

An application for suspension

- by -

Stephen Chi Ming Law  
(“Mr. Law”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

Pursuant to section 113 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2012A/3

**DATE OF DECISION:** February 20, 2012

## DECISION

### SUBMISSIONS

Stephen Chi Ming Law	on his own behalf
Yu (Mary) Zhang	on her own behalf
Andres Barker	on behalf of the Director of Employment Standards

### OVERVIEW

1. Stephen Chi Ming Law (“Mr. Law”) has appealed a decision of the Director of Employment Standards (“the Director”) issued November 22, 2011, ordering him to pay \$670.37, representing wages, vacation pay and accrued interest owed to Yu (Mary) Zhang (“Ms. Zhang”). The Director also imposed two administrative penalties in the amount of \$500.00 each for Mr. Law’s contraventions of sections 17 and 18 of the *Employment Standards Act*. The total amount payable is \$1,670.37.
2. Mr. Law seeks a suspension of the Determination pursuant to Section 113 of the *Act* pending the outcome of his appeal.
3. This decision addresses only the suspension request and is based on the written submissions of the parties.

### FACTS AND ARGUMENT

4. Ms. Zhang provided administrative services for Mr. Law, who operates a liquidation and online sales business. The parties had a disagreement about whether or not Ms. Zhang was an employee and whether or not she was entitled to wages. After hearing from the parties, the Director determined that Ms. Zhang was an employee and entitled to the wages set out above.
5. Mr. Law contends that the Director erred in law in Determining that Ms. Zhang was an employee. He also contends that the Director failed to observe the principles of natural justice in making the Determination by not permitting him to “explain his viewpoint” and was biased against him. Mr. Law further asserts that evidence has become available that was not available at the time the Determination was issued.
6. Ms. Zhang submits that Mr. Law’s appeal is simply an attempt to delay enforcement of the Determination. She contends that Mr. Law stated he intends to sell his goods and return to Hong Kong and believes that the suspension application is nothing more than an attempt to avoid paying her.
7. The Director opposes the suspension request pending the outcome of the appeal. The Director notes that Mr. Law has deposited no funds with the suspension request and has made no submissions explaining why a smaller amount is appropriate in the circumstances.

### ANALYSIS

8. Section 113 of the *Act* provides as follows:
  - (1) A person who appeals a determination may request the Tribunal to suspend the effect of the determination.

- (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
    - a. the total amount, if any, required to be paid under the determination or,
    - b. a smaller amount that the tribunal considers adequate in the circumstances of the appeal.
9. Although the Tribunal has the discretion to suspend a Determination, that discretion may be exercised only if the person requesting the suspension deposits either the total amount required to be paid under the Determination or a smaller amount that the Tribunal considers adequate.
10. Mr. Law has deposited no funds with the Director. Accordingly, I find that the Tribunal has no ability to grant Mr. Law's suspension application.

### **ORDER**

11. Pursuant to section 113 of the *Act*, I deny the application to suspend the Determination.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**