

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Eva Daniel
("Daniel")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE No: 1999/621

DATE OF HEARING: January 17, 2000

DATE OF DECISION: March 1, 2000

DECISION

APPEARANCES:

The Appellant, Eva Daniel (“Daniel”) appeared together with her husband, Irwin Daniel.

The Respondent, Geometric Coiffures Ltd. (“Geometric”) was represented by legal counsel, David Frechette. Appearing as a witness was Maya Moisner, owner of Geometrics.

The Respondent, Geometric, submitted an original of the Asset Purchase Agreement between Anica Mihalich and Geometric dated February 22, 1995, which is marked as Exhibit number 1.

The Director was represented by Irwin Schultz.

OVERVIEW

This is an appeal by Daniel pursuant to Section 7 of the *Employment Standards Act* (the “Act”) from a determination of the Director of Employment Standards (the “Director”) issued on October 5, 1999.

The determination was issued following a complaint by Daniel that she was employed by Geometric and that regular wages, overtime wages, annual vacation pay, statutory holiday pay and compensation for length of service were due to her following her termination from Geometric.

The Director determined that during her time with Geometric, Daniel was an owner not an employee and therefore not entitled to the wage benefits under the *Act*.

ISSUE TO BE DECIDED

Whether Daniel was an owner or employee of Geometric.

THE FACTS AND ANALYSIS

A. FACTS

As evidenced by the Asset Purchase Agreement, which is Exhibit 1, on February 22, 1995, Daniel and Moessner entered into an agreement on that date to purchase Geometric for \$31,000.00. Daniel and Moessner paid the purchase price as follows:

- 1) \$3,000.00 cash (\$1,500.00 each)
- 2) balance of approximately \$28,000.00 was financed by a bank loan to Daniel and Moessner jointly.

Daniel and Moessner were each fifty percent shareholders and directors of Geometric.

Due to differences between Daniel and Moessner, Moessner and Daniel entered into an agreement dated June 21, 1997, whereby Moessner agreed to purchase Daniel's shares in Geometric. The agreement was carried out i.e., Daniel received her money due under the agreement, she resigned as Director of Geometric and she ceased to work in the Geometric business on the date of the agreement, namely, June 21, 1997.

Subsequently, on August 24, 1999, Daniel filed a complaint with the Director that she was due wages under the *Act* and in general voicing her belief that she had been taken advantage of financially by Moessner.

B. ANALYSIS

Was the Appellant, Daniel, entitled to wage benefits under the *Act*?

In order to come within the jurisdiction of the *Act* and thereby be entitled to the wage protection provided by the *Act*, one must be an employee.

It is clear that Daniel was an owner and not an employee during her time with Geometric, that is February 22, 1995, until June 21, 1997. She owned fifty percent of the shares of Geometric and was a Director.

A person cannot be both an owner and an employee in the same business venture for the purpose of entitlement to employee benefits under the *Act*: see for example *Re Caba Mexican Restaurants Ltd.* [1997] B.C.E.S.T.D. No. 377.

The Appellant's complaints of alleged unfairness in her business dealings with Moessner are matters for civil court, as this tribunal has no jurisdiction to decide them.

ORDER

Pursuant to Section 115 of the *Act*, I order that the determination with respect to Geometric be confirmed as issued.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal