

An appeal

- by -

Betty Baer, a Director or Officer of Baer Enterprises Ltd.
(“Baer”)

- 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: April D. Katz

FILE No.: 2001/229

DATE OF DECISION: May 30, 2001

DECISION

SUBMISSIONS:

Wes Baer	on behalf of Betty Baer
Keith Creelman	on his own behalf
Dwight Webster	on his own behalf
Darryl Gratton	on his own behalf
Hans Suhr	on behalf of the Director

OVERVIEW

The Director of Employment Standards (the "Director") found 17 employees of Baer Enterprises Ltd. ("Baer Enterprises") were not paid wages, vacation pay and overtime and issued Determinations on March 1, 2000 for \$111,294.31 and April 25, 2000 for \$12,731.12. Baer Enterprises appealed the March 1, 2000 Determination and the Determination was varied to read \$100,531.10. The April 25, 2000 Determination was not appealed. On July 5, 2000 the Director issued a Determination against Betty Baer as an Officer/Director of Baer Enterprises finding her personally liable for two months wages owed to each of the employees in the complaint. The appeal period for this Determination expired on July 28, 2000. Betty Baer appealed the Determination on March 19, 2001. The timeliness of this appeal is the subject matter of this appeal.

ISSUE - TIMELINESS OF APPEAL

The Tribunal must decide whether to extend the appeal deadline from July 28, 2000 to March 19, 2001 and this decision deals only with that issue.

FACTS

The employees worked for Baer Enterprises between January 14, 2000 and February 18, 2000 and were not paid. Betty Baer was the registered Secretary of Baer Enterprises during this period. Baer Enterprises made an assignment in bankruptcy on June 19, 2000. A company search on June 30, 2000 shows Betty Baer as Secretary of Baer Enterprises. Betty Baer was served by registered mail with a Determination dated July 5, 2000 on July 7, 2000. Betty Baer consulted the solicitor for Baer Enterprises and was told not to worry about the Determination. She did not enquire further until October 24, 2000 when she contacted the Director's Delegate about the Certificate of Judgement filed against her property. After speaking with the Delegate no action was taken until March 2001.

ARGUMENT

In the Appeal submission, Betty Baer's agent argues that due to her poor health Betty Baer did have an active role in Baer Enterprises except for signing a few cheques. She was not told about the financial position of the company to reduce her stress. Stress negatively affected her condition. The submission goes on to suggest Betty Baer did not understand the significance of the Determination.

The employees argue that Betty Baer understood enough about the financial condition of Baer Enterprises to place a mortgage in her favour on the company property in March 2000. She consulted a lawyer about the Determination and had been told the Determination was filed in the Supreme Court of BC in July 2000.

The Director submits that Betty Baer was told of her rights of appeal, consulted counsel and decided not to appeal in July 2000. After speaking with the Delegate in October 2000 Betty Baer waited for 5 more months before filing this appeal.

LAW AND ANALYSIS

PRINCIPLES FOR EXTENDING AN APPEAL DEADLINE

The Tribunal has been asked to extend the time to file an appeal on many occasions. In each case the Tribunal is mindful of the purpose of the *Employment Standards Act* (the "Act") under section 2 (d) is "to provide fair and efficient procedures for resolving disputes". The Act imposes an appeal deadline to ensure appeals are dealt with promptly. Under section 109(1)(b) of the Act, the Tribunal may extend the time for requesting an appeal, even though the appeal period has expired.

The Tribunal must assess an appeal and ensure that there are compelling reasons to extend a time limit. The Tribunal set out the six criteria for determining timeliness of appeals based on previous cases in *Bravo Cucina Restaurante Italiano Ltd.* BC EST #D343/00.

"Appellants who are seeking a time extension for an appeal, should satisfy the Tribunal on balance that:

1. there is a good reason they could not appeal before the deadline;
2. there is not an unreasonably long delay in appealing;
3. they always intended to appeal the determination;
4. the other parties (the respondent and the Director) are aware of the intent to appeal;

5. the respondent will not be harmed by an extension; and
6. they have a strong case that might succeed, if they get an extension."

In *Suter (Re)*, BC EST #D177/00, the Tribunal considered a request for extension of time for filing an appeal where the Determination was made and mailed on November 23, 1999. The appeal was to be filed by December 16, 1999 and was actually filed December 23, 1999. The mail had not been claimed by the Employer and had been returned to the Employment Standards Branch on December 14, 2000. The appeal was filed when the Employer received a demand notice from her bank. An extension of time was denied after citing the statutory requirements for timeliness of appeals.

The Delegate considered the six grounds in his submission and I do not disagree with his analysis. I will consider the six factors described as they apply to the facts in this appeal.

1. "There is a good reason the appellant could not appeal before the deadline"

There is no reason given except lack of understanding of the significance of the Determination. Betty Baer understood the importance of the documents sufficiently to consult counsel for advice. She took steps to inform herself and was given advice.

2. "There is not an unreasonably long delay in appealing"

This appeal was delayed for 8 months. There is no explanation for the delay from October 2000 to March 2001.

3. "They always intended to appeal the determination"

There is no evidence that suggests Betty Baer expressed an intention to appeal to the Delegate or the employees.

4. "The other parties (the respondent and the Director) are aware of the intent to appeal"

Neither the Delegate nor the employees had any prior knowledge of Betty Baer's intention to appeal.

5. "The respondent will not be harmed by an extension"

The employees have experienced considerable hardship in not receiving their earnings. The wages and interest are not in dispute.

6. "They have a strong case that might succeed, if they get an extension."

The final factor relates to the merits of the Appeal. If the appeal were granted the sole grounds for the appeal are that Betty Baer was not an officer of Baer Enterprises. The June 30, 2000

corporate search supports the Determination's findings. There is no dispute on the quantum. There is no evidence to support a conclusion that Betty Baer was not an officer during the relevant period.

The onus is on Betty Baer to provide the evidentiary basis for an appeal which would result in varying or canceling the Determination. There is nothing in the documentation filed by Betty Baer to suggest that the Determinations are in error.

CONCLUSION

Betty Baer has failed to provide compelling reasons to extend the time for appeal. I therefore deny the application for an extension of time to file an appeal.

ORDER

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

April D. Katz
Adjudicator
Employment Standards Tribunal