

An appeal

- by -

Aaron Meyer Communications Inc.  
("Meyer Communications")

- 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.:** 2002/057

**DATE OF DECISION:** May 7, 2002

## DECISION

### OVERVIEW

This is an appeal filed by Aaron Meyer Communications Inc. (“Meyer Communications”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Meyer Communications appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on January 15th, 2002 (the “Determination”). By way of the Determination, the Director’s Delegate ordered Meyer Communications to pay the sum of \$982.33 to its former employee, Renee Smitherman (“Smitherman”), on account of unpaid wages and section 88 interest.

Further, by way of the Determination, the Director also assessed a \$0 penalty pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation*.

The parties were advised by the Tribunal’s Vice-Chair, in a letter dated April 10th, 2002, 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).

### ISSUES ON APPEAL

Meyer Communications has advanced three grounds of appeal:

- Smitherman’s complaint was not filed within the 6-month statutory complaint period [see section 74(3) of the Act];
- the Director of Employment Standards did not provide Meyer Communications with a reasonable opportunity to respond to Ms. Smitherman’s complaint (although section 77 was not specifically referred to in its submission, I assume Meyer Communications’ argument on this point is with respect to section 77); and
- Any services that Ms. Smitherman may have rendered did not amount to “work” provided to Meyer Communications since she was not an “employee” of the company.

### FINDINGS AND ANALYSIS

Ms. Smitherman claimed to have worked for Meyer Communications from June 5th to July 14th, 2000; her complaint was filed on January 12th, 2001 and, accordingly, her complaint was, on its face, timely (although it was filed on the cusp of the expiration of the governing limitation period).

The material before me shows that two delegates of the Director of Employment Standards made several efforts to contact the principal of Meyer Communications, Mr. Aaron Meyer, and that one Delegate did, in fact, speak with him about the matter on at least one occasion--during this conversation Mr. Meyer advanced essentially the same substantive argument that he has raised before the Tribunal, namely, that Ms. Smitherman was never an employee of the company. The material before me also shows that, to a large degree, the Delegates’ efforts to contact Mr. Meyer were frustrated by Mr. Meyer himself--for

example, his telephone was out of order; he declined an offer to meet with a Delegate personally; Mr. Meyer failed to return telephone calls or to respond to mail sent to his last known address. In light of the foregoing, I am of the view that there was no breach of section 77 in this case.

The third ground of appeal is more problematic. As noted in the Determination, Ms. Smitherman and Mr. Meyer were formerly romantically involved. Mr. Meyer's and Ms. Smitherman's relationship spanned the period from January to October 2000; Ms. Smitherman was awarded unpaid wages for the period June 5th to July 14th, 2000. Ms. Smitherman had separate employment throughout this latter period as a sales representative with a brokerage firm.

Mr. Meyer apparently ran the business of Meyer Communications from a residence in Vancouver. Ms. Smitherman claims that she spent a considerable number of hours cleaning the kitchen, the bathroom and a bedroom (which was to be the operating office) in that residence and that she also did other administrative and clerical tasks for Meyer Communications.

Both parties agree that Ms. Smitherman did not receive any compensation for her alleged "work" on behalf of Meyer Communications. Neither Ms. Smitherman nor Meyer Communications has any records corroborating Ms. Smitherman's working hours. At the outset of her "employment" the usual Revenue Canada forms (such as a TD1 form) were not prepared. Ms. Smitherman did not file her claim for unpaid wages until after their romantic relationship ended (at the behest of Mr. Meyer). Ms. Smitherman has not produced any company records that would corroborate that she undertook work for the company's benefit. I do not have before me any independent evidence--such as statements from Meyer Communications customers--that would support Ms. Smitherman's assertion that she was employed by the company during June and July 2000.

In light of the available evidence, and on the balance of probabilities, I am not satisfied that there was an employment relationship between the parties. It would appear that Ms. Smitherman may have provided some services of benefit to the company (for example, cleaning the company's "home office"). However, it also appears that any such services were rendered in the context of a romantic, not an employment, relationship.

## **ORDER**

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

---

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**