

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Specialty Homes Inc.
("Specialty Homes")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/521

DATE OF DECISION: January 14, 2000

DECISION

OVERVIEW

This is an appeal brought by Specialty Homes Inc. (“Specialty Homes”) pursuant to section 112 of the Employment Standards Act (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 30th, 1999 under employer file numbers 086934 and 091189 (the “Determination”).

The Director’s delegate determined that Specialty Homes, together with three other firms (C.T. Properties Ltd., C.T. Construction Ltd. and Specialty Trading Inc.) were “jointly and separately liable” (see section 95 of the Act) to pay \$12,098.10 in unpaid wages (including compensation for length of service) and interest owed to two former employees, J.F. Glen Madge (“Madge”) and Bryan Arnold (“Arnold”).

In an earlier determination issued on April 29th, 1999, the Director’s delegate found, inter alia, that C.T. Construction Ltd., C.T. Properties Ltd. and Specialty Homes Inc. were “associated corporations” as defined by section 95 of the Act. This latter determination was not appealed and the time limit for such an appeal has now expired. Thus, in terms of section 95, the Determination under appeal before me simply adds another corporate entity to the “list” of associated corporations--namely, Specialty Trading Inc. It should be noted, however, that (inexplicably) only Specialty Homes has appealed the present Determination.

Finally, although an appeal of the Determination was required to have been filed by no later than August 23rd, 1999, this appeal was not filed until August 24th, 1999 (i.e., one day after the statutory appeal period expired).

GROUND FOR APPEAL

Specialty Homes says that the Determination ought to be set aside because it contains “fatal defects” and also because of the “wrongful conduct” of the Director’s delegate during the course of his investigation of the unpaid wage complaints filed by Madge and Arnold. In addition, Specialty Homes seeks various remedies most, if not all, of which are beyond the jurisdiction of this Tribunal (e.g., an award of “punitive damages” against the delegate; a direction that that delegate “forthwith answer” questions contained a letter sent by the appellant to the delegate on July 23rd, 1999).

In a document entitled “Reasons for Appeal” (appended to its notice of appeal), Specialty Homes asserts that the Determination should be cancelled because:

- “The subject Determination is wrong due to errors of both Law and Fact”;
- "No Demand for Information was issued in compliance with the statutory requirements of Section 122 of the Act

- the delegate committed "transgressions" of the law--none of which is particularized -- "which establish a pattern of procedural and other disregard extending beyond any mere technical defect that might otherwise be deemed acceptable under the Act prima facie, or the Law" [sic];
- The subject Determination is tarred by the fact that in one Determination two claims are determined, thereby breaching normal rules of administrative procedure, and the reasonable rights of the individuals to protection of their privacy”;
- “No reasonable opportunity was given to respond to a Demand, either reasonable or otherwise, as expressly required by Section 77 of the Act”.

The Director’s position, as set out in her delegate’s written submission to the Tribunal dated September 14th, 1999, is that Specialty Homes’ appeal should be dismissed because:

- i) the appeal is untimely [see section 114(1)(a) of the Act]; and
- ii) the reasons for appeal are entirely without merit and are not supported by any credible evidence.

FINDINGS AND ANALYSIS

Specialty Homes’ appeal was filed 1 day after the governing appeal period expired. Although, in its appeal documents, Specialty Homes did not make a specific application for an extension of the appeal period [see section 109(1)(b)], I am presuming that by filing an appeal Specialty Homes implicitly seeks such an order. Ordinarily, I would be inclined to grant a 1-day extension of the appeal period, particularly in the absence of any objection from the complainant employees or any evidence of prejudice that would flow from a 1-day extension. However, in this instance, where the appeal, on its face, is so manifestly devoid of merit I do not think it appropriate to extend the appeal period.

Even if I was inclined to extend the appeal period, this appeal must be dismissed on its merits in any event.

Section 95 of the Act provides as follows:

Associated corporations

95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and

(b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

As noted above, the Director's delegate determined, inter alia, that Specialty Homes and Specialty Trading Inc. were "associated corporations" and the reasons underlying this declaration are set out, in some detail, in the Determination itself. There is no evidence before me--indeed, not even a submission--challenging any of the facts upon which the delegate relied in applying section 95 and, in my view, the evidence set out in the Determination relating to the section 95 issue clearly supports such a declaration. The relevant facts are that one individual was the president of both firms; that he and another person were both directors of the two firms; this latter individual was the secretary of both firms; the two firms share the same "800" telephone number, the same fax number, the same office and e-mail addresses and the same web-site; both firms are styled as being part of the "CT Group" of companies and the two firms' operations were integrated. Given these uncontested facts, I have no hesitation in concluding that a section 95 declaration was appropriate.

Insofar as the unpaid wage claims are concerned, I can only observe that there is absolutely no evidence before me which calls into question the delegate's findings as to the wages owed to either Madge or Arnold.

As for the specific grounds of appeal set out in Specialty Homes' "Reasons for Appeal", I find these grounds to be entirely without merit. I shall briefly address each ground of appeal in turn.

Section 122 of the Act--which concerns the service of determinations and section 85 Demands--has absolutely no relevance here. Clearly, Specialty Homes was served with the Determination; it acknowledges as much. The Determination was properly served on Specialty Homes although it, in turn, did not file a timely appeal with the Tribunal.

It should be noted that, consistent with section 77 of the Act, prior to issuing the Determination the delegate contacted Mr. Cunliffe--Specialty Homes' president--in person and again by mail to request further particulars regarding the relationship between Specialty Homes and Specialty Trading Inc. Despite being given an opportunity to make submissions to the delegate regarding the possible application of section 95 of the Act, Mr. Cunliffe chose not make any submission whatsoever. Thus, the delegate proceeded on the basis of the information available to him.

As previously noted, Specialty Homes has not presented any evidence to the Tribunal which would suggest that it was not properly found to be associated with Specialty Trading Inc. or that the monies found to be due and owing to Madge and Arnold were incorrectly determined. Both firms were given an opportunity to make submissions regarding these latter questions to the delegate but neither firm chose to avail itself of that opportunity in any meaningful fashion. I have no evidence from the appellant regarding either the section 95 or the unpaid wage issue but even if relevant evidence had been presented, it may well be inadmissible in any event by reason of the Tri-West Tractor/Kaiser Stables exclusionary rule [see Tri-West Tractor Ltd. (B.C.E.S.T. No. D268/96) and Kaiser Stables Ltd. (B.C.E.S.T. No. D058/97)].

The suggestion that the delegate in some (not particularized) fashion breached the principles of administrative fairness by setting out the claims of two individuals in a single determination is, in my view, plainly silly. The two claims raise common issues of both fact and law and neither complainant has in any way claimed that their privacy rights were violated by reason of their separate unpaid wage claims having been addressed in a single determination.

In addition to other various attempts to obtain information from the appellant--which were either ignored or responded to in a superficial manner--the delegate wrote to the appellant's president on July 20th, 1999 and specifically requested certain information regarding the relationship between the appellant and Specialty Trading Inc. Not only did this request satisfy the requirements of section 77 of the Act, but, in addition, the delegate was entitled to request this information in accordance with the provisions of section 85 of the Act. As previously noted, the delegate's repeated requests for information were either ignored or responded to in a rather incomplete fashion.

To summarize, the appellant's application for an extension of the appeal period is refused and, in any event, I find that this appeal is entirely without merit.

ORDER

Pursuant to sections 114 and 115 of the Act, I order that the Determination be confirmed as issued in the amount of **\$12,098.10** together with whatever further interest that may have accrued, pursuant to section 88 of the Act, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal