

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

John Zedi
("Zedi")

and

Canadian Habitat International Inc.
("Canadian Habitat")

-of a Determination issued by-

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 96/445

BC EST # D308/96

DATE OF DECISION: October 29th, 1996

DECISION

OVERVIEW

This is an appeal brought by John Zedi (“Zedi”) and Canadian Habitat International Inc. (“Canadian Habitat”) pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination No. CDET 003320 issued by the Director of Employment Standards (the “Director”) on July 15th, 1996. The Director determined that Zedi and Canadian Habitat had failed to produce payroll records as demanded and, accordingly, issued a Determination in the amount of \$500 made payable to the Director of Employment Standards.

Zedi’s appeal is based on the grounds that, *inter alia*, he was not an “employer” under the Act. Zedi also takes issue with certain findings of fact set out in the Reason Schedule appended to the Determination. Canadian Habitat’s appeal is based, *inter alia*, on the assertion that it was never served with a demand for production of payroll records.

FACTS

Apparently, one Joso Banden, on or about March 18th 1996, filed a complaint under the Act against “Zedi, Canadian Homes International and/or Integral Construction”. The complaint alleged that Zedi et al. owed Banden certain unpaid wages. Banden and others were contracted to construct three homes in Osaka, Japan and to assist as “instructors” so that their skills could be passed on to other local workers employed by the Hana Corporation in Japan.

On May 7th, 1996, Dave MacKinnon, acting as an authorized representative of the Director, issued a “Demand for Employer Records” (the “Demand”) to:

John Zedi operating Canadian Homes International Inc, Integral Construction Co, Inc.[sic]
Registered & Records office 43810 Chilliwack Mtn. Rd. Sardis BC V2R 1A9
#311 - 5250 Victory Street
Burnaby BC
V5H 5H2

The Demand was made pursuant to section 85 of the Act and asked for employment records relating to five individuals (including Joso Banden) dating from “March

1994 to Present”. The Demand stated that the Records were to be delivered to the Burnaby office of the Employment Standards Branch on or before 4:30 P.M. on May 24th, 1996.

According to the Reason Schedule, the Demand was served on Koichi “Ted” Sakata of Bellevue, Washington, U.S.A. and Zedi and mailed to the Registered offices of Integral Construction Inc., Zedi Construction Company Inc. and Canadian Homes International Inc.

Mr. Sakata acknowledged receipt of the Demand in a letter dated May 13th, 1996 addressed to Mr. MacKinnon. In this letter, Mr. Sakata alleged that his company, Superwood Corp., had a contract with Zedi and Canadian Homes International for the construction of certain houses but that Zedi and Canadian Homes International, not Superwood, would have hired the five individuals in question. Mr. Sakata stated that neither he nor his firm had any payroll or other records regarding the five individuals.

Mr. MacKinnon states in the Reason Schedule that at 11:10 A.M. on June 21st, 1996 he attended at No. 311-5250 Victory Street in Burnaby, B.C. and “jammed the May 7, 1996 [Demand] under the door”; Mr. MacKinnon also says that he spoke with a “Jo Anne” over the intercom and that she provided a cellular telephone number for Mr. Zedi. On June 25th, 1996, a fax was sent to Mr. Stuart Moir, the solicitor for Zedi and Canadian Habitat, advising that:

- the Demand had been served on Zedi by certified mail (May 7th, 1996);
- the Demand was served “in person” on June 21, 1996 at 11:10 A.M.; and
- that the final production deadline was extended to 4:30 P.M. June 26th, 1996.

Apparently, no payroll records have ever been produced with respect to the five individuals named in the Demand.

ANALYSIS

Pursuant to section 28 of the Act, an employer is obliged to maintain certain payroll records. Pursuant to section 85 of the Act, the Director may require an employer to produce such records for inspection. Section 46 of the ESA Regulation provides that when records are required to be produced, the records must be produced “as

and when required”. Section 28(a) of the Regulation establishes a \$500 monetary penalty for failing to produce payroll records as demanded.

In this case, the Demand is directed to John Zedi, Canadian Homes International Inc. and Integral Construction Co. Inc. The latter firm is no longer in existence, apparently having been struck from the Register of Companies on November 12th, 1993 for failing to file annual reports. Thus, the Demand was issued, in the case of Integral, against a nullity. It would also appear that Canadian Homes International Inc. is an unrelated third party in these proceedings. This company, whose sole director is one William Kerkoff, does not appear to have any contractual or other relationship with any of the parties to the current dispute. Indeed, Canadian Homes International Inc., has taken some steps to ensure that Zedi does not trade under its name.

I note that the four contractual agreements respecting the construction of the three Osaka homes are between Superwood Corporation (of Bellevue, Washington) and Canadian Homes International rather than Canadian Homes International *Inc.* The former name is not a proper corporate name as it does not include one of “Limited”, “Corporation”, “Incorporated” or, the appropriate abbreviation, in the name--this is a requirement of any company registered under the B.C. *Company Act* (section 16).

It would appear that at some point Zedi caused a limited liability company to be incorporated under the name “Canadian Habitat International Inc.” however, this particular entity is *not* named in the Demand. Nor is Canadian Habitat a successor company to either of Canadian Homes International Inc. or Integral Construction Co. Inc. Accordingly, the Determination must be cancelled with respect to Canadian Habitat for the simple reason that this firm has never, so far as I can gather, been served with a demand for production of payroll records.

However, with respect to Zedi, I am satisfied that the Determination was properly issued. First, I do not accept, as alleged by Zedi’s legal counsel, that the Act does not apply here. While the employment contracts at issue may have been *performed* outside the province of British Columbia (in Japan), it would appear that the employment contracts themselves were *negotiated* in B.C. and thus subject to the Act. I am fortified in this conclusion by Zedi’s own contract with Superwood dated January 16th, 1996 which provides, in part (para. 1), that “Canadian Homes employs or otherwise has contracts with certain labourers (sic) who have [home building skills] and are willing to provide the labor for instruction in the methods of construction of the homes in Japan.” (emphasis added) This document is signed

by Zedi as President of Canadian Homes International--as I have already indicated, this firm cannot be considered a proper corporate entity and thus Zedi was, in effect, contracting as a proprietor.

Second, Although Zedi was not “served in person” [section 122(1)(a)], I am satisfied that Zedi was served with the Demand in accordance with section 122(1)(b) of the Act and that the Demand was also served on Mr. Zedi’s authorized agent, namely, his solicitor, on June 25th, 1996.

Third, I am satisfied that no payroll records were produced, in a timely manner, or at all, pursuant to the Demand.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 003320 be confirmed with respect to John Zedi and cancelled with respect to Canadian Habitat International Inc.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal