

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Raymond A.K. Kisun operating as Eon Capital Group and Rodney Kisun  
operating as Eon Capital Group

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorna Pawluk

**FILE NO.:** 96/692

**DATE OF DECISION:** January 24, 1997

**DECISION**

**OVERVIEW**

This is an appeal by Raymond A.K. Kisun and Rodney Kisun both operating as Eon Capital Group, pursuant to section 112 of the Employment Standards Act (the "Act") against Determinations CDET #0004439 and #0004441 of the Director of Employment Standards (the "Director") issued on October 28, 1996. In this appeal, Raymond A.K. Kisun and Rodney Kisun claim that \$500 penalties imposed upon each of them for failure to produce records does not comply with the Act and Employment Standards Regulation (the "Regulation")

**ISSUE TO BE DECIDED**

The issue to be decided is whether the \$500 penalties for failure to produce records is valid under the Act and the Regulation.

**FACTS**

By certified letters dated October 8, 1996, the Director directed Rodney Kisun and Raymond A.K. Kisun to disclose, produce and deliver certain records regarding the EON Capital Group to Industrial Relations Officer, Dave Ages. The letters specified the place for delivery of the documents; the deadline (11 a.m., October 21, 1996); and the penalty for noncompliance. Included were copies of the relevant sections of the Act and Regulation. It also identified the items to be produced by each individual: their tax returns for 1994, and that of any company for which they are a director or officer; documents showing all assets, property and chattels (cars, boats, etc.) in which they have a beneficial interest; records of all money earned or received from any source in 1995 and 1996; and records of all accounts in financial institutions.

Notices of certified mail were sent to Raymond A.K. Kisun and Rodney Kisun at 3576 Anzio Drive, Vancouver but they were not claimed from the post office address on the "Certified" notice card. The documents were not produced by deadline of October 8, and on October 28, the Director imposed a penalty of \$500 on Raymond A.K. Kisun in CDET #004439 and another of \$500 on Rodney Kisun in #CDET 004441.

In the "Appeal of Director's Determination", "Raymond Kisun" referred to both determination CDET 004439 and CDET 004441. He wrote:

RE: CDET 004439 AND CDET 004441 - did not receive notice until October 30, 1996 by certified mail asking for documents by October 21, 1996 [indecipherable] were not aware of request.

On November 29, 1996, "Roderick Kisun" responded to the request for documents by saying that he had filed no tax returns for 1994 or 1995; that he did not work and that he was not a director or officer of any company. He claimed there were "no chattels currently held" and that no money was "earned and received" in either 1995 or 1996. He said that he had no bank accounts and was seeking employment. "Raymond A.K.Kisun" responded similarly in a letter dated November 29, 1996: that he had not filed a tax return for either 1994 or 1995; that there were "no chattels currently held" and that a request had been made for records of "all money earned and received in 1995 and 1996". He said that his personal and business accounts had been closed due to a garnishee order and that he had no "valid contracts in place" but was seeking employment.

Also submitted for consideration by the Director were several statements of account from "Richmond Savings" purporting to show that account number 7953409 in the name of "Raymond Arun Kumar Kisun" had a "0" balance as of October 31, 1996. Account #8018194, in the name of "TZI Holdings Ltd.", was closed as of July 10, 1996. The address on both accounts was 3576 Anzio Drive in Vancouver.

By a letter dated December 2, 1996 to Dave Ages, Raymond A.K. Kisun requested, among other things, that he wished all further communications between them to be in writing, either by fax or registered mail. The remainder of the letter is a series of insults and statements not relevant here.

In a letter dated December 2, 1996 to the Tribunal, the Director's delegate outlined the actions which had led to the imposition of the penalties under section 28 of the Regulation. Attached to the letter were copies of the October 8, 1996 letters to Rodney Kisun and Raymond A.K. Kisun, as well as photocopies of the certified mail cards attached to the envelopes. The letter explained that a demand had been made under section 86(1)(c) and (f) of the Act and that service of the documents complied with section 122 requirements. The letters were sent to the last known address of Raymond A.K. Kisun and Rodney Kisun by certified mail on October 8, 1996. It was noted that section 29 of the Interpretation Act defines registered mail to include certified mail and argued that the failure of those two individuals to claim their certified mail was not a defence to these determinations. The delegate also argued that only Raymond A.K. Kisun completed the necessary appeal form and that he does not have the requisite authority under section 112(1) of the Act to appeal on behalf of Rodney Kisun

A letter dated December 30, 1996, was faxed to the Employment Standards Tribunal. It was signed "For and on behalf of Roderick A.K. Kisun & Raymond A.K. Kisun" but the signature is indecipherable and there is no other indication of who sent the letter. It indicated that the information requested by the Director was faxed to Dave Ages by "the writer" on November 29 and December 2, 1996.

## ANALYSIS

In the course of an investigation, the Director determined that it was necessary to secure documents from Raymond A.K. Kisun and Rodney Kisun. Section 85(1)(f) of the Act outlines the powers to compel production of relevant documents:

85. (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:

...

(c) inspect any records that may be relevant to an investigation under this Part;

...

(f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).

The demand was sent in a letter dated October 8, 1996 to each individual.

Section 46 the Regulation outlines permissible time limits for the delivery of documents and records:

46. A person who is required under section 85(1)(f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.

The deadline was October 21, 1996.

Section 112(1) of the Act outlines the procedure for the service of determinations and demands:

Service of determinations and demands

112.(1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if

(a) served in person, or

(b) sent by registered mail to the person's last known address.

(2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.

In this case, the demands were sent by certified mail to 3576 Anzio Drive, Vancouver. Certified mail cards were sent to that address and the letters were available for pick up at an address and times specified on the card. No documents were forthcoming by the

deadline and so the Director, in accordance with powers conferred by section 28 of the Regulation imposed a \$500 fine on each individual.

Rodney Kisun and Raymond A.K. Kisun argue that they did not actually receive the notice until October 30, 1996, nine days after the deadline, so that the fines are not valid. However, they offer no explanation of why they could not have received the notice before that time. They also argued that a number of documents identified in the October 8, 1996 demand from the Director were submitted on November 29, 1996 and thus, the fines should be cancelled or varied. However, section 122(2) deems service 8 days after a registered letter is deposited at the Post Office. Since certified mail is included in the definition of "registered mail" by virtue of section 129 of the Interpretation Act, it is no answer to say that the notice was not received. The defence thus fails.

The Director makes the procedural argument that only Raymond A.K. Kisun has a valid appeal before this tribunal since only he completed the necessary appeal form under Part 13 of the Act. I am asked to find that Rodney Kisun does not have a valid appeal here as he failed to sign an appeal form. However, it is not necessary for me to determine this issue in light of my conclusion on the substantive question.

**ORDER**

Pursuant to section 115 of the Act, I confirm determinations #CDET 0004441 and #CDET 0004439.

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**Lorna Pawluk**  
**Adjudicator**  
**Employment Standards Tribunal**

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