

An appeal

- by -

Andy Mollica as agent for Anducci's Restaurant (Coquitlam) Ltd. and Anducci's
Restaurant (Hastings) Ltd. carrying on business as "Anducci's"
("Mollica")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2009A/022

DATE OF DECISION: May 12, 2009

DECISION

SUBMISSIONS

Andy Mollica	on behalf of Anducci's Restaurant (Coquitlam) Ltd. and Anducci's Restaurant (Hastings) Ltd.
Mica Nguyen	on behalf of the Director of Employment Standards

INTRODUCTION

1. This is an appeal filed by Andy Mollica, presumably on behalf of Anducci's Restaurant (Coquitlam) Ltd. and Anducci's Restaurant (Hastings) Ltd., of a determination issued by a delegate of the Director of Employment Standards (the "Director's delegate") on February 20th, 2009 (the "Determination"). While I have nothing in the material before me confirming that Mr. Mollica has the legal authority to appeal the Determination on behalf of the two corporate entities named in it, I am proceeding on the assumption that Mr. Mollica has been so authorized. By way of the Determination, the Director's delegate declared that the two "Anducci's" corporations were "associated corporations" (see *Employment Standards Act* or "*ESA*", section 95) and thus jointly and severally liable for unpaid wages and section 88 interest owed to two former employees (Evan Dewsbury = \$1,141.25; Heather Dewsbury = \$793.55) as well as \$2,000 in monetary penalties (see *ESA*, section 98). Thus, the total amount payable under the Determination is \$3,934.80. I should note at the outset that the section 95 declaration is not at issue in this appeal.
2. I am adjudicating this appeal based solely on the parties' written submissions and in that regard, I have before me a detailed submission from the Director's delegate and an Appeal Form with various documents attached to it that was filed by Mr. Mollica (who I understand is a director of each of the two Anducci's firms). Neither employee filed a submission in response to this appeal.

GROUND OF APPEAL

3. There appears to have been some confusion regarding the initial filing of this appeal. After the Determination was issued someone on behalf of the Anducci's firms prepared a letter addressed to the "Employment Standards Tribunal" but actually delivered this unsigned single-page letter to the Employment Standards Burnaby branch office (and to the attention of the Director's delegate). This letter purports to appeal the Determination. This letter reads as follows:

As per you [sic] letter dated February 20th, 2009 with respect to your determination I would like to appeal your decision. I find that the evidence provided was sufficient enough to prove to you and to the claimants that the manager (Dean Dalton) at the time had acted to the best of his ability. Dean and Evan [presumably a reference to Evan Dewsbury, one of the two complainants] were friends outside of work so to comment on what was said and promised to these individuals is here say [sic]. At this point I am not sure what to do, all the Anduccis locations have been sold or closed.

[the letter then closed with a request to forward all correspondence to a particular mailing address]

4. On March 9th, 2009, Mr. Mollica submitted an Appeal Form in his own name (dated February 28th, 2009) to the Tribunal in which he asked that the Determination be cancelled because the Director of Employment Standards failed to observe the principles of natural justice in making the determination (see *ESA*, section 112(1)(b)). However, the appeal documents filed with the Tribunal do not provide any particulars whatsoever

regarding what the Director's delegate did or did not do that compromised the fairness of the Employment Standards Branch's hearing and/or adjudicative process. The Appeal Form does have several attachments such as some payroll records and some earlier correspondence between the Director's delegate and the two employer firms; however, there is nothing in these documents that addresses, in even the most rudimentary fashion, any "natural justice" concerns.

ANALYSIS AND FINDINGS

5. In my view, this appeal must be dismissed, pursuant to subsections 114(1)(c) and (f) of the *ESA*, on the basis that it is so wholly devoid of any apparent merit that it constitutes a frivolous and vexatious appeal and, in any event, based on the current record before me, has absolutely no prospect of success. As noted above, Mr. Mollica says that the Determination should be cancelled due to a breach of the rules of natural justice but he has not provided any particulars to support that allegation. For example, there is nothing in the material before me suggesting that the two firms were not given fair notice of the unpaid wage claims or were otherwise denied an opportunity to present whatever evidence they wished to respond to these claims. I am not aware of any relationship between the Director's delegate and the complainants that would give rise to a bias concern. The Determination itself is supported by detailed reasons that address both the evidence submitted and the governing legal principles. I see nothing in the Determination that bespeaks of obvious error. Indeed, the Determination appears to be quite adequately reasoned and the conclusions reached are amply grounded in the evidence.
6. The Director's delegate may receive hearsay evidence (as may the Tribunal) but all of the delegate's critical findings were either based on direct evidence or, in the case of payroll records, on documents that were kept in the ordinary course of business and thus admissible under the *Evidence Act* regardless of their hearsay nature. The one other allegation that might have been adjudicated in favour of the complainants despite conflicting oral testimony, namely, whether the employees had been promised certain wage increases, was ultimately resolved in favour of the employer firms since the delegate held that the complainants failed to prove their allegations regarding the alleged promised wage increases.

ORDER

7. I order, pursuant to subsections 114(1)(c) and (f) and section 115(1)(a) of the *ESA*, that the Determination be confirmed as issued in the amount of \$3,934.80 together with whatever further interest that may have accrued pursuant to section 88 of the *ESA* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal