

An appeal

- by -

Jie Liu  
(the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

pursuant to section 112 of the  
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Carol L. Roberts

**FILE NO.:** 2019/167

**DATE OF DECISION:** November 19, 2019

## DECISION

### SUBMISSIONS

Jie Liu on their own behalf as a Director of Sinorama Travel Vancouver Inc.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Jie Liu, a Director of Sinorama Travel Vancouver Inc., has filed an appeal of a determination (the “Director Determination”) issued by a delegate of the Director of Employment Standards (the “Director”) on August 1, 2019.
2. Between August 31 and September 25, 2018, the Director received complaints from a number of former employees of Sinorama Travel Vancouver Inc. (“Sinorama”) alleging that Sinorama had contravened the *ESA* in failing to pay wages. The Director initiated an investigation into the complaints and on January 7, 2019, issued a Determination against Sinorama in respect of five of the complainants. That Determination was unsuccessfully appealed (*Sinorama Travel Vancouver Inc.*, 2019 BCEST 34). In summary, Sinorama did not dispute that outstanding wages were owed, but claimed that its ability to pay the wages had been frustrated by Consumer Protection BC’s suspension of its business license and freezing of its corporate bank accounts. Consumer Protection BC had taken those steps because there was evidence Sinorama did not have sufficient capital to reasonably be expected to operate a travel service business.
3. On March 29, 2019, a preliminary findings letter regarding an additional five former employees, along with information on corporate director liability for unpaid wages, was sent by registered mail to Sinorama as well as its directors including the Appellant. The registered mail sent to the Appellant was returned to sender.
4. On August 1, 2019, the Director issued a Determination (the Corporate Determination) finding Sinorama in contravention of the *ESA* in failing to pay wages to the remaining former employees in the total amount of \$15,997.03. The Director’s delegate also imposed administrative penalties in the amount of \$1,000 for the contraventions, pursuant to section 98 of the *ESA*. The Corporate Determination, which included a Notice to Directors/Officers explaining their personal liability under the *ESA*, was sent to Jie Liu (the “Appellant”) as well as to the registered and records office, and to other Sinorama directors.
5. The delegate issued the Director Determination on August 1, 2019, the same day as the Corporate Determination because the corporate employer was out of business and there was a risk that assets would disappear.
6. The delegate determined that because the Appellant was a Director of Sinorama at the time the complainants’ wages were earned and payable, the Appellant was personally liable to pay \$15,977.03, representing not more than two months’ unpaid wages for each of the employees and interest, pursuant to section 96 of the *ESA*. The delegate concluded that there was insufficient evidence that the Appellant authorized, permitted or acquiesced in Sinorama’s contraventions, and found the Appellant not personally liable for the administrative penalties.

7. The Appellant appeals the Director Determination contending that the Director failed to observe the principles of natural justice in making the Determination. The deadline for filing an appeal of the Determination was September 9, 2019. The Tribunal received the appeal on September 18, 2019. The Appellant seeks an extension of time in which to file the appeal. The Appellant says that although the Determination was sent on August 1, 2019, they did not receive it until September 9, 2019.
8. Section 114 of the *ESA* provides that the Employment Standards Tribunal (the “Tribunal”) may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
9. These reasons are based on the Appellant’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1), the Respondent will and the delegate may be invited to file further submissions. If the appeal is not meritorious, it will be dismissed.

## **FACTS AND ARGUMENT**

10. The Corporate Determination contained the following “Notice to Directors/Officers”:

If a separate Determination is made against you as a director/officer of a company, you may not argue the merits of this Determination against the company by appealing the Determination that is made against you as a director/officer.

There are only three grounds on which you may appeal a Determination made against a you as a director/officer:

  - 1) That you were not a director/officer of the company at the time wages were earned or should have been paid;
  - 2) That the calculation of your personal liability as a director/officer is incorrect; and/or,
  - 3) That you should not be liable for the penalty, where a penalty has been imposed, on the grounds that you did not authorize, permit or acquiesce in the company’s contravention.
11. A BC Company Registry search conducted September 2018 confirmed that Sinorama was incorporated in British Columbia on October 24, 2018, and that as of June 22, 2018, the Appellant was a Director of Sinorama. The Appellant contends that they were not a director of the company. The Appellant contends that they did not agree to be a director, that they were only a shareholder, and that they were never involved in any aspect of the company since it began. The Appellant also contends that the director, Hong Qian, agreed to be responsible for all aspects of the company.
12. The Appellant also argues that the Corporate Records are incorrect, and that, had the delegate afforded the Appellant an opportunity to be heard, the Appellant would have informed the delegate about the errors. The Appellant says that there is nothing in the company minutes indicating that the Appellant was ever involved as a Director.

