

<b>Article:</b>	<b>NSW recruitment company to pay big damages bill over referencing failure</b>
<b>Date:</b>	12 November 2008
<b>Source:</b>	<a href="http://www.shortlist.net.au">www.shortlist.net.au</a>

A New South Wales recruitment company has lost a bid to have a \$160k damages award overturned, in a long-running legal dispute with a former client over its failure to properly reference a candidate.

Justice Roger Giles of the NSW Court of Appeal said Parramatta agency Driver Recruitment, which traded as Authorised Solutions, was engaged by global water treatment company Wedeco in 2003, to recruit a new sales manager for its Southeast Asian operations.

Authorised Solutions put forward a candidate for the role who was subsequently employed, and sacked 18 months later after making a number of false claims to prospective customers, and charging more than \$44,000 in personal expenses to the company credit card.

It also subsequently emerged that the candidate was an undischarged bankrupt when Authorised Solutions recommended him for the position, Justice Giles said.

As well as compensation for the credit card fraud, Wedeco sought reimbursement of the original recruitment fee, the candidate's salary, and the cost of several Wedeco staff travelling to Asia to rectify problems caused by him, amounting to \$164,224 in total.

The candidate provided Authorised Solutions consultant Robyn Holt with a CV which stated that he was currently working for manufacturing group Tyco, and listed two references there.

Holt rang the two referees, who told her that he had not been employed by Tyco for several months, and in any case he had not reported to either of them. The referees gave Holt the name of the candidate's former boss, Vernon Costelow.

However, the judge said, Costelow testified in court that he had never been called by a recruiter about the candidate, "and that if he had been contacted he would not have given a favourable reference".

Lawyers for Authorised argued that Holt had passed on the details of her conversation with the two referees to Wedeco personnel manager Mario Di Noia, who had then hired him regardless.

Di Noia was no longer with Wedeco and did not give evidence at the trial.

"[But] it was inherently unlikely, had it been made known to Mr Di Noia that [the candidate] had given a false account of his current employment and the referees were unable to speak of his employment performance, that he would have been regarded as suitable," Justice Giles said.

He added that Di Noia was not ultimately responsible for the decision to hire the candidate, and would not have done so without consulting senior HR managers - who were not informed of the Tyco issue.

The judge noted that regardless of this, undisputed evidence from Wedeco showed that shortly before the candidate's interview, Holt had told the senior HR staff: "I have now checked out [his] references and everything stacks up."

This statement "could not credibly stand", given that Holt had never spoken to his direct boss, Justice Giles said.

He said the original trial judge had been correct in finding that Authorised had "falsely represented that [it] had performed background and employment checks in relation to Tyco".

---



Consequently, Justice Giles said, "no error has been shown in the trial judge's conclusion that the appellant was in breach of contract and of the duty of care owed to the respondent".

He ordered that the appeal be dismissed and also that Authorised Solutions pay court costs - which could far outweigh the damages award.

[Driver Recruitment Pty Ltd \(trading as Authorised Solutions\) v Wedeco AVP Pty Ltd \[2008\] NSWCA 290 \(11 November 2008\)](#)