

An appeal

- by -

Irene Beilstein,  
Director of Demara Safeguard Shield Association  
("Ms. Beilstein")

- 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:** Shafik Bhalloo

**FILE No.:** 2015A/133

**DATE OF DECISION:** December 10, 2015

## DECISION

### SUBMISSIONS

Irene Beilstein on her own behalf as a Director of Demara Safeguard Shield Association

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Irene Beilstein (“Ms. Beilstein”), Director of Demara Safeguard Shield Association (“DSSA”), has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on September 4, 2015 (the “Section 96 Determination”).
2. The appeal was received by the Tribunal on October 19, 2015, although the deadline to file the appeal was October 13, 2015. Ms. Beilstein explains in the appeal submissions that she is requesting an extension to the appeal period because she had “power issues on the 13<sup>th</sup> of October and was unable to fax until the issues resolved themselves”.
3. The Section 96 Determination concluded that Ms. Beilstein was a director of DSSA, one company in the group of companies being treated by the Director as one employer for the purposes of the *Act* in the Corporate Determination dated August 29, 2014, at the time wages owed to Sabine Delveaux, Elaina Hanchar, Lynette Kleefeld, Alison Murray, Kimberley Mann, Kenneth Poole, Lisa Smilowski, Tracey Wahl, Lori Von Siemens, Rikki Bassett and Donna Metlowski (the “Complainants”) were earned or should have been paid and, as such, was personally liable under section 96 of the *Act* for an amount of \$23,115.84.
4. On October 20, 2015, the Employment Standards Tribunal (the “Tribunal”) sent a copy of the appeal submissions of Ms. Beilstein to the Complainants and to the Director for informational purposes only. The Tribunal advised the Complainants and the Director that no submissions from them were being requested at this time. In the same letter, the Tribunal requested the Director to provide the section 112(5) “record” (the “Record”) to the Tribunal. The Tribunal also requested Ms. Beilstein to provide the Tribunal with a clear, legible hard copy of several documents contained in Ms. Beilstein’s appeal submissions which were not legible.
5. On November 2, 2015, Ms. Beilstein provided legible copies of the documents the Tribunal had requested. On November 3, 2015, the Director sent the Tribunal the Record. On November 4, 2015, the Tribunal disclosed the legible copies of Ms. Beilstein’s documents to the Complainants and to the Director for informational purposes only. On the same date, the Tribunal disclosed the Record to Ms. Beilstein, and afforded her an opportunity to object to its completeness. However, no objection as to the completeness of the Record was received from Ms. Beilstein.
6. On November 23, 2015, the Tribunal notified the parties that the matter would now be reviewed by a Tribunal Member who may, without seeking submissions from the parties, dismiss all of, or part of, the appeal and/or confirm all of, or part of, the Section 96 Determination. If the Tribunal Member does not dismiss all of the appeal or does not confirm all of the Section 96 Determination, the Tribunal would invite the Director and the Complainants to file a reply to the question of whether to extend the deadline to file the appeal, and may request submissions on the merits of the appeal. Ms. Beilstein would subsequently be given an opportunity to make a final reply to these submissions, if any.

7. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. Therefore, at this stage, I will assess the appeal based solely on the Reasons for the Section 96 Determination (the “Section 96 Reasons”), the Appeal Form and written submissions of Ms. Beilstein, and my review of the Record that was before the Director when the Section 96 Determination was being made. Under section 114(1) of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal without a hearing of any kind for any of the reasons listed in that subsection. If satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1), the Tribunal will invite the Complainants and the Director to file a reply to the question of whether to extend the deadline to file the appeal, and may request submissions on the merits of the appeal. Ms. Beilstein will then be given an opportunity to make a final reply to the submissions, if any.

### ISSUE

8. The issue at this stage of the appeal is whether there is any reasonable prospect the appeal will succeed.

### THE FACTS

9. The Complainants filed their complaints under section 74 of the *Act*, alleging that Demara Consulting Inc., Demara Consulting (2012) Society, and DSSA (“Demara” or the “Demara Group of Companies”) contravened the *Act* by failing to pay them regular wages, overtime, annual vacation pay and compensation for length of service (the “Complaints”).
10. A delegate of the Director conducted an investigation into the Complaints, and the Director issued the Corporate Determination on August 29, 2014, finding that the Demara Group of Companies were to be treated as one employer for the purposes of the *Act*. The Corporate Determination further held that the Demara Group of Companies were jointly and separately liable for \$22,487.36 (including accrued interest) in unpaid wages. The Corporate Determination also levied administrative penalties against the Demara Group of Companies in the amount of \$1,000.00.
11. The Corporate Determination, which included a Notice to Directors and Officers explaining their personal liability under the *Act*, was sent to the Demara Group of Companies, with copies to the registered and records office and to the directors and officers of Demara.
12. The appeal period for the Corporate Determination expired on October 6, 2014, and no appeal was pursued by the Demara Group of Companies at the time of the Section 96 Determination.
13. On September 20, 2013, the delegate of the Director conducted a BC On-line: Registrar of Companies – Corporate Search on the Demara Group of Companies, and discovered that Ms. Beilstein was listed as a director of DSSA, which was incorporated on December 19, 2012.
14. In subsequent corporate searches, conducted on February 4, 2014, the delegate found that Ms. Beilstein was still listed as a director of DSSA.
15. According to the Section 96 Reasons, on February 6, 2014, the delegate sent correspondence by registered mail to the registered offices of the Demara Group of Companies outlining the Complaints and the requirements of the *Act*. The same correspondence was also sent to the directors and officers of the Demara Group of Companies at the addresses noted on the corporate searches. All letters were returned marked “moved”.

