Appellant means by a "fully fledged application", the terms of the agreement reached between the parties were clear. Clause 1 required by Appellant to submit a new application which they did. Clause 2 of the agreement required the Respondent to process that application which they did. The final clause of the agreement now cannot be completed due to the Appellant withdrawing from the process and preventing the Respondent from making a determination.
13. As a matter of fact, the parties had an agreement which they partially complied with. The case was adjourned on the terms that were agreed between the parties. It was not alleged that the Respondent was in any way in breach of that agreement, entitling the Appellant to reinstate the appeal or that there was evidence of bad faith. The Respondent maintained that the actions of the Appellant amounted to a determination of the new licence application.
14. I have taken into account the submissions by both parties on what amounts to a determination. I have considered paragraph 7 of the Appellant's submission that maintained that for a determination it was **"necessary for the Appellant to cease the process-in other words, to actually prevent a determination which would have the effect of a leading to the appeal being formally withdrawn"**. The Respondent's submission on that point put quite simply that the determination of the new licence application had taken place when it was withdrawn. The submissions of the Respondent on this point are to be preferred both on the normal meaning of the words and the structure of the

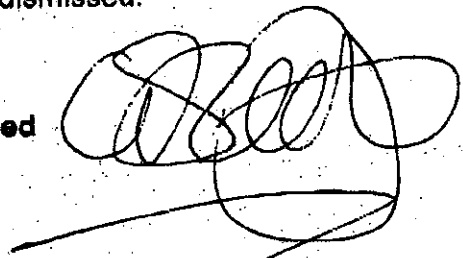
agreement the parties reached. The agreement clearly envisaged a 3 stage process of application, processing that application and determination. If there was no application there can be no determination. The process ceased with the Appellant withdrawing from the terms of the agreement and preventing the Respondent from completing the determination. A determination took place when the Appellant withdrew its application for a fresh license, on the 17 March 2009 which was when the process determined.

15. I find that the parties reached a binding settlement on the 23rd of January, 2009 and that there are no grounds on which the terms of that agreement should be set aside. The Appellant does not refer to any impropriety by the Respondent or to undue influence or bad faith that may affect the validity of the agreement.
16. Having concluded that the parties reached a settlement which was binding, the sole issue is whether the appeal should be reinstated notwithstanding the terms of the agreement. I am reminded by both parties of the overriding objective, which includes the obligation to deal with the case justly and fairly and in a way which is proportionate to the complexity or importance of the issues. The issues in this case were not complex and this was evidenced by the agreement that was reached between the parties for a sensible and pragmatic way forward, the agreement benefited all parties. It allowed the Appellant to continue to trade without interruption, whilst the application for a new license was underway. I believe it would not be fair and just, on the evidence before me, to allow the Appellant to renege on an agreement simply because it is now has the benefit of advice from the Association of Labour Providers and different Counsel. This is a binding settlement which has been brokered by legal representatives which cannot now be set aside simply on the grounds that one party has thought the better of it. It would be an abuse of process to allow the Appellants to renege on an agreement and to reinstate the appeal where the matter has been the subject to a binding settlement.
17. There is a requirement on the Appointed Person to deal with a case expeditiously and fairly. It would not be expeditious to allow a Gangmaster to continue to operate where a licence has been revoked without immediate effect, for an indefinite period. The date of the original revocation was the 11th of July, 2008 and agreement was reached between the parties for a sensible way forward on the 23rd of January, 2009. If the Appellants were to be allowed to continue their appeal, this would have the effect of delaying any final determination in this matter and the outcome would be to allow a Gangmaster to continue to trade despite the decision of the Respondent that the license should be withdrawn. This would lead to uncertainty and may result in workers in the GLA sector being placed at risk. Although it is noted that there are presently no workers operating in this sector, this may change.

Any further delay in reaching a final determination in this matter will stand in the way of a fair and expeditious outcome and would be against the overriding objective.

18. The terms of the agreement are binding on the parties. The application to reinstate the appeal is refused. The determination of the licence application took place on the 17 of March 2009 when the licence application was revoked by the Appellant. In the absence of the Appellant withdrawing the appeal in accordance with the terms of the settlement reached, it is the Appointed Person's decision that their appeal should be dismissed.

Signed

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Dated

18 May 2009.