



An appeal

- by -

Amy Yuli Chen
a Director of M.R. Fire Protection Ltd.
("Ms. Chen")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

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

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2015A/150

DATE OF DECISION: January 11, 2016

DECISION

SUBMISSIONS

Amy Chen on her own behalf as a Director of M.R. Fire Protection Ltd.

Dawn Rowan on behalf of the Director of Employment Standards

OVERVIEW

1. On November 16, 2015, Amy Yuli Chen (“Ms. Chen”) a Director of M.R. Fire Protection Ltd., filed an appeal under subsections 112(1)(a), (b) and (c) of the *Employment Standards Act* (the “*Act*”) concerning a determination issued on July 30, 2015, by a delegate of the Director of Employment Standards (the “delegate”). By way of this determination, issued under subsection 96(1) of the *Act*, Ms. Chen was ordered to pay Christopher Biech (“Mr. Biech”) \$10,260.45 on account of unpaid wages and section 88 interest. I shall refer to this determination as the “Section 96 Determination”. The delegate concurrently issued “Reasons for the Determination” and I shall refer to this 3-page document as the “delegate’s reasons”.
2. The deadline for appealing the Section 96 Determination, calculated in accordance with the “deemed service” provisions of section 122 of the *Act*, was September 8, 2015.
3. Accordingly, Ms. Chen now applies, under subsection 109(1)(b) of the *Act*, for an extension of the appeal period. In adjudicating this application I have reviewed the Section 96 Determination, the delegate’s reasons, Ms. Chen’s submissions, and the subsection 112(5) record.
4. In my view, this is not an appropriate case to extend the appeal period. My reasons for reaching this conclusion now follow.

PRIOR PROCEEDINGS

5. On June 10, 2015, the delegate issued a determination against M.R. Fire Protection Ltd. (“M.R. Fire”) in the total amount of \$19,368.37 (the “Corporate Determination”). This latter amount is comprised of wages and interest owed to Mr. Biech (\$17,868.37) as well as three separate \$500 monetary penalties (see section 98 of the *Act*).
6. Ms. Chen, as one of two directors of M.R. Fire, received a copy of the Corporate Determination (by registered mail). I should note that the subsection 112(5) record before me indicates that M.R. Fire was dissolved, for failing to file annual reports, on April 13, 2015, and thus the Corporate Determination was issued against an entity that had ceased to have any separate legal existence as of the date of dissolution.
7. In any event, so far as I am aware, the M.R. Fire directors never applied to the B.C. Supreme Court to have M.R. Fire restored under the *Business Corporations Act* and an appeal of the Corporate Determination was never filed with the Tribunal (the applicable appeal period expired on July 20, 2015).
8. M.R. Fire, not surprisingly since it was no longer in existence, never paid any monies due under the Corporate Determination. Accordingly, the delegate issued a Section 96 Determination against Ms. Chen – the determination now before me in these proceedings. Subsection 96(1) of the *Act* provides as follows: “A person who was a director or officer of a corporation at the time wages of an employee of the corporation

were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.”

9. Ms. Chen did not file her appeal within the statutory appeal period – it was filed nearly ten weeks after the appeal period expired – and hence the current application to extend the appeal period.

FINDINGS AND ANALYSIS

10. In support of her application to extend the appeal period Ms. Chen says:

I have no knowledge of this proceeding against me until Tuesday October 27 when the Bailiff served me. I am pleading for extension so I can find out more regarding what liability is extended to me and why. I was never served prior to the bailiff nor knew of any meetings/mediation and court proceeding that was happening in which if I knew I would have represented myself accordingly. [sic]

11. Ms. Chen also says, with respect to the merits of the appeal, that she resigned her directorship “in March 2015”. Three points should be noted with respect to this assertion. First, the record before me shows that as of July 6, 2015, B.C. Corporate Registry records showed that Ms. Chen was still listed as an M.R. Fire director and Ms. Chen has not provided any explanation for this inconsistency between the B.C. Corporate Registry records and her avowed position that she resigned her directorship in March 2015. Second, Ms. Chen has not provided any corroboration for her bald assertion that she resigned her directorship “in March 2015 (such as a copy of her resignation letter). Third, and most critically, even if Ms. Chen *did* resign in March 2015, that fact is wholly irrelevant since Mr. Biech’s unpaid wage claim crystallized during the period from February 26 to August 25, 2014. Thus Ms. Chen was a director, *by her own admission*, when Mr. Biech’s wages, in the language of subsection 96(1) “were earned or should have been paid”.
12. Ms. Chen, as noted above, asserts that she had no knowledge about this matter until the Bailiff showed up at her door on October 27, 2015. I find this assertion to be wholly lacking in credibility. I say this for several reasons.
13. First, the Corporate Determination was mailed, by registered mail, to Ms. Chen c/o of the very same address where she says the Bailiff served her with a Writ of Seizure and Sale on October 27, 2015 (the Section 96 Determination was also sent by registered mail to this same address).
14. Second, the Corporate Determination contained a notice to both directors clearly advising them of their potential liability under subsection 96(1) of the *Act* and thus she was put on notice, as early as mid-June 2015, of the fact that the Director might take enforcement proceedings against her personally. Given that M.R. Fire was dissolved in April 2015, Ms. Chen should have understood it was virtually certain that section 96 determinations would, at some point, be issued against her and her fellow director if Mr. Biech’s unpaid wage claim was not fully satisfied.
15. Third, the Section 96 Determination was sent, by registered mail, to Ms. Chen on July 30, 2015, and Canada Post tracking records indicate that the envelope containing the Section 96 Determination was actually “accepted” and “successfully delivered” on August 6, 2015 – about one month prior to the expiration of the appeal deadline. Ms. Chen has not provided any explanation to account for why she says she had no knowledge of this matter until October 27, 2015, when, in fact, the Section 96 Determination was in her hands as and from August 6, 2015.
16. When considering whether to extend the appeal period in a particular case, the Tribunal will consider a number of factors including: the length of the delay; the applicant’s explanation for failing to file a timely

appeal; whether there is evidence of an on-going *bona fide* intention to appeal; possible prejudice to respondent parties if the appeal period were to be extended; and the presumptive strength of the grounds of appeal (see *Niemisto*, BC EST # D099/96).

17. The delay in this matter is consequential. The record before me suggests that Ms. Chen displayed a rather studied indifference to this entire matter and was only motivated to act when the Bailiff showed up at her door on October 27, 2015 (but even then she did not act as quickly as she might have). Ms. Chen says she first learned about the Section 96 Determination on October 27, 2015 (an assertion I reject), but even if that were so, the appeal was not filed until November 16, 2015, some three weeks later. Ms. Chen has not provided any explanation as to why she did not move with much greater dispatch to file her appeal. She has not provided a credible explanation for her failure to file a timely appeal and, with respect to the merits of the appeal itself, it seems doomed to fail as it is not even presumptively meritorious. Ms. Chen may have resigned her directorship in March 2015 but she was an M.R. Fire director when Mr. Biech's unpaid wage claim crystallized. Ms. Chen does not say the delegate incorrectly calculated Mr. Biech's 2-month entitlement and the record before me persuades me that, in any event, the delegate has not made a calculation error.

ORDER

18. Ms. Chen's application to extend the appeal period in this matter is refused. Pursuant to subsections 114(1)(b) and (f) of the *Act* this appeal is dismissed and, pursuant to section 115(1)(a) of the *Act*, the Section 96 Determination is confirmed as issued in the amount of \$10,260.45 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal