

An appeal

- by -

Jean Bolduc, aka Jean Francis Bolduc, a.k.a. Jeff Bolduc, a Director of NFO Solutions Inc., a.k.a. New Framing Order (NFO), a.k.a. New Framing Operations Solutions

- 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.: 2019/24

DATE OF DECISION: June 19, 2019

DECISION

SUBMISSIONS

Jean Bolduc

on his own behalf

OVERVIEW

1. On February 5, 2019, Shannon Corregan, a delegate (the "Delegate") of the Director of Employment Standards (the "Director"), issued a determination (the "Director Determination") finding that Jean Bolduc, a.k.a. Jean Francis Bolduc, a.k.a. Jeff Bolduc ("Bolduc") was a director of NFO Solutions Inc., a.k.a. New Framing Order (NFO), a.k.a. New Framing Operations Solutions (the "Company"), and accordingly personally liable for orders made against the Company pursuant to sections 96 and 98 of the *Employment Standards Act* (the "ESA"). Bolduc appeals the Director Determination pursuant to section 112 of the *ESA*.
2. The concurrent determination finding the Company breached the *ESA* and ordering the Company to pay wages, interest, and penalties for breaches of the *ESA* with respect to Company employees Joseph M. J. Ecker ("Ecker"), Steven G. Maddern ("Maddern"), and another employee ("Corporate Determination") was not appealed.
3. Bolduc seeks to vary the Director Determination with respect to Ecker, Maddern and the penalties on two grounds: an error of law and evidence that was not available at the time the Director Determination was made has become available.
4. Under section 114(1) of the *ESA*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed:
 - 114 (1) 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:
 - ...
 - (f) there is no reasonable prospect that the appeal will succeed;
5. I am satisfied that I am able to determine this appeal under section 114(1) on the basis of the material before me, namely, the appeal document and Bolduc's submissions, the Director Determination, the Reasons for the Determination, and the section 112(5) Record (the "Record") provided by the Delegate.

ISSUE

6. Does the appeal have a reasonable prospect of success?

THE FACTS AND ANALYSIS

7. The Director Determination makes the following findings:
 - a. Bolduc was the sole director of the Company from April 6, 2018, to September 29, 2018, the period wages were earned by and payable to Ecker and Maddern;
 - b. In the Corporate Determination, the Delegate found Ecker was owed \$2778.44 in wages and interest and Maddern was owed \$3298.54 in wages and interest;
 - c. The Company contravened sections 17, 18, and 27 of the *ESA* and section 46 of the *Employment Standards Regulation* (the “*Regulation*”) and so was ordered to pay an administrative penalty of \$2000;
 - d. The Company has not paid the administrative penalty; and
 - e. Bolduc permitted the Company to contravene sections 17, 18, and 27 of the *ESA* and section 46 of the *Regulation*.
8. The Director Determination finds Bolduc personally liable for up to two months’ wages for Ecker and Madden and for the administrative penalty.
9. Bolduc has submitted evidence which he claims demonstrates that wages are not owing to Ecker and Maddern. This is the sole argument Bolduc makes on the appeal. Bolduc appeals none of the factual findings from the Director Determination.
10. Bolduc is precluded from challenging in an appeal of the Director Determination the findings of the Corporate Determination. He is permitted only to appeal those issues that arise under sections 96 and 98 of the *ESA*: *Re Abram Neudorf*, BC EST # D076/07. As there is no appeal of the Corporate Determination, the findings that wages are owing to Ecker and Maddern are final.
11. I find there is no merit in the appeal and there is no reasonable prospect of success. Accordingly, I dismiss the appeal pursuant to section 114(1)(f) of the *ESA*.

ORDER

12. Pursuant to section 115 of the *ESA*, I confirm the Determination together with any interest that has accrued under section 88 of the *ESA*.

Allison Tremblay
Member
Employment Standards Tribunal