

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Daniel Abraham carrying on business as Eagle Talent Agency  
(the “Employer”)

- 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:** Carol L. Roberts

**FILE NO.:** 2020/122

**DATE OF DECISION:** October 7, 2020

## DECISION

### SUBMISSIONS

Daniel Abraham on his own behalf carrying on business as Eagle Talent Agency

### OVERVIEW

1. This is an appeal by Daniel Abraham carrying on business as Eagle Talent Agency (the “Employer”) of a July 17, 2020 Determination issued by a delegate of the Director of Employment Standards (the “Director”).
2. The Director found that the Employer had contravened section 12 of the *Employment Standards Act* (the “ESA”) in operating a talent agency without a valid licence, and imposed a \$500 administrative penalty on the Employer for the contravention.
3. The Employer contends that evidence has become available that was not available at the time the Determination was being made.
4. Section 114 of the *ESA* provides that 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. After reviewing the appeal submissions and the record, I found it unnecessary to seek submissions from the Employer or the Director.
5. This decision is based on the section 112(5) “record” that was before the delegate at the time the Determination was made, the submissions of the Employer, and the Reasons for the Determination.

### FACTS

6. The Employer operates a talent agency, as that is defined in the *ESA*. Mr. Abraham was issued a talent agency licence on June 11, 2019, for one year. The licence expired on June 10, 2020. Mr. Abraham submitted a renewal application for a talent agency licence on June 30, 2020. The application was unsigned. The Director conducted an investigation to determine if Mr. Abraham contravened the *ESA* by operating a talent agency without a valid licence.
7. A delegate of the Director spoke to Mr. Abraham on July 2, 2020, to review the details in the application. Mr. Abraham acknowledged that the licence renewal application had been submitted late due to an administrative error, explaining that he had been in Ontario.
8. The delegate determined that Mr. Abraham had contravened section 12 of the *ESA* by operating a talent agency without a valid licence, and imposed a mandatory \$500 penalty.

## ARGUMENT

9. The Employer submits that he failed to communicate effectively with the Director's delegate. He says that the Covid pandemic "decimated" the industry, that he was depressed and did not want to discuss his psychological well-being with her. He said that he had not been doing any work and, on June 15, 2020, as the industry began picking up, contacted an employee of the Employment Standards Branch, with whom he had previously been in communication, regarding a renewal before engaging in any business.
10. The Employer says that he was not "engaging in any commerce" during the time he was communicating with the Director, although he was maintaining his existing professional relationships.
11. The Employer asks that the few days lapse in his licence be forgiven, and that the penalty be waived given the difficult economic circumstances posed by Covid.

## ANALYSIS

12. 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.
13. 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.
14. It is not difficult to sympathize with Mr. Abraham. He, like many others, has suffered challenging economic and personal circumstances due to the Covid pandemic, which has significantly affected our world.
15. Nevertheless, I am unable to find that he has met the burden of demonstrating that the Determination should be cancelled.

16. In *Re Merilus Technologies*, BC EST # D171/03, the Tribunal established the following four-part test for admitting new evidence on appeal:
- (a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
  - (b) the evidence must be relevant to a material issue arising from the complaint;
  - (c) the evidence must be credible in the sense that it is reasonably capable of belief; and
  - (d) the evidence must have high probative value, in the sense that, if believed, it could, on its own, or when considered with other evidence, have led the Director to a different conclusion on the material issue.
17. The information provided on appeal is not new. Mr. Abraham conceded that he elected not to inform the delegate about his personal circumstances at the time they discussed the reasons his application was late. I do not wish to suggest that Mr. Abraham did not have good reason for not wanting to disclose his medical situation. However, if he felt that the information was relevant, he ought to have informed the delegate at that time. An appeal is not an opportunity to present evidence that ought to have been presented during the investigation of the matter.
18. Furthermore, I am not persuaded that even had Mr. Abraham communicated that information to the delegate at first instance, it would have led the Director to a different conclusion.
19. Mr. Abraham does not dispute that he did not submit his application in a timely manner.
20. The record discloses that when the Employer's initial application was granted in 2019, the Branch informed Mr. Abraham that his licence would expire on June 10, 2020. The correspondence accompanying the licence noted that the Branch "does not send out renewal notices. Please ensure that you submit your application to have your licence renewed at least 30 days before your licence expires." [my emphasis] I find that the Employer was aware of its obligation to renew its licence before June 10, 2020.
21. I also note that, according to the licence application, three individuals were associated with the Employer. An individual who appears related to Mr. Abraham was identified as "Director of Operations". A third individual was identified as an Office Manager. It is not clear why, even if Mr. Abraham was medically unable to complete the renewal application, either of the other individuals was not able to do so.
22. Finally, Mr. Abraham contends that he was not "engaging in any commerce" during the period he had no valid licence. While it is unclear what Mr. Abraham means by this assertion, I note that it conflicts with the information he provided the delegate during their July 2, 2020 conversation. According to the record, Mr. Abraham told the delegate that "he was trying to do as little as possible because he knew he wasn't licensed, but that he was still operating as a talent agency."
23. While it may be that the Employer had no active clients during this period, there is no evidence the Employer ceased advertising its services or took any steps to cease operation.
24. I find there is no reasonable prospect the appeal will succeed.

**ORDER**

25. Pursuant to section 115 of the *ESA*, I confirm the July 17, 2020 Determination.

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