



An appeal

- by -

William Jia, an Officer of Panagin Pharmaceuticals Inc.  
(“Mr. Jia”)

- 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.:** 2014A/42

**DATE OF DECISION:** May 13, 2014

## DECISION

### SUBMISSIONS

William Jia on his own behalf as an Officer of Panagin Pharmaceuticals Inc.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), William Jia, an Officer of Panagin Pharmaceuticals Inc. (“Mr. Jia”), has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 13, 2014.
2. On May 31, 2013, the Director issued a Determination (the Corporate Determination) finding six companies (Pegasus Pharmaceuticals Group Inc., Panagin Pharmaceuticals Inc., Pegasus Lifecare Inc., Pepmetric Technologies Inc., Tatech Bioscience Inc. and Pegasus Biopharmaceuticals Inc.) collectively “Pegasus”, to be associated companies under section 95 of the *Act*. In that Determination, the Director also found Pegasus in contravention of section 18 of the *Act* in failing to pay wages to eighteen of its former employees.
3. The total amount of wages and accrued interest was \$216,716.19. The Director also imposed a \$500 penalty on Pegasus for the contravention, pursuant to section 98 of the *Act*. The Corporate Determination, which included a Notice to Directors/Officers explaining their personal liability under the *Act*, was sent to William Jia; the registered and records office, and to other Pegasus directors/officers. Canada Post tracking records establish that the Corporate Determination was sent to the address indicated for Mr. Jia on the Annual Report. The Determination was forwarded to Mr. Jia’s current address and delivered June 5, 2013. The date for appealing the Corporate Determination was July 8, 2013.
4. On March 13, 2014, the Director’s delegate found that the Corporate Determination had not been satisfied, nor had it been appealed. The delegate determined that as Mr. Jia was an Officer of Panagin Pharmaceuticals Inc. (“Panagin”) between June 1 and December 3, 2012, (the time the complainants’ wages were earned and payable) he was personally liable to pay \$148,341.07, representing not more than two months’ unpaid wages for each of the employees, pursuant to section 96 of the *Act* (the Director Determination). The delegate concluded that there was insufficient evidence that Mr. Jia authorized, permitted or acquiesced in Pegasus’ contraventions, and found him not personally liable for the administrative penalties.
5. Mr. Jia filed an appeal of the Director Determination on April 10, 2014, contending that the Director erred in law in making the Determination. Mr. Jia also says that new evidence has become available that was not available when the Determination was being made.
6. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”) provide that the Employment Standards Tribunal (the “Tribunal”) may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
7. These reasons are based on Mr. Jia’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114 (1), the Respondent will and the delegate may be invited to file further submissions. If the appeal is not meritorious, it will be dismissed.

## FACTS AND ARGUMENT

8. The Corporate Determination contained the following “Notice to Directors/Officers”:

If a Determination is issued against a director/officer of a company, the director/officer may not argue the merits of the Determination against the company by appealing the director/officer Determination.

There are only three grounds on which a Determination made against a director/officer may be appealed:

- 1) That the person appealing was not a director/officer of the company at the time wages were earned or should have been paid;
- 2) That the calculation of the director/officer’s personal liability is incorrect; and/or,
- 3) That the director/officer should not be liable for the penalty, where a penalty has been assessed, on the grounds that he or she did not authorize, permit or acquiesce in the company’s contravention.

9. BC Company Registry searches conducted November 2012, April 2013, and March 2014, indicated that all the associated companies were “active” at the time the wages were earned and payable. Panagin was incorporated in British Columbia on September 28, 1998. Its 2012 Annual Report, filed November 8, 2012, confirms that as of September 28, 2012, William Jia was an Officer of Panagin.
10. While acknowledging that he was one of the original founders of Panagin, Mr. Jia says that he resigned from “the Board” in October 2006 and that he was unaware the company had not removed his name from the register after such resignation. He says that he has not been involved in the business management of Panagin since 2006.
11. In support of his appeal, Mr. Jia submitted a number of documents, including a PowerPoint presentation, a consulting agreement between himself and Pegasus and a copy of his letter of resignation as “Chief Scientific Officer and all the other management positions for the company...effective immediately.” The resignation letter is dated October 13, 2006.

## ANALYSIS

12. 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 being made.
13. 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. I find that Mr. Jia has not met that burden.
14. Section 96 of the *Act* provides as follows:
- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.

(2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for

(a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation is in receivership,

(b) any liability to an employee for wages, if the corporation is subject to an action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,

...

15. Section 126 of the *Business Corporations Act* [SBC 2002] c. 57 provides that:

A company must keep a register of its directors and enter in that register

(a) the full name and prescribed address for each of the directors,

(b) the date on which each current director became a director,

(c) the date on which each former director became a director and the date on which he or she ceased to be a director, and

(d) the name of any office in the company held by a director, the date of the director's appointment to the office and the date, if any, on which the director ceased to hold the office.

16. The corporate records establish that Mr. Jia was an Officer of Panagin at the time the wages were earned and payable.

17. The Tribunal has held that corporate records, which the Director can rely on to establish director and officer status, raise a rebuttable presumption that a person is a director/officer. A defense to section 96 liability can be successfully raised if a director/officer can show, on credible and cogent evidence, that the Registrar's records are inaccurate, either because the person resigned or is not properly appointed. (*Wilinojsky*, BC EST # D106/99, and *Michalkovic*, BC EST # D056/00)

18. In *Michalkovic*, the Tribunal held that it would be a rare and exceptional circumstance where a person recorded as a Director with the Registrar would not be found to be a director for the purposes of section 96. Showing that he or she does not actually perform the duties, functions and tasks of a director is insufficient. An honest person who is in business with a rogue who misappropriates funds and denies the director access to the company and records will be held liable (*Peter Stursberg*, BC EST # D380/01) as will a person who is a volunteer and receives no benefit from his involvement in the corporation (*Hernandez*, BC EST # D150/02). In *Grand East*, BC EST # D074/06, the Tribunal held that liability will be imposed even where there is good evidence of fraud or oppressive conduct on the part of other directors, or where the directors have exercised due diligence in attempting to operate the company properly.

19. It appears that Mr. Jia took some steps to attempt to resign as an Officer of Panagin. However, he does not say to whom he delivered the letter of resignation or whether or not he followed up to ensure the resignation was given effect.

20. I also note that the Corporate Determination was sent to Mr. Jia by registered mail. That Determination contained information regarding Officer liability and set out the date for appealing the Determination. Although Mr. Jia was identified as an Officer in that Determination, there is no evidence he took any steps to clarify his status or contact the Director about his potential liability at that time.

21. I am not persuaded that evidence has become available that was not available at the time the Determination was being made. At no time during the investigation did Mr. Jia inform the delegate that he had attempted to resign as an Officer of Panagin.
22. The Tribunal is obliged to apply the legislation, regardless of the consequences to Mr. Jia.
23. I am not persuaded that the delegate made any palpable or overriding error, reached a clearly wrong conclusion of fact or acted without any evidence or on a view of the evidence that could not be entertained. In my view, the Determination was both reasoned and based on appropriate law.
24. I dismiss the appeal.

### **ORDER**

25. Pursuant to section 114 (1)(f) of the *Act*, I dismiss the appeal. Accordingly, pursuant to section 115 of the *Act*, the Determination, dated March 13, 2014, is confirmed, together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

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