



An appeal

- by -

Robert G. Bakie, a Director or Officer of No. 289 Taurus Ventures Ltd. -and-
Prema Systems Ltd. -and- 544553 B.C. Ltd. -and-
546414 British Columbia Ltd. (associated corporations)

("Bakie")

- 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: David B. Stevenson

FILE No.: 2001/130

DATE OF DECISION: May 23, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Robert G. Bakie (“Bakie”), a Director or Officer of No. 289 Taurus Ventures Ltd. -and- Prema Systems Ltd. -and- 544553 B.C. Ltd. -and- 546414 British Columbia Ltd. (associated pursuant to Section 95 of the *Employment Standards Act*) (“the companies”) of a Determination which was issued on January 24, 2001 by a delegate of the Director of Employment Standards (the “Director”). An earlier Determination, dated August 28, 2000, had concluded that the companies had contravened Part 3, Sections 17(1), 18(1) and 27(1), Part 7, Section 58(3) and Part 8, Section 63(2)(b) of the *Act* in respect of the employment of John Babcock (“Babcock”) and ordered the companies to cease contravening and to comply with the *Act* and to pay an amount of \$253,544.83. The Determination under appeal concluded that Bakie was a Director or Officer of the companies and as such was required to pay an amount of 17,907.20, the extent of his statutory obligation under Section 96 of the *Act*.

Bakie has appealed the Determination, arguing he was not a Director or Officer of the companies, having resigned from the Board of Directors March 31, 1998.

ISSUE

The sole issue is whether Bakie has shown the conclusion in the Determination, that he was statutorily liable under Section 96 of the *Act*, was wrong.

FACTS

For the purpose of considering this appeal, the following facts are relevant:

1. Bakie was a Director of Prema Systems Ltd.. He alleges in his appeal that he resigned from the Board of Directors of Prema Systems Ltd. in March, 1998 and has provided a letter, dated March 31, 1998, to that effect with the appeal.
2. The companies’ liability under the *Act* related to wages earned by Babcock between April, 1998 and April, 2000.
3. The last filed annual report of Prema Systems Ltd., dated March 9, 1998 and filed March 15, 1998, showed Bakie as a Director. The corporate records do not contain any letter from Bakie dated March 31, 1998 nor any recorded change of Directors after the filing of the last annual report.

4. Bakie lives in Spokane, Washington. He says he had no involvement in the day to day operation of Prema Systems Ltd. He also says that prior to receiving the Determination under appeal, he had no knowledge of the complaint made by Babcock or the corporate Determination made August 28, 2000.
5. Prema Systems Ltd., along with No. 289 Taurus Ventures Ltd. and 544553 B.C. Ltd., was deemed to have made an assignment in bankruptcy on April 7, 2000.
6. Bakie alleges he filed a Chapter 7 Bankruptcy on February 1, 1999, which was discharged on May 12, 1999.

ARGUMENT AND ANALYSIS

As a preliminary matter, the Director argued that none of the material provided with the appeal should be considered because Bakie did not participate in the investigation and the material that has been provided with the appeal is material that ought to have been produced during the investigation. The Director has not, however, established that Bakie received the correspondence notifying the parties of the complaint, that he was aware of the complaint or that he knew of the demand made by the Director for documents. There is nothing in the submission of the Director indicating any attempt was made to contact Bakie for information concerning the complaint and that he failed or refused to participate in the investigation. For the purpose of dealing with the preliminary matter, I will accept the Bakie was unaware of the complaint, was not contacted by the Director and was not asked or required to provide any information in respect of the complaint. In such circumstances, *Re Kaiser Stables Ltd.* BC EST #D058/97 and *Re Tri-West Tractors Ltd.* BC EST #D268/96 have no application. There is an element of fairness involved in this case that requires the Tribunal to consider the appeal and the supporting material (see also *Re Super Shuttle Ltd., and others*, BC EST #D224/00).

In reply to the substance of the appeal, the only matter raised by Bakie that warrants any consideration is his assertion that he had resigned as a director of Prema Systems Ltd. before any liability for wages arose. In *Director of Employment Standards (Re Michalkovic)*, BC EST #RD047/01 (Reconsideration of BC EST #D056/00), the Tribunal summarized the approach to be taken in cases such as this, stating:

. . . the case law reviewed here and in *Wilnofsky* stands for the following propositions:

1. The corporate records, primarily those available through the Registrar of Companies or available at the corporation's registered and records office, raise a rebuttable presumption that a person is a director or officer. In other words, the Director may presumptively rely on those corporate records to establish director or officer status.

2. It is then open to the person, who, according to the corporate records, is a director or officer, to prove on a balance of probabilities that the company records are *inaccurate*, for example because the person resigned and the documents were not properly processed, a person is not properly appointed, etc. . . .

In *Re Wilinofsky*, BC EST #D106/99, the Tribunal stated:

. . . where an individual is recorded as an officer or director of a company in the records maintained by the Registrar, a rebuttable presumption arises that the individual is actually a director or officer . . . of the company. . . . *This presumption, however, can be rebutted by credible and cogent evidence that the Registrar's records are inaccurate* - the burden of proving that one is not a corporate director or officer rests with the individual who denies such status.

(emphasis added)

In this appeal, Bakie has submitted a letter, dated March 31, 1998, which he says was sent to Prema Systems Ltd., resigning as a director of that company.

I am not satisfied to the degree necessary that Bakie has proven the corporate records of Prema Systems Ltd. are inaccurate. The nature of his interest in the outcome of the appeal and the absence of any independent corroboration that the letter of resignation was created, sent, received and given effect in or around March 31, 1998 militate against giving the letter the effect necessary to overcome the presumption based on the records of the Registrar and the company.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 24, 2001 be confirmed in the amount of \$17,907.20, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal