

**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-

Gary Wirth  
("Wirth")

and

Janet Wirth

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/301

**DATE OF DECISION:** July 10th, 1998

## DECISION

### OVERVIEW

I have two appeals before me, both of which are purportedly brought pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on April 21st, 1998 under file number ER 27-40 (the “Determination”). Janet Wirth’s appeal was filed with the Tribunal on May 15th 1998; Gary Wirth’s appeal was filed on June 22nd, 1998. The latter appeal was filed well beyond the statutory time limit for filing such an appeal [see section 112(2) of the *Act*], but it may be that Mrs. Wirth intended to appeal on behalf of her husband, in which case Mr. Wirth's appeal would not be time-barred. In any event, given my decision on the merits of Mr. Wirth’s appeal, the question of timeliness of the appeal is not material.

The Director’s delegate dismissed a complaint brought by the appellant Gary Wirth for compensation for length of service holding that the employer, Liquidation World Inc. (the “employer”), had “just cause” under section 63(3)(c) of the *Act* to lawfully terminate Wirth’s employment.

While Gary Wirth’s status to file an appeal is clear and obvious, the same cannot be said for his wife, Janet Wirth. Mrs. Wirth appears to take issue with the delegate’s finding that her husband, Gary Wirth, was in a conflict of interest by reason of engaging in certain business activities with Mrs. Wirth’s company, Jalyn Services & Decor Ltd., contrary to the employer’s policy.

Mrs. Wirth, although perhaps understandably upset about having been drawn into the employment dispute between her husband and his employer, nonetheless was not an original complainant (indeed, she had no status to file a complaint) and she has no status to file an appeal, in her own right, with respect to the Determination now before me. Accordingly, the appeal of Janet Wirth is hereby dismissed pursuant to section 114(1)(b) and (c) of the *Act*.

### ISSUE TO BE DECIDED

Did the Director’s delegate err in determining that the employer had just cause to terminate Wirth’s employment?

### FACTS AND ANALYSIS

According to the facts set out in Wirth’s original complaint and the Determination, he was employed as a store manager (North Vancouver store) with the employer from October 1st, 1995 until his termination on or about August 10th, 1997, effective August 20th, 1997, allegedly for cause.

The employer alleged that Wirth was in a “conflict of interest” by reason of certain business dealings between Wirth (in his position as store manager) and his wife’s company, Jalyn Services & Decor Ltd. (“Jalyn”). The employer has a written policy regarding “conflict of interest” that includes the following provisions:

“While employed by the Company during normal business hours, you must devote the entire work time, your ability and attention, to the business of the Company. During the period of employment by the Company, you will not, without the Company’s prior written consent, directly or indirectly engage in any employment, consulting or any other activity which would conflict with your employment obligations to the Company. If you accept outside employment while employed by Liquidation World, you are required to notify your immediate Supervisor, in writing.

In order to protect and enhance the Company’s reputation, and maintain the satisfaction each Associate has in being associated with the Company, Liquidation World requires that all Associates adhere to the highest standards of ethical behaviour in their business contacts and relationships. All references to Associates include their families.

(Liquidation World policy manual, Article 220 - Dedication of Services and Ethics)

You may not hold any financial interest, directly or indirectly, in any organization from which the Company purchases merchandise, supplies, services, or who has any contractual or business relationship with the Company without written acknowledgement and approval from Home Office.”

(Liquidation World policy manual, Article 230, para. 3 - Standards of Conduct)

The employer’s August 27th, 1997 letter of termination referred to, *inter alia*, business transactions between Jalyn and the employer involving in excess of \$50,000. The employer asserted that these transactions were undertaken in the absence of any express knowledge and concomitant written consent vis-à-vis the relationship between Jalyn and Wirth.

In the material filed by Wirth in support of his appeal, he concedes that there were a number of transactions between the employer and Jalyn, dating from April 1996, which resulted in the latter firm--his wife’s company--being paid some \$30,000 as its share of the sales revenues (the employer retained 40% of the revenues). There is nothing in the material before me upon which I could reasonably conclude that these transactions had the proper written approval, given after full and complete disclosure, of the employer as required by the above-quoted provisions in the employer’s policy manual.

Wirth says that these transactions were conducted pursuant to a signed agreement between Jalyn and the employer. That may well be so; it is also entirely beside the point. The employer had a right to know, and Wirth had a duty to inform his employer, that the Jalyn firm was, in essence, his wife’s company.

I entirely agree with the delegate's finding that Wirth was in a very significant conflict of interest arising from the business dealings between the employer and Jalyn (dealings that were facilitated by Wirth himself through his position as store manager) and that his failure to disclose that conflict of interest--in violation of a clearly worded company policy--was of such a fundamental nature that the employer had just cause to terminate his employment.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

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