

An appeal

- by -

Mahmoud Sharafaldin, a Director and Officer of 658847 B.C. Ltd. carrying on
business as Tom and Jerry's Restaurant
(“Mr. Sharafaldin”)

- 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.: 2014A/153

DATE OF DECISION: December 16, 2014

DECISION

SUBMISSIONS

Annette Fraser

on behalf of the Director of Employment Standards

OVERVIEW

1. This decision arises out of an appeal by Mahmoud Sharafaldin, a Director and Officer of 658847 B.C. Ltd. carrying on business as Tom and Jerry's Restaurant, pursuant to section 112 of the *Employment Standards Act* (the "*Act*"), of a Determination issued by a delegate of the Director of Employment Standards (the "Director") on April 11, 2014.
2. Karen Rubkiewicz filed a complaint with the Director alleging that 658847 B.C. Ltd. carrying on business as Tom and Jerry's Restaurant ("Tom and Jerry's") had contravened the *Act* by failing to pay her wages. On October 25, 2013, the Director issued a Determination (the Corporate Determination) finding Tom and Jerry's in contravention of section 18 of the *Act* in failing to pay wages to Ms. Rubkiewicz.
3. The total amount of wages and accrued interest was \$1,908.80. The Corporate Determination, which included a Notice to Directors/Officers explaining their personal liability under the *Act*, was sent to Mr. Sharafaldin, Tom and Jerry's registered and records office, and to Tom and Jerry's business address. The date for appealing the Corporate Determination was December 2, 2013.
4. On April 11, 2014, the Director's delegate found that the Corporate Determination had neither been appealed or satisfied. The delegate determined that Mr. Sharafaldin was a director and officer of Tom and Jerry's between January 24, 2013, and March 23, 2013, when Ms. Rubkiewicz's wages were earned and payable, and that Mr. Sharafaldin was personally liable to pay \$1,865.76 representing two months' unpaid wages for Ms. Rubkiewicz.
5. On August 21, 2014, I issued a decision concluding that the Delegate had erred in law in concluding that Mr. Sharafaldin was a director of Tom and Jerry's at the time Ms. Rubkiewicz's wages were earned, and referred the matter back to her for further investigation. (see *Sharafaldin*, BC EST #D072/14)
6. These reasons are based on the reporting back letter.

The Referral Back

7. On November 13, 2014, the delegate issued a letter reporting back on the outcome of her supplementary investigation. The delegate has asked that I cancel the Determination. Although the Tribunal sought responses from Mr. Sharafaldin and Ms. Rubkiewicz, neither party responded to the reporting back letter.
8. Given that none of the parties responded to the delegate's report and in light of my conclusion in BC EST # D072/14, I grant the delegate's request.

ORDER

9. Pursuant to section 115(1)(a) of the *Act*, I cancel the Determination of the Director of Employment Standards finding that Mr. Sharafaldin was a director and officer of Tom and Jerry's at the time Ms. Rubkewicz's wages were earned and ordering that he pay \$1,921.89.

Carol L. Roberts
Member
Employment Standards Tribunal