

An appeal

- by -

Tsunehisa (“Rocky”) Iida operating as Ohtako  
(the “Appellant”)

- 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:** Ib S. Petersen

**FILE No.:** 2003/42

**DATE OF DECISION:** December 2, 2003

## DECISION

### SUBMISSIONS

Rocky Iida	on behalf of himself
None	on behalf of Nagano Trading Inc. (“Nagano”)
Jim Ross	on behalf of the Director of Employment Standards

### OVERVIEW

This decision is the result of a second referral back to the Director which, in turn, was the result of an appeal by Mr. Tsunehisa (“Rocky”) Iida and Ms. Franchine Melger, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on November 22, 2002.

Ms. Chow worked at Ohtako, a restaurant, from April 25 to June 1, 2002 as a cashier. The business apparently ceased to operate at that time and Chow remains unpaid for the last pay period. The Determination concluded that Chow was owed \$816.82 by Tsunehisa Iida operating as Ohtako; Francine Melger operating as Ohtako; and Nagano Trading Inc. operating as Ohtako.

When the Determination came before me, the key issue was the identity of the Employer and that the Delegate had not identified the employer. At the first referral back, it was apparent to me is that the Delegate still did not do that. The first report suggested that the employer were two entities: “Rocky Iida operating as Ohtako; Nagano Trading Inc. operating as Ohtako” (see *Tsunehisa Iida operating as Ohtako et al.*, BCEST #D078/03)

With considerable reluctance, I decided in (*Tsunehisa Iida operating as Ohtako et al.*, BCEST #201/03):

“to refer the matter of the identity of the employer back to the Director again; this time, however, on the conditions that the referral back be undertaken by another delegate and that it be done expeditiously.”

I am concerned that the Delegate did not comply with the order. Rather, in consultation with his “regional manager ... it was decided that another officer need not be involved.” In my view that is improper.

Despite this, in order to bring finality to this matter--considering the relatively small amount at stake, the delay, and the resources already expended at the Tribunal and elsewhere--I have reluctantly decided to uphold the Delegate’s conclusion that the employer is Nagano Trading Inc. operating as Ohtako. This is not to be taken as an endorsement of the Delegate’s analysis, which is not entirely clear to me, focussed as it is on Tsunehisa (Rocky) Iida and his relationship with Nagano, and which could well be read to suggest that he in combination with Nagano was the employer here. Based on the material on file and referred to in the Delegate’s report--including the fact that Ms. Chow’s Record of Employment and pay cheque were issued by Nagano--it does not seem unreasonable that that entity is the employer.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination, dated November 22, 2002, be confirmed against Nagano Trading Inc. operating as Ohtako.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**