

An appeal

- by -

572632 B.C. Ltd. operating Nor-Star Hotel  
(the "Employer")

- 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.:** 2002/164

**DATE OF DECISION:** May 23, 2002

## DECISION

### OVERVIEW

This is an appeal filed by 572632 B.C. Ltd. formerly operating as the “Nor-Star Hotel” (the “Employer”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Although the Employer is no longer an active business enterprise, I am not aware of any formal insolvency proceedings. However, it also appears that the business may well be insolvent.

The Employer appeals a Determination that was issued by a Delegate of the Director of Employment Standards (the “Director”) on November 21st, 2001 (the “Determination”) pursuant to which the Employer was ordered to pay its former employee, Jie Li (“Li”), the sum of \$3,387.70 representing unpaid wages (including regular wages, overtime, statutory holiday pay, vacation pay and one week’s wages as compensation for length of service) 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*.

### TIMELINESS OF THE APPEAL

As noted above, the Determination was issued on November 21st, 2001. This appeal was filed with the Tribunal on March 25th, 2002. A notice, set out in large boldface type on a separate page of the Determination, indicated that the deadline for appealing the Determination was December 14th, 2001 [see section 112(2) of the *Act*]--this latter notice also set out various particulars with respect to how an appeal could be filed. In other words, this appeal was filed over three months after the governing appeal period expired despite there being a clear direction given as to how an appeal might be filed. Accordingly, the Employer now seeks an extension of the appeal period pursuant to section 109(1)(b) of the *Act*.

By way of a letter dated April 8th, 2002 from the Tribunal’s Administrator, the Employer was advised that its appeal was not timely and, accordingly, invited the Employer to provide particulars in support of an application to extend the appeal period. The respondent employee, Jie Li, and the Director’s Delegate were also invited to make submissions with respect to the timeliness of the appeal.

In separate submissions filed with the Tribunal, the Director’s Delegate opposes the application to extend the appeal period as does Li.

The Employer’s principal, Gurdev K. Bhullar, says that the Employer’s appeal was filed outside the statutory time limit due to “human error” and because the matter had been turned over to the principal’s daughter who only “quickly glanced” over the Determination when it was served on the Employer (by registered mail).

The governing appeal period was clearly communicated in a notice attached to the Determination. The excuse offered for the delay in filing an appeal displays, in my view, a rather cavalier attitude toward this matter. I might add that the material before me indicates that the Employer was deliberately uncooperative with the Delegate during the course of his investigation.

The Employer's reasons for appeal amount to a bald denial of liability. On their face, the grounds for appeal appear to lack merit inasmuch as the grounds are wholly unsupported by any credible documentary or other evidence. The material before me leads me to conclude that this appeal was filed only after the Employer's principal learned (apparently on or shortly after March 5th, 2002), by way of separate section 96 determination issued against her on March 1st, 2002, that she could be held personally liable for some portion of Li's unpaid wages by reason of her status as an officer/director of the Employer.

In light of the foregoing circumstances, the Employer's application for an extension of the appeal period is refused. Accordingly, I do not propose to address the merits of the Employer's appeal except to note, as I previously stated, that this appeal appears to be of dubious merit.

### **ORDER**

Pursuant to section 114(1)(a) of the *Act*, I order that this appeal be dismissed.

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