

An appeal

- by -

Monica Raynolds carrying on business as Prestige Talent

- of a Determination issued by -

The Director of Employment Standards

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

**PANEL:** Allison Tremblay

**FILE NO.:** 2018A/110

**DATE OF DECISION:** March 18, 2019

## DECISION

### SUBMISSIONS

Monica Raynolds on her own behalf carrying on business as Prestige Talent  
Stefan Jankowski delegate of the Director of Employment Standards

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the "ESA"), Monica Raynolds carrying on business as Prestige Talent ("Raynolds") filed an appeal of the October 19, 2018 determination (the "Determination") of Stefan Jankowski, a delegate (the "Delegate") of the Director of Employment Standards (the "Director"). The Determination assessed a \$500 administrative penalty pursuant to section 98(1) of the *ESA*. Raynolds seeks to overturn the Determination.
2. I find that the Delegate made an error when it assessed the administrative penalty and cancel the Determination.

### THE FACTS AND ANALYSIS

3. The Delegate assessed a \$500 administrative penalty against Raynolds when he found that she operated a talent agency without a license in contravention of section 12(1) of the *ESA*. Raynolds asks the Tribunal to overturn the Decision and reverse the penalty. She argues that paying the penalty would be a hardship as her business is new, she makes very little money, and so she should be relieved from paying the penalty.
4. The Tribunal may only cancel an administrative penalty where there is bad faith, an abuse of process, or if the underlying contravention cannot be supported: *Marana Management Services Inc. operating as Brother's Restaurant*, BC EST # D160/04. For these reasons, the appeal fails on this ground.
5. However, Raynolds' appeal submissions and documentation question the underlying factual findings made by the Delegate. Accordingly, I must also assess the appeal on this ground in accordance with my duty to read a request for appeal liberally to ensure that the parties receive fair treatment: *Triple S Transmission Inc.*, BC EST # D141/03.
6. The Tribunal ordinarily does not review factual findings made by delegates. The Tribunal may only consider an appeal if there is a palpable and overriding error: *Re: Funk*, BC EST # D195/04.
7. The finding that Raynolds contravened section 12(1) of the *ESA* is based on the following facts as set out in the Determination:
  - a. Raynolds' talent agency license expired on August 31, 2018.
  - b. The Employment Standards Branch (the "Branch") received Raynolds' application to renew her license on September 13, 2018.
  - c. The Branch issued a renewed license effective September 20, 2018.

8. Raynolds included with her submissions a copy of her 2017-2018 talent agency license. That document and the covering letter both state that the license expires on October 5, 2018.
9. The section 112(5) Record provided to the Tribunal by the Delegate did not include a copy of the 2017-2018 license or the covering letter.
10. In his reply submission to the appeal, the Delegate stated that due to an administrative error the Director's records displayed the incorrect expiration date for Raynolds' license. In fact, she was operating under a valid license at all material times. Accordingly, the Delegate did not object to cancelling the Determination.
11. The evidence establishes a palpable and overriding factual error. Raynolds did not contravene section 12(1) and so must not face an administrative penalty. The appeal must succeed.

### **ORDER**

12. Pursuant to section 115(1) of the *ESA*, I order that the Determination is cancelled.

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**Allison Tremblay**  
**Member**  
**Employment Standards Tribunal**