

An appeal

- by -

Abram Neudorf, a Director or Officer of Styro-Mold Manufacturing Ltd.
(“Neudorf”)

- 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: David B. Stevenson

FILE No.: 2007A/69

DATE OF DECISION: September 4, 2007

DECISION

SUBMISSIONS

Abram Neudorf	on his own behalf
Roger Hall	on his own behalf
Amanda Clark Welder	on behalf of the Director

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Abram Neudorf, a Director or Officer of Styro-Mold Manufacturing Ltd. (“Neudorf”) of a Determination that was issued on May 23, 2007 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Neudorf was a director or officer of Styro-Mold Manufacturing Ltd., an employer found to have contravened provisions of the *Act*, and was personally liable under Section 96 of the *Act* for an amount of \$7,429.99 and under Section 98(2) of the *Act* for the administrative penalties imposed on Styro-Mold Manufacturing Ltd. in the amount of \$1500.00.
2. In this appeal, Neudorf has challenged the merits of the Determination issued against Styro-Mold Manufacturing Ltd., which was issued by the Director on April 13, 2007 (“the corporate Determination”). An appeal of the corporate Determination has been dismissed as being filed out of time period allowed by the *Act*.
3. The Tribunal has decided an oral hearing is not required in order to address this appeal.

ISSUE

4. The issue here is whether Neudorf has shown there is any basis for an appeal of the Determination.

THE FACTS

5. The Determination contains the following findings of fact:
 - As of February 2, 2007, Neudorf was listed in the Registrar of Companies as a director/officer of Styro-Mold Manufacturing Ltd.;
 - Neudorf was a director or officer of Styro-Mold Manufacturing Ltd. at the time the wages found owing in the corporate Determination were earned and payable;
 - In the corporate Determination, Styro-Mold Manufacturing Ltd. was found to have contravened Sections 17, 18 and 21 of the *Act* and incurred administrative penalties in the amount of \$1500.00;

- The administrative penalties had not been paid by Styro-Mold Manufacturing Ltd. as of the date of the Determination being considered in this appeal; and
- Neudorf was actively involved in the day to day operation of the business of Styro-Mold Manufacturing Ltd. He was directly involved in the events that resulted in a finding of contraventions of the Act and the imposition of administrative penalties against Styro-Mold Manufacturing Ltd. and, based on his involvement and specific knowledge, had authorized, permitted or acquiesced in the contraventions of the Act resulting in the imposition of administrative penalties against Styro-Mold Manufacturing Ltd.

6. None of the above findings of fact are challenged in the appeal.

ARGUMENT AND ANALYSIS

7. As indicated above, this appeal addresses the merits of the corporate Determination, specifically the finding that the claimant, Roger Hall, was an employee of Styro-Mold Manufacturing Ltd. for the purposes of the *Act*.

8. The Director argues that the issue of the liability of Styro-Mold Manufacturing Ltd. has been decided and, applying the doctrine of issue estoppel, Neudorf is limited to three issues in this appeal:

1. whether he was a director or officer of Styro-Mold Manufacturing Ltd. at the time wages were earned and should have been paid;
2. whether the calculation of the amount determined to be owed by him is correct; and
3. whether he authorized, permitted or acquiesced in the contraventions of the *Act* resulting in the imposition of administrative penalties against Styro-Mold Manufacturing Ltd.

9. The Director says Neudorf has not raised any arguments relating to the above matters and the appeal should be dismissed.

10. Mr. Hall has filed a reply, but it does not address the allowable scope of appeal of the Determination.

11. In his final reply, Neudorf does not address the argument of the Director on the issue estoppel.

12. The issue of whether a Director/Officer of an employer corporation found liable for unpaid wages under Section 96 of the *Act* can appeal the issues of the company's liability has been squarely dealt with by this Tribunal in the case of *Kerry Steinemann, a Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST #D180/96. In that decision, the Tribunal said that, in the absence of fraud, collusion, or decisive fresh evidence not previously available, the doctrine of *res judicata*, or issue estoppel, precludes individuals like Neudorf from arguing whether the Company was properly found liable in the corporate Determination.

13. A director/officer of an employer company appealing a Determination of personal liability under Section 96 of the *Act* is limited to arguing issues of whether he or she was a director/officer at the time the wages were earned and should have been paid and whether the amount of the Determination falls within the 2 month ceiling on such personal liability. Where personal liability is imposed under Section 98(2), a

director/officer is limited to arguing the issue of whether he or she authorized, permitted or acquiesced in the contraventions of the *Act* resulting in the imposition of administrative penalties against the company. The policy reason underlying this approach is that the enforcement mechanisms of the *Act* are meant to operate quickly and inexpensively, and permitting corporate directors to re-litigate a finding of corporate liability would undermine the fulfillment of that goal.

14. In this appeal, however, Neudorf has not raised any arguments in respects of those issues to which this appeal is limited. The doctrine of issue estoppel applies to the issues he has raised in the appeal and the appeal must be dismissed on that basis.

ORDER

15. Pursuant to Section 115 of the *Act*, I order the Determination dated May 23, 2007 be confirmed in the amount of \$9,058.23.

David B. Stevenson
Member
Employment Standards Tribunal