

**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-

Joze Markelj operating as Joe's Janitorial Services  
(“Markelj” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft  
**FILE No.:** 98/120  
**DATE OF HEARING:** May 19, 1998  
**DATE OF DECISION:** June 9, 1998

**DECISION**

**APPEARANCES**

Joze Markelj	on his own behalf
Nihad Arifovic	on his own behalf
Adem Dzaferovic	on his own behalf
Ibrahim Blazevic	on his own behalf
Mehemmed Klino	on his own behalf
No appearance	for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Joze Markelj operating as Joe’s Janitorial Services (“Markelj” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 007488 issued by the Director of Employment Standards (the “Director”) on February 3rd, 1998 (the “Determination”) under file number 086-588.

The Director determined that Markelj owed seven former employees a total of \$2,023.49 on account of unpaid wages and interest.

**ISSUE TO BE DECIDED**

The sole issue raised by the employer in this appeal concerns the identity of the employer of the seven complainant employees. Markelj maintains that he was merely acting as an agent for a firm known as Vertex Building Maintenance (“Vertex”) and that the seven complainants should pursue that firm for their unpaid wages. The Director’s delegate rejected this position and determined that Markelj was the actual employer.

**FACTS AND ANALYSIS**

Markelj operates a janitorial firm and may well have operated as a subcontractor for a firm known as Vertex. Apparently, Vertex never paid Markelj for work undertaken at a North Vancouver job-site and this, in turn, lead to Markelj’s failure to pay the seven complainant employees. Markelj testified before me “They [*i.e.*, the seven complainants] deserve money but I shouldn’t pay from my own pocket”. Markelj did not produce any documents or other evidence to support his

assertion that he was authorized to hire labour on behalf of Vertex; indeed, I do not even have any evidence before me--other than Markelj's statement--that any sort agency relationship existed between Markelj and Vertex.

On the other hand, Markelj also testified that:

- none of the seven complainants met any principal of Vertex;
- he personally hired all seven complainants and negotiated their hourly wage rates;
- he supervised and otherwise directed their work;
- he paid at least one of the complainants some monies out of a personal account.

For their part, the four complainants who testified before me all told essentially the same story, the particulars of which were not denied, or even challenged, by Markelj:

- Markelj hired them and set their wage rate and never mentioned anything about a firm known as Vertex and certainly never told the complainants that Vertex was their employer;
- Markelj gave them their daily work assignments and otherwise supervised their work and received their verbal reports as to the number of hours worked each day;
- Markelj made various promises to them to pay the wages which they were owed;
- Markelj owned the equipment that they used at the job sites.

In light of the foregoing, and the in the complete absence of *any* evidence corroborating Markelj's assertion that Vertex was the complainant's employer, I find that the Director's delegate did not err in concluding that all seven complainants were employees of Markelj.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 007488 be confirmed as issued in the amount of **\$2,023.49** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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