

An appeal

- by -

Venturex Global Investment Corporation
(“Venturex”)

- 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.: 2007A/44

DATE OF DECISION: July 25, 2007

the financial difficulties. Mr. Halladay was paid 40% of his salary until June 30, 2005, at which time his employment was terminated due to the company's worsening financial position. At the time of his termination, Venturex promised to pay Mr. Halladay his deferred wages and expenses. The records disclose that Mr. Halladay made many unsuccessful attempts to collect on those wages and benefits prior to filing his complaint in December 2005. At the hearing, Venturex did not dispute Mr. Halladay's entitlement to wages, expenses and benefits. The delegate found that Venturex had failed to pay Mr. Halladay all of his wages within 48 hours of the date of his termination on June 30, 2005, therefore contravening section 18 of the Act. The delegate also found that Venturex contravened section 26 of the Act in failing to pay health benefit and insurance premiums according to Mr. Halladay's employment contract. The delegate imposed two administrative penalties in light of these contraventions.

9. Venturex's appeal is only of the administrative penalty assessments. It says that it did not dispute Mr. Halladay's entitlement, and has paid all outstanding money owed to him after the Determination was issued. Mr. Hamanishi says that he understood that so long as he made the payments, the Determination "would not be in effect" and that "the determination was only there so that we will not deviate from our agreed upon schedule." He says he understood the penalties would only be imposed if the payment schedule was not adhered to. As I understand Mr. Hamanishi's submission, Venturex made its final payment to Mr. Halladay on March 31, 2007. Mr. Hamanishi says that the penalties should be "reversed" as Venturex has "fully co-operated with Employment Standards and Mr. Halladay."
10. The delegate provided the section 112(5) "record". She submits that Venturex has not provided any compelling reason to extend the time period for appealing the Determination, and says that, in any event, should the appeal deadline be extended, Venturex's appeal would not be successful.
11. The delegate submits that Venturex was made aware, both at a mediation and at the hearing, that penalties would be imposed should the matter proceed to a hearing and a Determination issued. She notes that the letter accompanying the Notice of Hearing and Demand for Records indicated that penalties would be assessed for the contraventions. The delegate also says that she advised Venturex at the hearing that, if she found that the *Act* had been contravened, she had no discretion not to impose penalties. She submits that Venturex never informed the Branch of its intention to pay Mr. Halladay until after the Determination was issued.
12. The delegate submits that the payment schedule between Mr. Halladay and Venturex was entered into without the knowledge or involvement of the Employment Standards Branch.

THE FACTS AND ANALYSIS

13. Section 112 of the *Act* provides that a person served with a determination may appeal the determination by delivering a written request to do so, with reasons for the appeal, to the Tribunal within 15 days of service, if served by registered mail, or 8 days after service, if served personally.
14. These time limits are in keeping with one of the purposes of the Act. Section 2(d) provides that one of the purposes of the Act is to provide for fair and efficient procedures for resolving disputes over the application and interpretation of the Act.
15. Section 109(1)(b) provides that the Tribunal may extend the time for requesting an appeal even though the time period has expired.

16. In *Niemisto* (BC EST #D099/96), the Tribunal set out criteria for the exercise of discretion extending the time to appeal. Those include that the party seeking an extension must satisfy the Tribunal that:
- (1) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
 - (2) there has been a genuine, ongoing *bona fide* intention to appeal the determination;
 - (3) the respondent party as well as the director has been made aware of this intention;
 - (4) the respondent party will not be unduly prejudiced by the granting of an extension; and
 - (5) there is a strong *prima facie* case in favour of the appellant.
17. These criteria are not exhaustive.
18. I decline to grant the request for an extension for the following reasons.
19. Although Venturex has apparently satisfied Mr. Halladay's claim for outstanding wages and benefits, it did so only after Mr. Halladay pursued his claim through the Employment Standards Branch. As Venturex did not dispute the claims at the hearing of the complaint, by implication, it also did not dispute contravening the *Act*. Venturex did not appeal the finding of those contraventions until the Branch attempted to collect on the penalty assessments. A misapprehension of the consequences of the hearing and penalties is not a credible explanation for failing to appeal the Determination within the statutory time limit.
20. I also find no *prima facie* case in Venturex's favor.
21. 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;
or
 - (c) evidence has become available that was not available at the time the determination was being made
22. Venturex says that the director failed to observe the principles of natural justice. However, there is nothing in the submissions that supports that ground of appeal. The delegate says that she advised Venturex that, if she concluded that the *Act* had been contravened, she had no discretion as to whether administrative penalties would be imposed or not. Venturex was also advised that administrative penalties would be imposed when Mr. Halladay's complaint was set for hearing. Venturex was therefore aware of the nature of the claim and the fact that it may have been subject to administrative penalties for its failure to pay Mr. Halladay in accordance with the *Act*.

ORDER

23. Pursuant to section 109(1)(a) of the *Act*, I deny the application to extend the time for filing an appeal.

Carol L. Roberts
Member
Employment Standards Tribunal