

An appeal

- by -

Jack Suderman, aka Jacob Victor Suderman, operating as  
J.V. Suderman Business Services and/or Plaza Income Tax Services  
and/or JVS Business Centre  
("Suderman")

- 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

**ADJUDICATOR:** David B. Stevenson

**FILE Nos.:** 2003A/293 and 2003A/294

**DATE OF DECISION:** January 21, 2004

## DECISION

### SUBMISSIONS

J.V. (Jacob Victor) Suderman	on his own behalf
Zygmunt Marian Eliaz	on his own behalf
Pat Douglas	on behalf of the Director

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by J.V. (Jacob Victor) Suderman (“Suderman”) of a Determination that was issued on May 13, 2003 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Suderman had contravened Part 3, Section 18 and Part 7, Section 58 of the *Act* in respect of the employment of Zygmunt Marian Eliaz (“Eliaz”) and ordered Suderman to pay Eliaz an amount of \$922.46.

The Determination was issued following a Director’s hearing. Suderman says he did not receive notice of the hearing and consequently was not allowed to provide his evidence and argument in response to Eliaz’ complaint and claim. Suderman says the Director made several errors, not the least of which was giving any credibility at all to Eliaz’ complaint and claim.

The appeal was delivered to the Tribunal on November 21, 2003, well outside the time limited for appeal under Section 112 of the *Act*. There is a preliminary issue, therefore, of whether the Tribunal will exercise its discretion to extend the time limited for appeal and allow the appeal to proceed on its merits.

Suderman has also requested a suspension of the effect of the Determination pursuant to Section 113 of the *Act*. It will only be necessary to consider that request if the Tribunal allows the appeal to proceed.

The Tribunal has decided an oral hearing is not necessary in order to adjudicate the appeal.

### ISSUE

The issues that will be addressed in this decision are whether the Tribunal will extend the time limited for requesting the appeal and, if so, whether the Tribunal will suspend the effect of the Determination pending consideration of the merits of the appeal.

### THE FACTS

For a period in early 2002, Suderman operated a tax return preparation business. Eliaz was employed by Suderman for that business from February 25, 2002 to April 26, 2002 at a rate of \$10.00 an hour. He filed a complaint with the Director alleging Suderman had contravened the *Act* by failing to pay him all wages earned and by terminating his employment without notice or pay in lieu of notice.

The Director found Eliaz was owed wages for 75 hours of work performed between March 18, 2002 and April 26, 2002, but that he did not qualify for entitlement to compensation for length of service as he was employed by Suderman for less than three months.

The Determination was issued following a hearing by the Director on April 8, 2003. The Determination notes that all notices and demands, including the notice of hearing, were delivered by registered mail to two addresses, an address on Pender Street and a post office box in Vancouver and were returned. The Determination was sent to the post office box address and returned to the Director marked “unclaimed”. The material on file indicates the Determination was received at the Canada Post terminal on May 15, 2003 and returned to the Director on June 10, 2003. A card was left by Canada Post in the post office box advising Suderman of the existence of registered mail.

Suderman’s address and whereabouts were unknown to Eliaz and the Director until November 2003, when the Director became aware of his whereabouts and took steps to execute a Writ of Seizure and Sale against him.

## ARGUMENT AND ANALYSIS

Section 112 of the *Act* limits the time for filing an appeal. In the circumstances, Suderman had a period of 30 days following service by registered mail (see also Section 122). Paragraph 109(1)(b) of the *Act* allows the Tribunal to extend that period, but only where there are compelling reasons to do so (see *Matty Tang*, BC EST #D211/96). The Tribunal looks at several factors when considering a request to extend the time for filing an appeal, including the reason for delay, the length of the delay, an intention to appeal, the affect on other parties of allowing the appeal to be considered on its merits and the apparent merits of the appeal.

Suderman says he had no knowledge that a Determination had been made until the Writ of Seizure and Sale was delivered to him at his residence on November 18, 2003.

The Director opposes the request to extend the appeal period, arguing that Suderman was properly served with the Determination and that all communications served on Suderman at his post office box, including the Determination, went unclaimed. The Director says there is no indication that Suderman ever intended to pay Eliaz or participate in the complaint process. Finally, the Director argues the appeal has little chance to succeed.

Eliaz also opposes extending the appeal period.

Suderman’s request to extend the appeal period is denied. The appeal is filed nearly five months after the appeal period expired. I can find no good reason why Suderman could not have filed the appeal within the period allowed. Even if I accepted that Suderman was unaware a hearing was held on Eliaz’ complaint and that the Determination had been issued, it strains credulity to suggest the existence of registered mail in Suderman’s post office box went unnoticed by him.

In his submission, Suderman says he only checked his mailbox “every few weeks”. That being so, he must have received the registered mail notices. It is apparent that he made no attempt to determine what registered mail the notices related to. The alleged failure to be aware of the hearing and the Determination are not the responsibility of the Director. The Director properly served both documents in

accordance with the *Act*. Had Suderman made an effort to make himself aware of the contents of the registered mail, there would have been ample time to file an appeal within the period.

In any event, having reviewed the Determination, and in particular the findings which support the wage claim, and the appeal submission from Suderman, there is not a strong chance of success for the appeal.

In light of the decision to deny the request to extend the time for filing the appeal, it is not necessary to say more than there is no basis for granting any suspension request.

## **ORDER**

Pursuant to Section 112 of the *act*, I order the Determination dated May 13, 2003 be confirmed in an amount of \$922.46, together with any interest that has accrued under Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**