

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 -

Fu Wang Enterprises Ltd., and Kin's City Enterprises Ltd.
operating as Kin's City

("Fu Wang" and "Kin's City")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE NO.: 1999/81

DATE OF DECISION: April 20, 1999

DECISION

OVERVIEW AND FACTS

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Fu Wang Enterprises Ltd. of a Determination issued on December 11, 1998, by a Delegate of the Director of Employment Standards (the “Director”). In that Determination, the Director found that Fu Wang Enterprises Ltd. and Kin’s City Enterprises Ltd. operating as “Kin’s City” was in contravention of Section 21(1) of the *Act* and owed its former employee, Man Hang (William) Chan (“Chan”) the sum of \$4,607.21. Kin’s City, a car stereo and stereo systems installation store has two locations, one on Jacombs Road and the second on Capstan Way in Richmond, B.C.

Chan worked as an installer of car radio and stereo systems from May, 1997, to May, 1998. Between May, 1997, and September, 1997, Chan worked at the Jacombs Road location. Between September, 1997, and May, 1998, Chan worked at the Capstan Way location. The Jacombs Road location is operated by Kin’s City Enterprises Ltd.

There is evidence that the Kin’s City Capstan Way location is operated by Fu Wang Enterprises Ltd. in addition to Kin’s City Enterprises Ltd. and the owner of Kin City Enterprises Ltd., Man Hang (William) Chan. Incorporation documents dated August 28, 1996, indicate that Chuan Tsung Tien (“Tien”) was the sole shareholder and business licences with the City of Richmond for the years 1997, 1998, and 1999, indicate that the business address for Fu Wang Enterprises Ltd. is the 8100 Capstan Way location. Furthermore, advertisements submitted by Chan indicate that the Capstan Way location of Kin’s City operated as “Kin’s City Fu Wang Enterprises Ltd.”. Furthermore, Ivy Hallam states in the letter dated March 5, 1999, that Fu Wang Enterprises Ltd. was named at the front of the shop while a sign of “Kin’s City” was at the front of the mall during an inspection site at the Capstan Way location on December 11, 1998.

The Determination of the Director issued December 11, 1998, mailed by certified mail that date to both the operating address, that is the Capstan Way location, and the registered and records office according to the addresses listed on the B.C. Companies search. The Determination sent to the Capstan Way address was returned with a notation of “Moved”. The Determination sent to the registered and records office was returned as well as “Not at this Address”. Tien states that he had no notice of the Determination until February 1999 when he attended at his bank and was advised that the accounts of Fu Wang Enterprises Ltd. were frozen pursuant to collection proceedings further to the Determination.

Fu Wang Enterprises Ltd. submitted an appeal of the Determination dated February 12, 1999, well outside the 15 day time limit prescribed by Section 112 of the *Act*.

ISSUE TO BE DECIDED

The issue to be decided here is whether the Tribunal should exercise its discretion under Section 109(1)(b) of the *Employment Standards Act* (the “Act”) to extend the time to allow an appeal by Fu Wang Enterprises Ltd. and Kin’s City Enterprises Ltd., operating as “Kin’s City”, of a Determination issued on December 11, 1998, in favour of Kin Chong (Bill) Wan that Fu Wang Enterprises Ltd. and Kin’s City Enterprises Ltd. owed wages and vacation pay to Chan in the amount of \$4,607.21 plus accruing interest.

ANALYSIS

Section 112(2) of the *Act* provides as follows:

- (2) The request must be delivered within
 - (a) 15 days after the date of service, if the person was served by registered mail, and
 - (b) 8 days after the date of service, if the person was personally served or served under section 122(3).

Section 109(1)(b) gives the Tribunal discretion to extend the time period for requesting an appeal if that time period has expired:

- (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:
 - (b) extend the time period for requesting an appeal even though the period has expired.

The following factors are to be considered in a request for an extension of an appeal period:

1. There is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
2. There was a genuine and ongoing bone fide intention to appeal the Determination;
3. The respondent party as well as the Director was aware of this intention;

4. The respondent party will not be unduly prejudiced by the granting of the extension.
5. There is a strong prima face case in favour of the appellant.

Based on those factors, the Tribunal is not satisfied that it is appropriate to extend the appeal period in this case:

1. There is not a reasonable and credible explanation for the failure to request an appeal time within the statutory limit. The Determination was sent to the operating business address of Fu Wang Enterprises Ltd. at Capstan Way. This is the operating business address listed on the 1999 Business Licence and the 1998 Business Licence address which was renewed at the same location in 1999. In other words, this evidence contradicts the reason given for the return of the Determination as having moved;
2. Fu Wang Enterprises Ltd. does not have a strong prima face case in favour of granting the appeal. There is abundant evidence in signage, advertising and other evidence such as invoices at the Capstan Way location being made out to both Fu Wang Enterprises Ltd. and Kin's City Enterprises Ltd. to support the Determination that the wages are owed by both parties.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated December 11, 1998, and filed under number 1999/81, be confirmed.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal