

An appeal

- by -

Securcom Security & Communication Services Ltd.  
(“Securcom”)

- 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 No.:** 2003A/301

**DATE OF DECISION:** January 30, 2004

## DECISION

### SUBMISSIONS

Parm Pooni	on behalf of Securcom
Therese Kitney	on her own behalf
Rod Bianchini	on behalf of the Director

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Parm Pooni (“Pooni”) on behalf of Securcom Security & Communication Services Ltd. (“Securcom”) of a Determination that was issued on October 21, 2003 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Securcom had contravened Part 3, Section 18 and Part 8, Section 63 of the *Act* in respect of the employment of Therese Kitney (“Kitney”) and ordered Securcom to pay Kitney an amount of \$4873.67.

On the record, Pooni shows as the sole director and officer of Securcom.

Securcom says the Director erred in law and asks the Tribunal to cancel the Determination.

After considering the Determination, the appeal and the material on file, the Tribunal has decided an oral hearing is not necessary in order to adjudicate the appeal.

### ISSUE

The issue is whether the Director erred in finding Securcom owed Kitney the amount ordered to be paid.

### THE FACTS

During the relevant period of time, Securcom operated a security business. The Director found that Kitney was employed as a bookkeeper from January 1, 2001 to July 28, 2002 at a rate of \$3000.00 a month.

In response to the claim made by Kitney, Securcom took the position that Kitney was a director of Securcom, was an independent contractor engaged by Securcom to be responsible for all financial activities and was compensated as such through a company owned and controlled by her.

The issues in dispute that were identified and addressed in the Determination were whether Kitney was a director of Securcom and whether she was owed wages under the *Act*. The Director found that Kitney was neither a director of Securcom nor an independent contractor, but was an employee of Securcom for the purposes of the *Act* and entitled to wages for the bookkeeping and accounting duties performed by her and, in the absence of any evidence of notice or cause, to length of service compensation under Section 63 of the *Act*. In deciding Kitney was entitled to length of service compensation, the Director indicated in

the Determination that although several reasons were advanced for terminating Kitney, those reasons were not supported by any evidence provided during the investigation.

The Determination also noted the limited involvement of Securcom in the investigation, stating:

Securcom chose not to fully participate with all inquiries and, other than the two responses, did not contact my office at any time. A letter dated August 6, 2003 was sent to Securcom outlining in detail the allegations and the interpretation of the act relating to directors and independent contractors. The letter requested any and all clarification of the points listed and a written response to be received on or before August 21, 2003. No response has been received to date.

## **ARGUMENT AND ANALYSIS**

The appeal only inferentially addresses the findings and conclusions made in the Determination. Primarily, it seeks to have the Tribunal review Pooni's "involvement" in Securcom and find she would not be personally liable as a director or officer of Securcom for any of the wages that might be owed to Kitney.

In response to the appeal, the Director notes that no director/officer Determination has been issued and the Determination reached no conclusions about Pooni's standing as a director/officer, or her personal liability under the *Act*. I agree with the Director on this point. Pooni's concerns about potential personal liability as a director/officer of Securcom are premature and are quite irrelevant to the correctness of the Determination against Securcom.

If the appeal is to succeed, it must do so because the Director made a reviewable error in deciding Securcom had contravened the *Act* and owed Kitney wages.

The Director argues that the assertions and information made by Pooni relating to the substance of the Determination should not be accepted as no such assertions or information were provided during the investigation.

Kitney has also filed a reply to the Determination. Her submission mirrors that of the Director in many respects. She argues that while Securcom has based its appeal on an alleged error in law made by the Director in the Determination, the appeal itself provides no basis for concluding such an error was made. She notes, correctly in my view, that the appeal is "simply a rendition of Parm Pooni's recollection of events which have taken place" and is not new evidence.

The Tribunal received a submission from Peter Simon ("Simon"). Simon is variously identified in the material on file as general manager, owner and a shareholder of Securcom. He is also identified in the material as the person who terminated Kitney's employment. His submission includes two paragraphs alleging there were valid reasons for Kitney's termination. There is nothing in his submission, or in the appeal generally, supporting the allegations.

The burden is on Securcom, as the appellant, to persuade the Tribunal that the Determination was wrong and justifies the Tribunal's intervention. An appeal to the Tribunal is not a re-investigation of the complaint nor is it intended as an opportunity for a party who has not participated in the complaint process to submit argument and information that should have been provided during the investigation. It is well settled that the Tribunal will not allow a party to fail or refuse to participate in the complaint process and

then later seek to challenge findings made by the Director (see *Tri-West Tractors Ltd.*, BC EST #D268/96 and *Kaiser Stables Ltd.*, BC EST #D058/97). Securcom failed to fully participate in the complaint process and its ability to challenge what are basically conclusions of fact made in the Determination is limited.

Even allowing that Securcom could challenge the conclusions of the Director on the two issues identified and addressed in the Determination, there is nothing in the appeal that shows the Director made any error in respect of them.

The appeal is dismissed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated October 21, 2003 be confirmed in the amount of \$4873.67, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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