



An appeal

- by -

Wen Hsing Huang, a Director of Kingdom Treasure Group Corp.
(“Mr. Huang”)

- 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/7

DATE OF DECISION: March 23, 2016

DECISION

SUBMISSIONS

Shen-Shun Huang

on behalf of Wen Hsing Huang, a Director of Kingdom Treasure Group Corp.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Wen Hsing Huang (“Mr. Huang”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on November 27, 2015. In that Determination, the Director found that Mr. Huang was a director of Kingdom Treasure Group Corp. (“KTG”) at the time wages owing to Peiyuan Jin (“Mr. Jin”) were earned or should have been paid. The Director ordered Mr. Huang to pay the amount of \$665.60, representing not more than two months’ outstanding wages, plus \$14.12 interest.
2. Mr. Huang appeals the Determination contending that the delegate failed to observe principles of natural justice in making the Determination. Mr. Huang also contends that evidence has become available that was not available at the time the Determination was made.
3. This decision is based on Mr. Huang’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

4. Mr. Jin filed a complaint alleging that KTG, operating as Chamonix Taiwanese Restaurant, had contravened the *Act* in failing to pay him regular and overtime wages earned in February 2015.
5. The delegate held a hearing into Mr. Jin’s allegations on September 8, 2015. The record shows that although properly notified of the hearing, no one from KTG appeared at the hearing. On October 8, 2015, the Director issued a Determination against KTG finding that Mr. Jin was entitled to wages and interest in the amount of \$667.25 (the “Corporate Determination”). The Director also imposed two administrative penalties on KTG in the total amount of \$1,000 for contraventions of the *Act*.
6. The Determination, which included a notice to directors and officers regarding their personal liability for wages under the *Act*, was sent by registered mail to KTG’s registered and records office as well as to its officers and directors. KTG was not located at its registered office and the Determination was returned to the Branch. The Determination sent to the records office, which was also the address of one of the Directors, was unclaimed and also returned to the Branch. Canada Post records indicate that Mr. Huang received the Determination on October 15, 2015.
7. The appeal period for the Corporate Determination expired November 16, 2015. The Determination was not appealed and KTG did not pay the amount in that Determination.
8. A July 13, 2015 Corporate Search indicated that KTG was incorporated on May 21, 2014 and that Mr. Huang was listed as a director. A subsequent search conducted on November 13, 2015 indicated that Mr. Huang continued to be listed as a director. The delegate found that Mr. Huang was a director between February 1, 2015, and February 28, 2015, when Mr. Jin’s wages were earned or should have been paid.

9. The delegate determined that as a director, Mr. Huang was liable for up to two months of Mr. Jin's unpaid wages. The delegate was unable to conclude that Mr. Huang authorized, permitted or acquiesced in the contravention and found that he was not personally liable for the administrative penalties.
10. Mr. Huang contends that he was not a director of KTG and that he did not know Mr. Jin. Mr. Huang agreed that he did not appear at the September 8, 2015 hearing because he thought the company had paid Mr. Jin all outstanding wages. Mr. Huang says that he did not participate in the affairs of the restaurant; that he simply assisted KTG in the rental of the restaurant space. Mr. Huang also says that he managed the restaurant from December 2014 to January 2015, and used his commission to pay Mr. Jin wages, and that he forgot to make any statutory deductions from those wages. He further says that Mr. Jin told him that Zhen Jian gave him a promissory note for \$3,000. Mr. Huang says he knows nothing about the affairs between these two individuals.
11. Mr. Huang's command of English is, as he notes, very basic. As I understand his submissions, he wishes to have a face-to-face meeting with Mr. Jin and the delegate because he believes the company has paid all wages owing.

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(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.
14. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that Mr. Huang has not met that burden and dismiss the appeal.

Failure to observe the principles of natural justice

15. Although Mr. Huang contends that the Director failed to observe the principles of natural justice, there is nothing in the appeal documentation that refers to this ground of appeal. 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". The record confirms that Mr. Huang received, by registered mail, both the Notice of Hearing regarding Mr. Jin's complaint as well as the Notice to Directors regarding their personal liability for unpaid wages, following the Determination against KTG. Furthermore, Mr. Huang admits that he knew about the hearing and chose not to attend.

16. Therefore, I find that Mr. Huang was aware of the allegations, as well as his liability for the wages owed to Mr. Jin and had every opportunity to respond.
17. Mr. Huang's appeal is, in essence, a contention that the Determination is wrong. He argues that he was not a director of KTG and that Mr. Jin was paid all the money he was entitled to.
18. Once corporate liability has been established, directors cannot, through an appeal of a determination of director liability, reargue the issue of a company's liability for wages unless they can establish fraud or fresh evidence that is decisive to the merits of the issue (*Steinemann*, BC EST # D180/96).
19. Mr. Huang is, through his appeal of the director Determination, advancing arguments that ought to have been made either before the delegate during the hearing on the wage determination, or on appeal of that Determination. Neither Mr. Huang nor anyone else from KTG appealed the wage determination. As outlined in the Notice to Directors/Officers which accompanied the corporate Determination, Mr. Huang cannot argue the merits of the Determination through an appeal of the director Determination.
20. The Corporate registry demonstrates that Mr. Huang was, in fact, listed as a corporate director during the time Mr. Jin's wages were earned and should have been paid.
21. 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
22. The appeal is dismissed.

ORDER

23. Pursuant to section 114(1) of the *Act*, I deny the appeal. Pursuant to section 115(1)(a) of the *Act*, I order that the Determination, dated November 27, 2015, be confirmed in the amount of \$679.72 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