16. However, one of the Complainants received notification by mail that Demara had moved to a new location and was continuing to conduct business. As a result, the delegate redirected the correspondence to the new location where one of the directors, namely, Ms. Beilstein, accepted and signed for all of the registered letters.
17. The Section 96 Reasons also indicate that, in September 2014, the Employment Standards Branch (the “Branch”) reached Ms. Beilstein via telephone, and discussed the Complaints with her. Following the telephone call, the Branch sent her an email providing her with information regarding the requirements of the *Act* and the corporate officer’s liability for unpaid wages and penalties. While Ms. Beilstein provided some information to the Branch, the Section 96 Reasons state that she stopped responding to the Branch’s request for further information and did not participate in the investigation after January 2014.
18. Based on the corporate searches of the Demara Group of Companies and, particularly, DSSA, the delegate found that Ms. Beilstein was a director of DSSA at all material times when wages owed to the Complainants were earned and should have been paid. As a result, the delegate issued the Section 96 Determination against Ms. Beilstein, holding the latter personally liable for the entire amount of wages owed to the Complainants in the Corporate Determination, since the amount awarded in the Corporate Determination was less than two (2) months’ wages.
19. As there was insufficient evidence to indicate that Ms. Beilstein authorized, permitted or acquiesced in contraventions of the *Act* by Demara, she was not found liable for any administrative penalties levied against Demara.
20. Ms. Beilstein appeals the Section 96 Determination based on the “new evidence” ground of appeal, and is seeking the Tribunal to cancel the Section 96 Determination.

### **SUBMISSIONS OF MS. BEILSTEIN**

21. In her written submission, Ms. Beilstein contends that she should not be liable under the Section 96 Determination for any amounts because the “Management of the Company never submitted to the board with full disclosure of operations and Financial Updates [nor] discussed issues”. She states that if the management had shared financial information with the Board then “the Board would have been compelled to provide the necessary instruction to prevent this situation from occurring” but the “management never came to the Board and requested assistance with financial decisions”. In the circumstances, she states she should not be held liable to pay anything.
22. She also contends that she was a contractor with Demara and “not privy to Employee’s pay Cheques/stubs [sic]” and, therefore, she was unaware that payment of wages to employees was not being managed properly or mismanaged.
23. I have reviewed all of the documents Ms. Beilstein attaches with her written submissions, including several Minutes of the Board of Directors of Demara Consulting and DSSA, as well as “Positive Discipline” directions given to her in her position as an assistant or a contractor, but I do not find it necessary or relevant to summarize the content of these documents here.

## ANALYSIS

24. Section 96(1) of the *Act* states:

***Corporate officer's liability for unpaid wages***

96 (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.

25. In an appeal of a determination issued under section 96 of the *Act*, the appellant is limited to arguing only those issues that arise under section 96 of the *Act*, namely:

- (i) Whether the person was a director or officer when the wages were earned or should have been paid;
- (ii) Whether the amount of liability imposed is within the limit for which a director or officer may be found to be personally liable;
- (iii) Whether circumstances exist that would relieve the director or officer from personal liability under subsection 96(2).

26. The governing process for determining who is a director or officer under section 96 of the *Act* was set out by the Tribunal in *The Director of Employment Standards (Re: Michalkovic)* (BC EST # RD047/01) (Reconsideration of BC EST # D056/00) as follows:

1. The corporate records, primarily those available through the Registrar of Companies or available at a corporation's registered and records office, raise a rebuttable presumption that a person is a director or officer. In other words, the Director of Employment Standards may presumptively rely on those corporate records to establish director or officer status.
2. It is then open to the person, who, according to the corporate records, is a director or officer, to prove on the balance of probabilities that the company records are *inaccurate*, for example, because the person resigned and the documents were not properly processed, a person is not properly appointed, etc...

27. Having reviewed Ms. Beilstein's submissions and the Record, I find no basis for the appeal. Ms. Beilstein has not disputed or rebutted the presumption arising from the corporate searches conducted by the delegate that she was a director of DSSA at the time the Complainants wages were earned or should have been paid. She has also not challenged the Director's calculation of her personal liability, nor set out any circumstances that would relieve her from personal liability under subsection 96(2). In these circumstances, I find no grounds to interfere with the Section 96 Determination.

**ORDER**

28. Pursuant to section 115(1)(a) of the *Act*, I order that the Section 96 Determination, dated September 4, 2015, be confirmed in the amount of \$23,115.84, together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**