

An appeal

- by -

Descheneaux Insurance Recruiters Ltd.
(“DIR”)

- 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: Carol L. Roberts

FILE No.: 2014A/9

DATE OF DECISION: March 25, 2014

DECISION

SUBMISSIONS

Pat Descheneaux

on behalf of Descheneaux Insurance Recruiters Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) Descheneaux Insurance Recruiters Ltd. (“DIR”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on December 20, 2013. In that Determination, the Director found that DIR was operating an employment agency without a licence contrary to section 12(1) of the *Act* and imposed an administrative penalty in the amount of \$500 for the contravention.
2. DIR appeals the Determination contending that the delegate failed to observe principles of natural justice in making the Determination.
3. Section 114(1) of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”) permit the Tribunal to dismiss all or part of an appeal without seeking submissions from the other parties. I have decided that this appeal is an appropriate case for consideration under section 114(1) of the *Act*. Accordingly, I have evaluated the appeal based solely on the reasons for the Determination, DIR’s written submissions, and my review of the section 112(5) “record” that was before the Director at the time the Determination was made.
4. If I am satisfied that DIR’s appeal has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Tribunal may invite the Director to file Reply submissions on the appeal, and DIR would be afforded an opportunity to make a final Reply to those submissions, if any. If the appeal is not meritorious, it will be dismissed.

FACTS AND ARGUMENT

5. DIR, a company incorporated in BC, operates an employment agency as defined in the *Act*, having been issued an employment agency license on September 2, 2012. The license expired September 1, 2013.
6. The Employment Standards Branch received a renewal application from DIR on November 27, 2013, and conducted an investigation to determine whether DIR contravened the *Act*.
7. On December 18, 2013, the delegate contacted Ms. Descheneaux to discuss her renewal application. Ms. Descheneaux confirmed that the company had been operating during the period the license had expired and was aware there would be a penalty.
8. The delegate determined DIR had contravened the *Act* by operating an employment agency without a valid license from September 2, 2013, until December 20, 2013.

Argument

9. Ms. Descheneaux appeals the Determination on the grounds that “it is excessive under the circumstances.” She says that DIR has been in business since 1984 and have always maintained a license. She says that in the

summer of 2013, the company was struggling financially and she had to give up her apartment, move her office to her boyfriend's home and lay off staff, including an assistant who had handled the licensing requirements. She says that she assumed the license fee had been paid for the year, but after telephoning the Branch, discovered it had not been. She says the default was not intentional and although DIR was late renewing the license, there were extenuating circumstances. She says that she is 70 years old and still relies on the business for income. She seeks to have the penalty reduced.

ANALYSIS

10. Section 114(1) of the *Act* 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.
11. Having reviewed the section 112(5) "record" and DIR's submissions, I dismiss the appeal.
12. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.
13. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds set out in section 112 of the *Act*. This burden requires the appellant to provide, demonstrate or establish a cogent evidentiary basis for the appeal. I find that DIR has not met that burden.
14. Although DIR alleges that the Director failed to comply with natural justice as the basis for the appeal, the submissions do not support this ground.
15. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker. I am satisfied DIR was afforded natural justice.
16. Natural justice does not mean that the delegate accepts one party's notion of "fairness." DIR does not deny that it contravened the *Act*, but says it did not do so intentionally and disagrees with the imposition of a \$500 administrative penalty.

17. Once the delegate finds a contravention, a finding not disputed by DIR, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by the *Employment Standards Regulation*.
18. I find that this appeal has no prospect of succeeding and the object and purposes of the *Act* would not be served by requiring a response from the other party.
19. The appeal is dismissed.

ORDER

20. Pursuant to section 115 of the *Act*, I order that the Determination, dated December 20, 2013, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal