

An appeal

- by -

Grant Howard

- 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

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2002/639

DATE OF DECISION: March 4, 2003

DECISION

INTRODUCTION

This is an appeal filed by Grant Howard (“Howard” or the “appellant”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Mr. Howard appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “delegate”) on November 25th, 2002 (the “Determination”).

These reasons for appeal do not address the merits of the appeal but, rather, whether the appeal period should be extended pursuant to section 109(1)(b) of the *Act*.

THE DETERMINATION

The Director’s delegate determined that Mr. Howard was an employee, rather than an independent contractor as was alleged by the respondent, Kirk Capital Corporation (“Kirk Capital”). Kirk Capital is a mortgage broker licensed under the B.C. *Mortgage Brokers Act*. Further, the delegate also found that Mr. Howard’s employment was summarily terminated without cause or proper written notice on or about August 1st, 2000 and, accordingly, he was entitled to 2 weeks’ wages as compensation for length of service (section 63 of the *Act*).

In addition to his claim for compensation for length of service, Mr. Howard also originally claimed that Kirk Capital did not pay him earned commissions on ten separate transactions. Kirk Capital, for its part, conceded that commissions were payable with respect to two transactions but not on any of the other matters. The delegate upheld Mr. Howard’s unpaid commission claims on the two transactions not in dispute but held that the other eight commission claims had not been made out.

Kirk Capital apparently deducted, from commissions otherwise payable to Mr. Howard, certain legal fees expended in order to collect some brokerage fees from Kirk Capital clients. The delegate held that such deductions were not permissible and, accordingly, issued an order for reimbursement against Kirk Capital and in favour of Mr. Howard.

Finally, the delegate ordered Kirk Capital to pay some \$900 on account of vacation pay and statutory holiday pay for the year 2000. The delegate did not award Mr. Howard any vacation pay or statutory holiday pay for the years 1997 to 1999 since “there is insufficient evidence and records to complete calculations for statutory holiday pay and vacation pay”.

In total, Kirk Capital was ordered to pay Howard the sum of \$29,535.29 on account of the following claims:

Unpaid commissions:	\$26,265.33
Unauthorized wage deduction:	\$ 1,483.96
Compensation for length of service:	\$ 876.35
Unpaid vacation and statutory holiday pay for the year 2000:	<u>\$ 909.65</u>
TOTAL (including concomitant vacation pay and section 88 interest)	<u>\$29,535.29</u>

THE APPEAL

Mr. Howard appended a 15-page document entitled, on separate lines, “Appeal” and “Statement of Claim”. It is apparent from a review of this latter document that Mr. Howard has misconceived the nature of the appeal process and the jurisdiction of both the Employment Standards Branch and the Employment Standards Tribunal. For example, Mr. Howard claims damages for various alleged wrongs including “wrongful dismissal”, “undue influence”, “duress”, “loss of opportunity and deprivation of economic interests”, “breach of fiduciary duty”, “professional negligence”, “bad faith”, “mental distress” and “unjust enrichment in lieu of specific performance”.

It would appear that Mr. Howard has simply compiled a “laundry list” of recognized (and, in some cases, unknown) civil claims and has asked the Tribunal to adjudicate those claims. To the extent that such claims have any legal foundation, the appropriate forum to adjudicate those claims is the B.C. Supreme Court; neither the Employment Standards Branch nor this Tribunal has the statutory authority to adjudicate those claims.

On the other hand, Mr. Howard does say that the delegate erred in dismissing certain of his commission claims--this is a matter that can properly be placed before the Tribunal.

TIMELINESS OF THE APPEAL

This appeal was filed on December 24th, 2002; the time limit for filing an appeal expired on December 18th, 2002. In other words, this appeal was filed less than one week after the appeal period expired.

In light of the fact that this appeal was not filed within the time limit governing an appeal to the Tribunal, on January 2nd, 2003 the Tribunal’s Vice-Chair wrote to all parties requesting their submissions regarding the appropriateness of the Tribunal granting an extension of the appeal period. The Vice-Chair’s January 2nd letter also identified the relevant criteria governing such extensions as set out in the Tribunal’s jurisprudence.

In a submission dated January 22nd, 2003 the Director’s delegate indicated that she opposed an extension of the appeal period. The Director’s delegate notes that the Determination was forwarded by registered mail to Mr. Howard’s home address on November 25th, 2002 (and that a notification of delivery card was left at this address on November 26th) but that the letter was not actually in Mr. Howard’s hands until December 18th, 2002. On December 19th, Mr. Howard contacted the delegate by telephone and left a message requesting an extension of the appeal period. The delegate, in turn, left a voice mail message indicating that she did not have the jurisdiction to extend the appeal period and that such an application would have to be made to the Tribunal. In opposing the application for an extension of the appeal period, the delegate correctly observes that many of Mr. Howard’s claims fall outside the purview of the *Act*. The delegate also submits that the appeal lacks merit.

Counsel for the respondent Kirk Capital, in a submission filed on January 23rd, 2003, also opposes an extension of the appeal period. Among other things, counsel submits that Mr. Howard has not adequately explained the delay in filing a timely appeal; that he did not have a *bona fide* intention to appeal; that the respondent will be prejudiced if the appeal goes forward; and that the appeal lacks merit.

For his part, Mr. Howard (in a submission dated December 22nd, 2002) concedes that the registered mail notice of delivery of the Determination was received at his residence on November 26th, 2002. Mr.



Howard says (but does not explain why) that he did not “locate” this notice until December 18th, 2002 and then attended at the post office and obtained the Determination. Mr. Howard says that the delay is accounted for by the fact that the matter is complex and he needed to consult legal counsel.

FINDINGS

Although the delay in filing an appeal in this case is not lengthy, that fact, alone, is not sufficient to justify overlooking the statutory time limit. There is no proper explanation before me as to why the appellant failed to “locate” the delivery notice (which was delivered on November 26th) until December 18th, 2002. Mr. Howard simply says that he placed the notice in a “large drawer” and did not turn his mind to the notice until December 18th. Surely, such a cavalier treatment of an important legal notice ought not to redound to his credit.

Further, I reject the notion that filing an appeal in this case was a burdensome task; in essence, the appeal simply reiterates arguments that were before the delegate. I note that the appellant filed this appeal in person; this appeal was not filed by legal counsel.

Finally, in support of this appeal, the appellant submits additional information that may well be inadmissible before the Tribunal in light of the fact that such evidence was not placed before the delegate for her consideration and, accordingly (and despite Mr. Howard’s assertions to the contrary), on its face, this is not a compellingly meritorious appeal.

In light of the foregoing circumstances, the appellant’s application for an extension of the appeal period is **refused**.

ORDER

Pursuant to section 114(1)(a) of the *Act*, I order that this appeal be **dismissed**.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal