

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

The Corker Collective Inc.
(the “Appellant”)

- 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: James F. Maxwell

FILE No.: 2021/056

DATE OF DECISION: August 16, 2021

DECISION

SUBMISSIONS

Stephanie Corker

on behalf of The Corker Collective Inc.

OVERVIEW

1. The Corker Collective Inc. (the “Appellant”) has filed an appeal of a determination dated May 27, 2021 (the “Determination”), issued by a delegate of the Director of Employment Standards (the “Director”), pursuant to the *Employment Standards Act* (the “ESA”). The Director held that the Appellant had breached section 12 of the *ESA* by operating as an employment agency without a valid license. The Director assessed an administrative penalty in the sum of \$500.00. The Appellant appeals from the imposition of the administrative penalty.

ISSUE(S)

2. The following issue arises in this appeal:
 - Did the Director err in law in the making of the Determination?

FACTS

3. The Appellant is a corporation carrying on business as an employment agency, as defined in the *ESA*.
4. Prior to April 30, 2021, the Appellant operated pursuant to an Employment Agency License (the “License”) issued May 1, 2020. The License expired on April 30, 2021.
5. On May 13, 2021, the Appellant applied for a renewal of the License. A renewal license was issued May 19, 2021.
6. The Director undertook an investigation to determine if the Appellant had been continuing to operate as an employment agency in the interval between May 1 and May 19, 2021, without a valid License.
7. The Director conducted an interview of Stephanie Corker, director of the Appellant corporation. Ms. Corker acknowledged that the Appellant had been conducting business as an employment agency between May 1 and May 19, 2021.

The Determination

8. The Director examined the relevant legislative provisions and issued the Determination.
9. The Director considered section 12 of the *ESA*, which provides that a license issued pursuant to the *ESA* is required to operate an employment agency:

12 (1) A person must not operate an employment agency or a talent agency unless the person is licensed under this Act.

10. The Director concluded that the Appellant breached section 12 of the *ESA* by continuing to carry on business as an employment agency between May 1 and May 19, 2021, without a valid license.
11. The Director imposed upon the Appellant a \$500.00 administrative penalty for breach of the *ESA*, pursuant to section 98 of the *ESA*, which states:
- 98 (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.

The Appeal

12. The ground upon which the Appellant appeals the Determination is that the Director allegedly erred in law in imposing the administrative penalty of \$500.00.

ANALYSIS

Did the Director err in law in making the Determination?

13. I have examined the Determination, the Delegate's Reasons in support of it (the "Reasons"), the Appellant's Appeal Form, the Appellant's submission in support of the appeal, and the record that the Director provided to the Tribunal pursuant to subsection 112(5) of the *ESA*.
14. By the Appellant's own admission, the Appellant continued to operate as an employment agency after the expiry of the License, and until the issuance of a renewal licence. The Director correctly concluded that this was a contravention of section 12 of the *ESA*.
15. The administrative penalties contemplated by section 98 of the *ESA* are mandatory. The Director did not have a discretion to waive the penalty.
16. As this Tribunal stated in *Re Rajender Singh Parmar and Emerald Taxi Ltd.*, 2021 BCEST 47:
- ...[administrative] penalties are mandatory and, in this case, each penalty was assessed based on a demonstrated contravention of the *ESA* or the *Employment Standards Regulation*. The Tribunal does not have any statutory authority to cancel monetary penalties that were properly levied.
17. Subsection 114(1) of the *ESA* provides that the Tribunal may dismiss all or part of an appeal, at any time after an appeal is filed and without a hearing, if certain criteria are satisfied. One of the circumstances in which an appeal may be summarily dismissed is if there is no reasonable prospect that the appeal will succeed.
18. As this Tribunal does not have a statutory authority to cancel the penalty, I find that there is no reasonable prospect that the within appeal will succeed.

CONCLUSION

19. I find that the Director committed no error of law in making the Determination. The Director conducted an appropriate investigation into the events around the expiry of the License, including an interview of

the representative of the Appellant corporation. I am satisfied that the Director correctly applied the relevant statutory provision in concluding that the Appellant continued to operate as an employment agency in the period between the expiry of the License and the date of issuance of a renewal license. I am satisfied that the Director correctly applied the relevant statutory provision in imposing the administrative penalty.

20. Having reviewed the Determination, the Appellant's submissions, the Record, and the relevant legislative provisions, I dismiss this appeal.

ORDER

21. Pursuant to section 115(1) of the ESA, I confirm the Determination dated May 27, 2021.

James F. Maxwell
Member
Employment Standards Tribunal