

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Mark Percival

- of a Determination issued by -

The Director of Employment Standards

PANEL: Brandon Mewhort

FILE NO.: 2022/125

DATE OF DECISION: September 22, 2022

DECISION

SUBMISSIONS

Mark Percival on his own behalf

OVERVIEW

1. This is an appeal by Mark Percival (the “Appellant”) of a determination issued by Jennifer Redekop, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”), dated June 14, 2022 (the “Director Determination”). The Appellant appeals the Director Determination pursuant to section 112(1) of the *Employment Standards Act* (“ESA”).
2. In the Director Determination, the Delegate determined that, as a director of RavenQuest Biomed Inc. (the “Company”), the Appellant was personally liable for up to two months’ unpaid wages for two former employees (together, the “Complainants”) of RavenQuest Technologies (Canada) Inc. (together with the Company, the “Employer”), which was determined to be associated with the Company pursuant to section 95 of the *ESA*.
3. Section 114(1) of the *ESA* provides that 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, among other things, there is no reasonable prospect the appeal will succeed.
4. For the reasons discussed below, I dismiss this appeal pursuant to section 114(1) of the *ESA*, because there is no reasonable prospect it will succeed. I have assessed the appeal based on the Director Determination, the reasons for the Director Determination, the appeal, the Appellant’s written submission, and my review of the material that was before the Director when the Director Determination was being made.

ISSUE

5. Whether this appeal should be dismissed pursuant to section 114(1) of the *ESA*.

THE DIRECTOR DETERMINATION

6. The Director issued a determination against the Employer on April 25, 2022 (the “Corporate Determination”), which found wages and interest were owed to the Complainants in the amount of \$16,478.17. It was also determined that administrative penalties were also owed by the Employer in the amount of \$2,000.00.
7. A BC Registry Services Search indicated that the Appellant was a director of the Company from October 30, 2019 to May 1, 2020, during which the Complainants’ wages were earned but not paid. Accordingly, in the Director Determination, the Delegate found that the Appellant was personally liable for up to two months’ unpaid wages for each of the Complainants pursuant to section 96 of the *ESA*.

8. The Delegate determined that the Appellant was not personally liable for the administrative penalties, because there was insufficient evidence that he authorized, permitted or acquiesced in the contraventions of the Employer.

ARGUMENT

9. When asked in the appeal form to select his grounds of appeal, the Appellant indicated that the Director failed to observe the principles of natural justice in making the Director Determination. However, the Appellant did not raise any alleged failures to observe the principles of natural justice in his submission.
10. Rather, the Appellant essentially argues that it is unfair for him to be personally liable for the Complainants' unpaid wages when he had no part in the decision to not pay them. He says he was a "mised investor and token director, who was never properly informed of the company's actual financial position and obligations." The Appellant says he resigned as soon as he saw how poorly the company was being managed and that he had no knowledge that wages were not being paid. The Appellant argues that the people directly involved in the financial decisions of the company should be held responsible for the unpaid wages.

ANALYSIS

11. While I sympathize with the Appellant's position, section 96 of the *ESA* is clear that a person who is a director at the time wages of an employee of a corporation were earned or should have been paid is personally liable for up to two months' unpaid wages for each employee.
12. In *Noel-Steeves*, BC EST # D007/16 at para 48, this Tribunal held:
- Absent extraordinary circumstances, in an appeal of a director/officer determination issued under subsection 96(1) of the *Act*, the only issues that may be properly raised concern the appellant's status as a director or officer of the employer firm, whether any particular subsection 96(2) defence applies, or whether the individual's personal liability "for up to 2 months' unpaid wages for each employee" has been correctly calculated...
13. The Appellant has not raised any of those issues in his appeal. The extent of a director's involvement in the corporation is not a relevant consideration: *Ray Torresan (Re)*, 2022 BCEST 35 at para 51.
14. Accordingly, the Appellant has failed to demonstrate a basis for the Tribunal to interfere with the Director Determination and I dismiss the appeal pursuant to section 114(1)(f) of the *ESA* as there is no reasonable prospect that it will succeed.

ORDER

15. I order that the Director Determination be confirmed pursuant to section 115 of the *ESA*.

Brandon Mewhort
Member
Employment Standards Tribunal