

An appeal

- by -

Allen Schwabe, a Director or Officer of Delphi International Academy, Delphi Student Development Inc. and Double D Holdings Ltd. associated companies pursuant to section 95 of the Employment Standards Act

("Schwabe")

- 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

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2001/889

DATE OF DECISION: April 25, 2002

DECISION

INTRODUCTION

This is an appeal filed by Allen Schwabe (“Schwabe”) pursuant to Section 112 of the Employment Standards Act (the “Act”). Mr. Schwabe appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on November 30th, 2001 (the “Determination”).

The Director’s Delegate determined that Schwabe was a director of Delphi International Academy (“Delphi”) and, by reason of section 96 of the *Act*, was personally liable for \$37,775.86 in unpaid wages and section 88 interest owed to 9 former Delphi employees. The employees’ unpaid wage claims span the period from September 1st, 2000 to June 29th, 2001. Mr. Schwabe’s position is that he ought not to have been found liable under section 96 of the Act since he was not a director or officer when the employees’ wage claims crystallized.

By way of a letter dated March 6th, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

FINDING

Delphi operated a now defunct independent school that offered a curriculum tailored to the needs of student-athletes, particularly hockey and baseball players. Mr. Schwabe’s son was a student at the school who graduated in June 2000.

In a 1-page handwritten note appended to his appeal form, Mr. Schwabe states that his involvement with the school’s board was merely as a parent representative and that his involvement ended with his son’s graduation in June 2000. Mr. Schwabe says that he did not receive any compensation for his service on the board.

Mr. Schwabe submitted a letter dated December 14th, 2001 from Mr. Al Decker, Delphi’s former “C.E.O.”, which reads as follows:

“Please be advised that Allen Schwabe resigned as a Director of Delphi International Academy effective June 30, 2000, when his son graduated from the Academy. It should be noted that Mr. Schwabe’s resignation was accepted but inadvertently not filed and removed with the Society.

Mr. Schwabe was a parent volunteer Director and received no remuneration. We apology (sic) to Mr. Schwabe for this error and any inconvenience that it may have caused.”

I also have before me the submission from the Director’s Delegate dated January 9th, 2002. In that submission, the Delegate confirmed Mr. Decker’s advice that Mr. Schwabe resigned in June 2000 following the graduation of his son and that Schwabe’s former involvement was merely as a parent volunteer board member. Further, the Delegate was advised by the school’s accountant that Mr. Schwabe did not receive any compensation for having served as a Delphi director. The Delegate noted that Delphi last filed an annual report with the Registrar of Companies in December 1999 and that the society is

currently not in good standing with the Registrar. The Delegate was advised by former members of the school's teaching staff that Mr. Schwabe was not involved with the school after June 2000. Finally, the Delegate stated: "I recommend that the above-mentioned Determination issued on November 30, 2001 be cancelled".

In light of the above submissions and uncontroverted evidence, I am satisfied that Mr. Schwabe had already ceased to be a director of Delphi when the employees' unpaid wage claim crystallized. Accordingly, it follows that the Determination should be cancelled.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be cancelled.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal