

An appeal

- by -

Leila Celani a director of Hampton Park Bilingual Montessori Inc.
(“Ms. Celani”)

- 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/109

DATE OF DECISION: September 23, 2015

DECISION

SUBMISSIONS

Leila Celani on her own behalf as a director of Hampton Park Bilingual Montessori Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Leila Celani (“Ms. Celani”) a director of Hampton Park Bilingual Montessori Inc. (“Hampton Park”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on July 2, 2015.
2. On June 25, 2014, the Director issued a Determination ordering Hampton Park to pay its former employee, Jiho Katherine Uhm (“Ms. Uhm”), \$17,267.40 in wages and interest. The Director also imposed two administrative penalties in the total amount of \$1,000 for Hampton Park’s contraventions of the *Act*, for a total amount payable of \$18,267.40. Hampton Park unsuccessfully filed an appeal of the Determination, which was upheld by the Tribunal on September 26, 2014.
3. On July 2, 2015, the Director’s delegate determined that Hampton Park had not paid the Determination amount. The delegate also determined that as Ms. Celani was a director of Hampton Park between September 2011 and March 2012 when Ms. Uhm’s wages were earned or should have been paid, Ms. Celani was personally liable for up to two months of Ms. Uhm’s unpaid wages, pursuant to section 96 of the *Act*. The delegate determined that Ms. Uhm’s wages for two months amounted to \$5,335.88, and that Ms. Celani was also liable for accrued interest on those wages in the amount of \$521.17.
4. The delegate concluded that there was insufficient evidence that Ms. Celani authorized, permitted or acquiesced in Hampton’s contraventions, and found her not personally liable for the administrative penalties.
5. Ms. Celani contends that the Director erred in law in making the Determination.
6. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
7. I find that this appeal can be decided based on Ms. Celani’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made, the Determination and the Reasons for the Determination.

FACTS AND ARGUMENT

8. As Ms. Celani filed Hampton Park’s appeal of the corporate Determination, she was aware of her potential personal liability for unpaid wages. The corporate Determination contained the following “Notice to Directors/Officers”:

If a Determination is issued against a director/officer of a company, the director/officer may not argue the merits of the Determination against the company by appealing the director/officer Determination.

There are only three grounds on which a Determination made against a director/officer may be appealed:

- 1) That the person appealing was not a director/officer of the company at the time wages were earned or should have been paid;
 - 2) That the calculation of the director/officer's personal liability is incorrect; and/or,
 - 3) That the director/officer should not be liable for the penalty, where a penalty has been assessed, on the grounds that he or she did not authorize, permit or acquiesce in the company's contravention.
9. Although Ms. Celani asserted that the Director erred in law, in her submissions she conceded that she was not certain which ground of appeal was appropriate. She says that the Director did not verify Ms. Uhm's timesheet and that the timesheet was fraudulent. She also argues that Ms. Uhm was a volunteer.
10. Ms. Celani asks that the Determination be cancelled.

ANALYSIS

11. 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;
 - (c) evidence has become available that was not available at the time the determination was being made.
12. Section 115 of the *Act* provides that, after considering whether the grounds for appeal have been met, the Tribunal may, by order
- (a) confirm, vary or cancel the determination under appeal, or
 - (b) refer the matter back to the director.
13. Once corporate liability has been established, directors cannot, through an appeal of a determination of director liability, reargue the issue of a company's liability for wages unless they can establish fraud or fresh evidence that is decisive to the merits of the issue (*Steinemann*, BC EST # D180/96). Although Hampton Park appealed the corporate Determination, I dismissed that appeal (BC EST # D087/14).
14. Ms. Celani is, through her appeal of the director Determination, advancing the same arguments that were made in Hampton Park's unsuccessful appeal of the corporate Determination. As outlined in the Notice to Directors/Officers, which accompanied the corporate Determination, Ms. Celani cannot argue the merits of the Determination through an appeal of the director Determination.
15. Section 96 of the *Act* provides as follows:
- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
 - (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
 - (a) any liability to an employee under section 63, termination pay or money payable in respect of an individual or group terminations, if the corporation is in receivership,

- (b) any liability to an employee for wages, if the corporation is subject to an action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency *Act*

16. I find no basis for the appeal. Ms. Celani has not disputed that she was a director of Hampton Park at the time Ms. Uhm's wages were earned or should have been paid. Ms. Celani has also not challenged the Director's calculation of her personal liability. I find no grounds to interfere with the Determination.

ORDER

17. Pursuant to section 115 (1)(a) of the *Act*, I Order that the Determination, dated July 2, 2015, be confirmed in the amount of \$5,857.05 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal