

An appeal

- by -

J.B. MacDonald Search Group Ltd.
(“MacDonald”)

- 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.: 2015A/81

DATE OF DECISION: July 10, 2015

DECISION

SUBMISSIONS

Jeff Danis

on behalf of J.B. MacDonald Search Group Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), J.B. MacDonald Search Group Ltd. (“MacDonald”) has filed an appeal of a Determination issued by the Director of Employment Standards (“the Director”) on June 5, 2015. In that Determination, the Director found that MacDonald had contravened section 12 of the *Act* in failing to renew its employment agency license, and imposed an administrative penalty in the amount of \$500 for the contravention.
2. MacDonald appeals the Determination contending that the delegate failed to observe the principles of natural justice in making the Determination.
3. These reasons are based on MacDonald’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. MacDonald was incorporated on June 18, 2007. On October 30, 2013, MacDonald was issued an employment agency license from the Employment Standards Branch. That license expired on October 29, 2014.
5. On May 19, 2015, MacDonald applied for another employment agency license. A delegate of the Director contacted Mr. Danis on May 27, 2015, about the application. Mr. Danis indicated that the company had been operating since the previous license expired. Mr. Danis explained that MacDonald’s failure to obtain a license was unintentional and filed the application upon realizing that the license had expired.
6. The delegate determined that MacDonald had contravened section 12(1) of the *Act* in operating an employment agency or talent agency without a valid license from October 30, 2014, until June 5, 2015, and imposed an administrative penalty.

Argument

7. MacDonald says that it is a new and small business, and this was the first time it was expected to renew its license. It says that it assumed, erroneously, it would receive a renewal notice for the license, and that it had every intention to maintain the license and pay the applicable fee.
8. MacDonald argues that, because this was its first renewal and its actions were not intentional, the penalty should be “forfeited”.

ANALYSIS

9. 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.
10. 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 set out in section 112(1) of the *Act*. This burden requires the appellant to provide, demonstrate, or establish a cogent evidentiary basis for the appeal. Having reviewed the section 112(5) record and MacDonald's submissions, I dismiss the appeal.
 11. MacDonald's grounds of appeal are that the Director failed to comply with the principles of natural justice. Natural justice rights are, in essence, procedural rights, designed to ensure that the parties know the case against them, have the right to respond and to have the case decided by an unbiased decision maker. I am satisfied MacDonald was afforded natural justice. Mr. Danis spoke with the delegate and explained that MacDonald had forgotten to apply for a new licence.
 12. MacDonald's submission is, in essence, a repetition of the explanation it provided to the delegate for its failure to apply for an employment agency licence in a timely fashion.
 13. I note that on October 31, 2013, the Director approved MacDonald's application for an employment agency licence. The covering letter stated, in part, as follows:

Your licence will expire on **October 29, 2014**. The Employment Standards Branch does not send out renewal notices. Please ensure that you submit your application to have your licence renewed at least 30 days before your licence expires. (bold in original)
 14. MacDonald does not deny that it contravened the *Act* but says it did not do so intentionally. It disagrees with the imposition of a \$500 administrative penalty on the basis that the contravention was, in essence, an oversight.
 15. Once the delegate finds a contravention, a finding not disputed by MacDonald, 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*.
 16. I find that this appeal has no prospect of succeeding and the object and purposes of the *Act* would not be served by requiring a response from the other parties.
 17. The appeal is dismissed.

ORDER

18. I Order, pursuant to section 115 of the *Act*, that the Determination, dated June 5, 2015, be confirmed together with whatever interest may have accrued since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal