

An application for suspension

- by -

Love Again Network Inc. carrying on business as eloveagain.com  
(“LAN”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

Pursuant to section 113 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113 (as amended)

**TRIBUNAL MEMBER:** Carol L. Roberts

**FILE No.:** 2012A/74

**DATE OF DECISION:** August 10, 2012

## DECISION

### SUBMISSIONS

Eric Bernal, Neil Hain, Directors	on behalf of Love Again Network Inc., carrying on business as cloveagain.com
Terri Goss	on her own behalf
Robert Krell	on behalf of the Director of Employment Standards

### OVERVIEW

1. Terri A. Goss worked as a sales manager for Love Again Network Inc. carrying on business as cloveagain.com (“LAN”). On December 6, 2010, Ms. Goss filed a complaint with the Director of Employment Standards (“the Director”) alleging that LAN had contravened the *Employment Standards Act* (the “*Act*”) in failing to pay her two months’ wages. On June 5, 2012, the Director issued a Determination ordering LAN to pay Ms. Goss \$3,301.15, representing wages, vacation pay and accrued interest. The Director also imposed two administrative penalties in the total amount of \$1,000 for contraventions of sections 28 and 40 of the *Act*.
2. LAN appealed the Determination on June 21, 2012, alleging that the Director had erred in law and failed to observe the principles of natural justice. LAN also sought a suspension of the Determination pursuant to Section 113 of the *Act* pending the outcome of its appeal.
3. This decision addresses only the suspension request.

### FACTS AND ARGUMENT

4. At issue before the Director’s delegate was whether or not Ms. Goss filed her complaint within the six month period provided under the *Act* for filing complaints, and whether or not Ms. Goss was an employee or independent contractor.
5. The Director ultimately concluded that LAN was an employer within the meaning of the *Act* and that Ms. Goss performed work on LAN’s behalf. The Director determined that Ms. Goss was entitled to wages in the amount set out above. The Director also found that Ms. Goss did not end the employment relationship until June 10, 2010, and that her complaint was timely.
6. LAN contends that the Director erred in law by relying on evidence not before him and by ignoring evidence or making findings not supported by the evidence in concluding that Ms. Goss was an employee and in finding that the employment relationship ended on June 10, 2010.
7. LAN submits that it has been fully compliant with the Director’s process, participating in mediation and meeting document production deadlines, and that it has no prior history of any contraventions of the *Act*.
8. LAN also submits that it is a small start-up company and that it would be faced with administrative hardships if it were forced to make source deductions and pay a penalty should it later be successful on appeal. LAN

also contends that Ms. Goss “can be secure in the knowledge that should [LAN] be successful on appeal, she still has legal remedies available through the court process.”

9. The Director took no position on LAN’s suspension request.
10. Ms. Goss opposed the suspension application. She contends that she went through considerable hardship when she was without revenue for two months and that, as a lawyer, Mr. Hain, one of the principals of LAN, should be held to a higher standard.

## ANALYSIS

11. Section 113 of the *Act* provides as follows:
  - (1) A person who appeals a determination may request the Tribunal to suspend the effect of the determination.
  - (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
    - a) the total amount, if any, required to be paid under the determination or,
    - b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.
12. The Tribunal will not suspend the effect of a Determination in circumstances where the grounds of appeal are frivolous or have no apparent merit; however it may suspend where the appeal may have some merit. (*Tricom Services Inc.* BC EST # D420/97; *TNL Paving Ltd.* BC EST # D397/99)
13. It is not the function of the Tribunal Member to conduct an extensive analysis of the merits of an appeal on a suspension application. Nevertheless, I am persuaded that the appeal has some merit. Without expressing an opinion on those merits, the appeal raises issues of law and the delegate’s assessment of the facts in light of the applicable law, issues which will require consideration by the Tribunal. The appeal also raises issues of natural justice which the Tribunal will be required to address.
14. LAN did not deposit any funds with the Director with the suspension request.
15. While I am persuaded that the suspension application has merit, I find that the total amount of the Determination should be paid as a condition of that suspension. While I accept that LAN will experience “administrative hardship”, that is no different than any other party to an employment standard hearing. I am not persuaded that administrative hardship is a sufficient basis for not depositing funds with a request for suspension.
16. Attached to the appeal is the affidavit of Mr. Bernal who says that the company has been in business for “several years”. In the absence of any information on LAN’s financial position, I infer that an order in the full amount of the Determination, less the penalty assessment, will not be a financial hardship to a company that, while small, appears to be a going concern. If LAN is successful in its appeal, the amount will be repaid, with interest. I find no reason to find that a smaller amount would be adequate in the circumstances.
17. Finally, whether or not Ms. Goss may have remedies in a court process in the event LAN is successful on appeal is not, in my view, a relevant consideration on a suspension application. The *Act* is designed to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. The deposit of funds with a suspension application is one of those procedures.

**ORDER**

18. Pursuant to section 113 of the *Act*, I allow the application to suspend the effect of the Determination, on the condition that LAN deposits the amount of \$3,301.15 with the Director no later than August 20, 2012.

---

**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**