

An appeal

- by -

William Campbell, a Director of Pepmetric Technologies Inc.
(“Mr. Campbell”)

- 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/45

DATE OF DECISION: July 10, 2014

DECISION

SUBMISSIONS

William Campbell on his own behalf as a Director of Pepmetric Technologies Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), William Campbell, a Director of Pepmetric Technologies Inc., 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. (“Pepmetric”), 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 explaining their personal liability under the *Act*, was sent to William Campbell; Pepmetric’s registered and records office; Pegasus’ registered and records office; and to other Pegasus directors. 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. Campbell was a director of Pepmetric 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. Campbell authorized, permitted or acquiesced in Pegasus’ contraventions, and found him not personally liable for the administrative penalties.
5. Mr. Campbell filed an appeal of the Director Determination on April 22, 2014, contending that the Director erred in law in making the Determination.
6. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”) provide that 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. Campbell’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

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. Pepmetric was incorporated in British Columbia on February 18, 2004. An April 4, 2013, BC Company Summary report for Pepmetric indicates that Mr. Campbell was both a director and officer of Pepmetric as at February 18, 2012.
10. While acknowledging that he was a director of Pepmetric during the period in question, Mr. Campbell says he had nothing to do with any of the other companies determined by the Director to be associated corporations. Mr. Campbell also says that Pepmetric had only two employees and that he resigned as a director in August 2013.

ANALYSIS

11. 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.
12. 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. Campbell has not met that burden.
13. 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 an 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

...

14. 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.

15. The corporate records establish, and Mr. Campbell concedes, that he was a director of Pepmetric at the time the wages were earned and payable.

16. As I understand Mr. Campbell's argument, the Director erred in associating the companies under section 98 of the *Act*.

17. The record discloses that the Corporate Determination was sent by registered mail to both Mr. Campbell and to the address used by Mr. Campbell in his appeal document, which is also the records and registered office of Pegasus. Canada Post tracking record shows that on June 4, 2013, Mr. Campbell refused delivery. However, the Determination addressed to Pegasus' records and registered office was delivered successfully. That Determination contained information regarding director and officer liability and set out the date for appealing the Determination. The Corporate Determination was never appealed.

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). Given that Pegasus neither disputed the initial claims of the employees nor appealed the corporate determination and Mr. Campbell has not established fraud or fresh evidence, Mr. Campbell cannot now, on an appeal of the Director Determination, argue the Director's decision to associate the companies.

19. I dismiss the appeal.

ORDER

20. 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.

Carol L. Roberts
Member
Employment Standards Tribunal