13. The Appellant states that the Corporate Records search is “obviously error ridden” and should have attracted closer scrutiny, as it lists five individuals, two of whom share the same name. The Appellant asserts that this discrepancy ought to have led the delegate to investigate and verify the corporate records. The Appellant says that while there is a presumption that the records are correct, they ought to have been given an opportunity to rebut that presumption.
14. The Appellant asserted that they had contacted their lawyer and would provide supporting documentation, if available. No further documents were submitted to the Tribunal in support of the appeal.

### **ANALYSIS**

15. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind, the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
  - (b) the appeal was not filed within the applicable time limit;
  - (c) the appeal is frivolous, vexatious, trivial or gives rise to an abuse of process;
  - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
  - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
  - (f) there is no reasonable prospect the appeal will succeed;
  - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
  - (h) one or more of the requirements of section 112(2) have not been met.
16. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination;
  - evidence has become available that was not available at the time the determination was being made.

### *Extension of time*

17. I am persuaded that the Appellant did not receive the Determination by registered mail until September 9, 2019, the deadline for filing an appeal. I note that one of the reasons the Determination may not have been received until September 9, 2019, was that it was sent to the address listed for the Appellant in the corporate registry. The Appellant’s address was apparently not updated in the company records. I allow the application for an extension of time in which to file the appeal.
18. The record confirms that both the Corporate Determination and the Director Determination were sent to Sinorama as well as all directors by registered mail on August 1, 2019. The Appellant received both

Determinations on September 9, 2019. There is no dispute that Sinorama failed to pay wages to the employees. The sole issue therefore, is whether the Appellant was a Director of Sinorama at the time the wages were earned.

19. The Corporate records indicate that as of the date of the Annual Report filed October 24, 2017, Jie Liu was listed as a director of Sinorama. Jie Liu was identified as a director of Sinorama as of December 27, 2018. Therefore, the Appellant was listed as a director during the time the employees' wages were earned and should have been paid.
20. The Appellant argues that they were not a director of the Corporate Employer at the time the wages were earned, or at all.
21. Section 96 of the *ESA* provides as follows:
  - (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
  - (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
    - (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation
      - (i) is in receivership, or
      - (ii) is subject action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,

...
22. Corporate records, primarily those available through the Corporate Registry or at the corporation's registered and records office, raise a rebuttable presumption that an individual is an officer or director of a company. That presumption can be rebutted by evidence that the individual has resigned as an officer or director. The Director may rely on those records to determine officer and director status. It is then open for an individual who is recorded as an officer or director to prove that the records are inaccurate (*Michalkovic*, BC EST # RD047/01).
23. The Appellant contends that while the corporate records are presumptively accurate, they should have been given the opportunity to rebut that presumption. Jie Liu has presented no evidence on appeal to demonstrate that the corporate records are incorrect.
24. The Appellant also argues that they did not act as a director and contends that the delegate ought to have investigated the accuracy of the corporate records based on what they suggest is an obvious error.
25. The delegate is under no obligation to inquire into the accuracy of the corporate records, as the accuracy of those records rests with the company. Section 126 of the *Business Corporations Act* ([SBC 2002 c. 57]) provides that a company must keep a register of its directors, including the full name and prescribed

address for each of the directors, the date on which each current director became a director and the date on which each former director became a director and the date on which he or she ceased to be a director.

26. Furthermore, the delegate has no ability to access corporate minutes to determine if a person listed as a director participated in the business of the company, nor should they be required to. If that information exists, the Appellant must submit it to the Director.
27. Despite the Appellant's assertions, they have presented no evidence on appeal that the corporate records are incorrect.
28. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds. I find that the Appellant has not met that burden.
29. I dismiss the appeal.

#### **ORDER**

30. Pursuant to section 114(1)(f) of the *ESA*, I dismiss the appeal. Accordingly, pursuant to section 115 of the *ESA*, the Determination, dated August 1, 2019, is confirmed in the amount of \$15,977.03, together with whatever further interest that has accrued under section 88 of the *ESA* since the date of issuance.

---

**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**