

An appeal

- by -

Richelle Bellis Homecare Society
(“Bellis”)

- 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.: 2012A/136

DATE OF DECISION: February 19, 2013

8. On June 13, 2012, the delegate sent a letter to Bellis and all five of its directors outlining the complaint and the steps that had been taken to that point. The letter notified the directors of their personal liability for unpaid wages under section 96(1) of the *Act* and advised them to contact the delegate if they disagreed with the allegations. The delegate did not receive a response from any of the directors.
9. The delegate contacted Ms. Bellis again on September 10, 2012. She advised him to stop contacting her, that she had moved and that she did not owe anyone any money. The delegate notified her that he would be making a decision based on the information he had received and asked Ms. Bellis for her address. Ms. Bellis hung up the telephone.
10. The delegate also spoke with Mr. Warren who advised him that he had not been in contact with Ms. Bellis for some time but that he would attempt to communicate with Ms. Bellis.
11. The delegate concluded that all parties had been given an opportunity to respond to the allegations and made his decision based on the information provided to him by Ms. Reyes. Ms. Reyes advised the delegate that Ms. Bellis terminated her employment because Ms. Reyes refused to follow one of Ms. Bellis' orders. Ms. Reyes said that she refused to drive Ms. Bellis' "drunk" boyfriend home, because that was not her job. She had never received any written or verbal warnings regarding her work. Ms. Bellis confirmed that she terminated Ms. Reyes employment for failing to follow direct orders in a conversation on January 19, 2011.
12. The delegate found Bellis had not met its burden of showing just cause for terminating Ms. Reyes' employment and that Ms. Reyes was entitled to compensation for length of service as set out above.
13. Mr. Warren says that he was asked by Ms. Bellis to be a director of Bellis, a society that was created to make decisions regarding her healthcare in the event she was unable to. He says that he had limited communication with Ms. Bellis and in 2010, attempted to remove himself as a director. He says that Ms. Bellis told him she no longer received funds from Bellis and that it no longer existed. Mr. Warren says he was surprised to hear from the delegate about Ms. Reyes' complaint and contacted Ms. Bellis, who assured him she would "look after the matter". Mr. Warren asserts that he spoke with the delegate and advised him that he was no longer involved with Bellis. He says he did not respond in writing as he had no knowledge of the situation.
14. After receiving the Determination, Mr. Warren says that the dispute between Ms. Reyes and Bellis was resolved in Provincial Court, which found the Society not liable for Ms. Reyes' compensation. He further says that he is unable to make contact with or obtain the documents relating to this case from Ms. Bellis as she is moving.
15. Mr. Warren submits that he is not liable for the wages because he did not consider himself a director of Bellis in 2010 and because of the Provincial Court decision. Mr. Warren did not submit a copy of that decision.
16. The Director's delegate says that he contacted the Port Coquitlam Provincial Court to obtain a copy of the decision and was advised that Ms. Reyes had filed a claim in the amount of \$8,527.00 for underpayment of wages and unpaid Medical Service Plan premiums. The delegate says that this evidence was not before him, nor was it relevant to the issue he had to decide, because Ms. Reyes' Employment Standards claim was for compensation for length of service.
17. In response to the Director's submission, Mr. Warren says that both he and Ms. Bellis assumed that the issue before the Provincial Court was the same as that before the Director. Mr. Warren also set out additional reasons Ms. Bellis "let Ms. Reyes go". He says that he obtained this information from Ms. Bellis during the month of January, 2011. Those reasons include a "[refusal] to clean" and "[fighting] with her co-workers".

18. Mr. Warren further states that the purpose of the Society is to “assist with management and co-ordination of home support services for Richelle Bellis...” and that he never agreed to be held financially responsible for Ms. Bellis. He asserts that she never sought his help or asked his opinion and did not keep him informed of what she was doing. He also says that he was never informed about any Society meetings. Finally, Mr. Warren asserts that Ms. Bellis led him to believe that the Society was “closed” and that he had no further responsibility.

ANALYSIS

19. Section 114 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.
20. Having reviewed the section 112 record and Bellis’ submissions, I find no reasonable prospect that the appeal will succeed.
21. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was made.
22. 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.
23. Although Mr. Warren’s first ground of appeal is that the Director failed to observe the principles of natural justice, there is nothing in the submissions or the record that supports that ground of appeal.
24. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker.
25. There is no evidence, or suggestion, that Mr. Warren, or indeed any of the other Bellis directors, did not know the case they had to meet or that they did not have full opportunity to respond to the evidence presented. All of the directors received the information package from the delegate by registered mail. None of the directors or Bellis responded to the delegate’s invitation to respond to the complaint. I am not persuaded that there is a reasonable prospect the appeal will succeed on this ground.

26. As I understand Mr. Warren's main argument, he contends that he is not personally liable for Ms. Reyes' wages because he did not consider himself to be a director of Bellis and relied upon Ms. Bellis to "take care of things", and because the dispute has subsequently been resolved in Provincial Court. Neither of these reasons constitutes a statutory ground of appeal.
27. Furthermore, although Mr. Warren asserts that the dispute between Ms. Reyes and Bellis has been resolved in Provincial Court, he provides no evidence of that. I accept the Director's submission that the small claims action was in regard to matters not before the delegate. Accordingly, I am unable to conclude that the Provincial Court of British Columbia issued a decision about Ms. Reyes' entitlement to compensation for length of service. Indeed, Mr. Warren appeared to confirm that after speaking with Ms. Bellis.
28. Mr. Warren had many opportunities to obtain and provide what information he considered relevant to the delegate while the investigation was underway. Having failed to do so, he cannot now suggest that there is new information that the delegate did not consider.
29. I am not persuaded that there is a reasonable prospect the appeal will succeed.

ORDER

30. Pursuant to section 114(1)(f) of the *Act*, I dismiss the appeal on the grounds that there is no reasonable prospect that it will succeed. Accordingly, the Determination, dated October 16, 2012, is confirmed in the amount of \$1,282.47 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal