

An appeal

- by -

Lauren Levitt & Associates Inc.
(“Levitt”)

- 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.: 2016A/21

DATE OF DECISION: March 10, 2016

DECISION

SUBMISSIONS

Jamie Levitt

on behalf of Lauren Levitt & Associates Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Lauren Levitt & Associates Inc. (“Levitt”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on December 1, 2015.
2. Levitt is a corporate entity that operates a talent agency as defined in the *Act*.
3. On November 5, 2014, Levitt was issued a one-year talent agency licence. The licence expired November 4, 2015. On November 26, 2015, Levitt submitted an application for a renewal of the licence to the Employment Standards Branch (the “Branch”).
4. Following an investigation, a delegate of the Director concluded that Levitt had contravened section 12(1) of the *Act* by operating a talent agency without a licence and imposed a \$500 administrative penalty for the contravention. The deadline for filing an appeal of the Determination was January 8, 2016.
5. Levitt’s appeal, received February 2, 2016, contends that the Director failed to observe the principles of natural justice in making the Determination and seeks to have the Determination cancelled.
6. These reasons are based on Levitt’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.

FACTS AND ARGUMENT

7. On December 1, 2015, after receiving the licence renewal application, a delegate of the Director spoke to Jamie Levitt, Levitt’s sole director and officer. The delegate asked Ms. Levitt if she had operated the agency after November 4, 2015, the date the agency licence expired. Ms. Levitt stated that she had, and that the agency was continuing to operate.
8. The delegate noted that section 12(1) prohibited persons from operating an employment or talent agency unless they were licensed under the *Act*. The delegate considered Ms. Levitt’s acknowledgement that she operated a talent agency without a license after November 5, 2015, and determined that Levitt had contravened section 12 of the *Act*.
9. On December 10, 2015, Levitt wrote to the Director, disputing the administrative penalty. Those arguments also formed Levitt’s submissions on appeal. In essence, Levitt argues that the Branch ought to have sent it a reminder about the license renewal, and the Branch’s failure to remind Levitt of the pending expiry resulted in the licence not being renewed in a timely manner. Levitt contends that the Branch’s “policy” of not sending out reminders is unfair, especially to busy and successful businesses.

10. Levitt's accountant explained that she was a part-time accountant, working one day per week, and that she understood that "the payment" was due in November, but that she had not been informed that it was due on a specific date.

ISSUE

11. Whether or not the Director erred in law or failed to observe the principles of natural justice in making the Determination.

ANALYSIS

12. Section 114(1) of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.
13. Section 112(3)(a) of the *Act* provides that a party wishing to appeal a Determination must deliver that appeal to the Tribunal within 30 days of the date of the Determination, if the person was served by registered mail.
14. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.
15. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that Levitt has not met that burden and dismiss the appeal.
16. Levitt filed its appeal almost one month after the statutory time period for doing so. Even though Levitt disputed the penalty almost immediately after receiving the Determination, the letter of dispute was sent to the Director rather than the Tribunal. I accept that Levitt intended to file the appeal in a timely manner but submitted the dispute to the incorrect address.
17. Although Levitt alleges a failure to comply with principles of natural justice as the ground of appeal, the appeal submissions are, in essence, an assertion that the delegate's conclusion is unfair.
18. The Tribunal recognizes that parties without legal training often do not appreciate what natural justice means. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being

made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Natural justice does not mean that the delegate accepts one party's notion of "fairness".

19. There is no evidence Levitt was not treated fairly and I find no merit to this ground of appeal. Levitt agreed that it had not submitted its licence renewal in a timely fashion.
20. I understand Levitt's argument to be that it is unfair of the Director to impose a penalty on anyone holding a licence under the *Act* who fails to renew that licence in a timely manner. There is nothing in the legislation that obliges the Director to remind individuals of their licence obligations and I find no error or omission on the Director's part.
21. Once the Director has found a contravention of section 12 of the *Act*, a conclusion Levitt does not dispute, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by the *Employment Standards Regulation*.
22. As I noted in *Marana Management Services Inc.* (BC EST # D160/04),

...administrative penalties under the *Act* are part of a larger scheme designed to regulate employment relationships in the non-union sector. The Tribunal determined that penalties are generally consistent with the purposes of the Act, and the design of the penalty scheme established under section 29 meets the statutory purpose of providing fair and efficient procedures for the settlement of disputes over the application and interpretation of the *Act*.

It does appear that the penalty assessment against Brother's is excessive in light of the amounts owing to Mr. Joly, and thus, for essentially minor breaches, the cumulative penalties seem unfair. However, in *Douglas Mattson* (BC EST #DRD647/01) the Tribunal found that it could not ignore the plain meaning of the words of a statute and substitute its view of the legislative intent based solely on its judgement about what is "fair" or "logical". Further, in *Action Super-Save Gas Stations Ltd.* (BC EST #D067/04) the Tribunal concluded that the *Act* provides for mandatory administrative penalties without any exceptions: "The legislation does not recognize fairness considerations as providing exceptions to the mandatory administrative penalty scheme."

23. The appeal is dismissed.

ORDER

24. Pursuant to section 115 of the *Act*, I order the Determination dated December 1, 2015, be confirmed in the amount of \$500 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal