

**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 -

Medallion Developments Inc.  
("Medallion" or the "employer")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 2000/184

**DATE OF DECISION:** June 20, 2000

## DECISION

### OVERVIEW

This is an appeal filed on March 17th, 2000 by Medallion Developments Inc. (“Medallion” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 9th, 2000 under file number ER 080-024 (the “Determination”).

By way of the Determination, the Director’s delegate levied a \$500 penalty based on the employer’s failure to produce proper payroll records as demanded (see section 46 of the *Employment Standards Regulation*). The demand was issued pursuant to section 85(1)(f) of the *Act* and the \$500 penalty was levied pursuant to section 28(b) of the *Employment Standards Regulation*.

The present appeal was *not* filed within the statutory 15-day appeal period [see section 112(1)(a) of the *Act*] and, accordingly, Medallion seeks an extension of the appeal period. This latter application is made pursuant to section 109(1)(b) of the *Act*. *These reasons address only the timeliness of this appeal.*

### ANALYSIS

The following notice is set out at the foot of page 4 of the Determination:

#### Appeal Information

Any person served with this Determination may appeal it to the Employment Standards Tribunal. The appeal must be delivered to the Tribunal no later than 4:30 PM on March 1, 2000. Complete information on the appeal procedure is attached. Appeal forms are available at any office of the Employment Standards Branch.

As noted above, this appeal was filed on March 17th, 2000--more than 2 weeks after the statutory 15-day appeal period expired.

On March 21st, 2000, the Tribunal’s Vice-Chair wrote to all parties (including Medallion) requesting that they file written submissions--by no later than April 10th, 2000--with respect to Medallion’s application to extend the appeal period. On April 25th (*i.e.*, some two weeks past the deadline for submissions), Medallion filed a submission which does not, *in any fashion*, address the *timeliness* of the appeal; rather, the submission relates entirely (albeit rather obliquely) to the substantive merits of the appeal. On April 17th (also after the April 10th deadline for submissions), the delegate advised the Tribunal, by fax, that she had “no submission on this [timeliness] issue”.

In light of the fact that I do not have before me *any* explanation--let alone corroborating evidence--for Medallion’s failure to file a timely appeal, I do not have any basis for exercising my discretion to extend the appeal period. Thus, Medallion’s application must fail.

Notwithstanding the foregoing, however, it does appear to me that this penalty Determination might be a nullity in light of section 117(2) of the *Act*. However, since this appeal is not properly before the Tribunal, I do not propose to make any order to that effect. Nevertheless, the Director may wish to consider whether or not the Determination should be cancelled pursuant to section 86 of the *Act*.

**ORDER**

Medallion's request for an extension of the appeal period is refused. Accordingly, pursuant to subsection 114(1)(a) of the *Act*, this appeal is dismissed.

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