

An appeal

- by -

Star Touch Enterprises Inc. and Lloyd Betschova operating as Salon 41  
("Star Touch")

- 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:** Carol L. Roberts

**FILE No.:** 2002/559

**DATE OF DECISION:** January 28, 2003

## DECISION

This is a decision based on written submissions by R. McCloy, Jones McCloy Peterson, Barrister and Solicitor for Star Touch Enterprises Inc. ("Star Touch") and Lloyd Betschova operating as Salon 41 ("Salon 41"), and by Sharon Cott for the Director of Employment Standards. Two employees also made written submissions in support of the Determination.

### OVERVIEW

This is an appeal by Star Touch, pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued October 21, 2002.

The delegate found that Star Touch and Salon 41 were associated corporations for the purpose of s. 95 of the Act.

The Director's delegate found that Star Touch had contravened Sections 17, 18, 58 and 63 of the *Act* in failing to pay 5 former employees (Angela Downey, Dione El-Bitar, Tracey Langley, Laurie MacDonald and Jane Tachuk) wages, compensation for length of service and vacation pay. Star Touch and Salon 41 were ordered to pay the employees a total of \$2,077.48.

### ISSUE TO BE DECIDED

Whether the delegate erred

1. in finding Star Touch and Salon 41 to be associated corporations;
2. in determining entitlements to compensation for length of service;
3. in determining that Ms. Downey was entitled to vacation pay; and
4. in determining that Ms. El-Bitar is entitled to regular wages.

### FACTS

Star Touch operates a film and television production company. Incorporated in British Columbia, it was struck from the Corporate Registry on June 28, 2002 for failing to file necessary records.

The five employees worked for Star Touch in various capacities between February 2, 2002 and June 28, 2002. All worked at two locations, an internet café and an office on West Hastings Street.

Star Touch employees were paid, in part, by way of cheques drawn on the account of Salon 41, operated by Lloyd Betschova, and signed by Mr. Betschova. The delegate found, based on this information, that Salon 41 and Star Touch were associated corporations.

The delegate issued a Demand for Employee Records on July 15, 2002. Star Touch sought, and was granted, an extension of one week to provide those records. On July 22, counsel for Star Touch advised the delegate that the documents sought would be provided the following day. On August 8, the delegate advised Star Touch that no documentation had been received. Jamie Stathis, the agent for Star Touch, advised the delegate that he was unable to produce the documentation, and that his lawyer would provide it. Although several opportunities were granted to both Star Touch principals and counsel to produce documents in support of its position, nothing was received prior to the issuance of the Determination in October.

The delegate found that Star Touch failed to pay wages and vacation pay as required by the *Act* and made the Order in the amount noted above.

## ARGUMENT

Counsel for Salon 41 and Star Touch asserts that they are not associated corporations. Mr. McCloy contends that Salon 41 and Star Touch do not carry on businesses together, and are not under common control and direction. He says that Salon 41 is in the business of cutting hair.

Counsel argues that Jamie Stathis of Star Touch entered into a verbal and written agreement with Lloyd Betschova of Salon 41 to loan Star Touch funds by writing payroll cheques. Counsel also contends that there has never been an employee-employer relationship between Salon 41 and Star Touch employees. He further asserts that neither Salon 41 nor Mr. Betschova had a proprietary interest in Star Touch, nor served as an officer or director of Star Touch. He also contends that neither Star Touch nor Mr. Stathis ever had a proprietary interest in Salon 41. Counsel asserts that Salon 41 is not liable for employee wages, “or any other matter complained of under the *Act*.”

Star Touch and Salon 41 assert that Ms. Downey is not entitled to compensation for length of service since she quit her employment.

Finally, Star Touch and Salon 41 argue that Ms. El-Bitar has been paid all outstanding wages. Counsel asserts that Ms. El-Bitar would provide a letter confirming that.

The Director's delegate argues that, because Salon 41 paid the wages of Star Touch employees, and in the absence of any evidence of a loan agreement between Salon 41 and Star Touch, the companies are properly found to be associated. The delegate also relies on *Star Touch v. Director of Employment Standards* BC EST #D259/02, which was never appealed.

Ms. Langley contends that Mr. Stathis was, and perhaps still is, an employee of Salon 41. She also contended that Mr. Betschova was the contact person for Star Touch's website account.

Ms. Downey's submissions were essentially those she made to the delegate.

## ANALYSIS

The burden of establishing that the Determination is incorrect rests with an Appellant. Both Star Touch and Salon 41 have failed to discharge this burden.

In *Star Touch* (supra), the Tribunal said as follows:

The evidence of the complainants is that Mr. Stathis and Mr. Betschova are partners and that they reside together. While that is not necessarily indicative of a business relationship, there is also evidence that Star Touch employees produced documents for Salon 41 on Star Touch's computer systems. Those documents include Salon 41 voicemail code access sheet, advertising, memos, announcements and notices to employees, stock list and cleaning schedules. Wages for Star Touch employees for the period March 2001 to July 2001 were paid by Salon 41 cheques, signed by Mr. Betschova. Although counsel for Star Touch argued that Mr. Betschova lent money to Mr. Stathis for the purpose of wage payments, no evidence of any agreement, either written or oral, between Mr. Stathis and Mr. Betschova of a loan from Salon 41 to either Star Touch or Mr. Stathis was provided.

Although counsel advanced the same arguments on this appeal as were advanced in the previous appeal, like that appeal, no documentation evidencing a loan was ever produced. In the absence of any evidence supporting counsel's assertions, the appeal must fail.

I am unable to conclude that the delegate erred in treating Star Touch and Salon 41 as one person for the purposes of the Act.

Likewise, there is no evidence supporting the other grounds of appeal. No letter from Ms. El-Bitar was submitted or received. Therefore, the Determination stands.

Section 63 of the Act creates a liability to pay compensation for length of service in respect of employees employed for over three months. That liability is discharged if notice is given, the employee quits, retires or is dismissed for just cause. Star Touch submits that Ms. Downy quit her employment. The evidence suggests that Ms. Downy quit because her salary was not being paid. Several of her pay cheques were dishonoured because there were insufficient funds in Salon 41's operating account.

Section 17 provides that an employer must pay to an employee all wages earned by the employee in a pay period at least semi-monthly and within 8 days after the end of the pay period. Star Touch fundamentally breached the employer-employee relationship by failing to pay the employees as required by the Act.

Section 66 of the Act provides that where a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated. Failure to pay wages earned in a timely manner is a fundamental condition of employment. If Star Touch and Salon 41 failed or refused to pay the employees, that amounted to constructive dismissal. Employees cannot quit employment they have been dismissed from.

Having no evidence or submissions to controvert the findings of the delegate, I dismiss the appeal.

**ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated October 21, 2002, be confirmed in the amount of \$2,077.48, together with whatever interest which has accrued since the date of Determination, pursuant to Section 88.

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