

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 -

Platinum Marketing Inc.

And

Global International Marketing Inc.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/427

DATE OF DECISION: August 12, 1997

DECISION

OVERVIEW

This is an appeal by Platinum Marketing Inc. And Global International Marketing Inc., under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards on May 14, 1997. The Determination imposed a penalty of \$500.00 due to a finding that employment records were not delivered to the Director’s delegate, in contravention of Section 46 of the *Employment Standards Regulation*. The Determination also contained a finding that the two companies were associated corporations pursuant to Section 95 of the *Act*.

I have made this decision following a review and analysis of the Determination and the written submissions to the Tribunal.

ISSUE TO BE DECIDED

Should the Determination be cancelled, varied or confirmed?

FACTS

A “Demand for Employer Records” was delivered by hand by the Director’s delegate on April 25, 1997. It was addressed to:

Platinum Marketing and Global International Marketing Inc.
Associated Companies under Section 95 for the purposes of this Act
607 Columbia Street
New Westminster, BC
V3M 1A7

The Demand required production and delivery of the following employment records (by May 5, 1997) for “...all employees, including trainees, who have worked or earned wages from March 15, 1997 to the present date”:

1. all records relating to wages, hours of work, and conditions of employment.
2. all records an employer is required to keep pursuant to Part 3 of the *Employment Standards Act* and Part 8 , Section 46 & 47 of the *Employment Standards Act Regulation*.

The appeal dated May 26, 1997 shows Global International Marketing Inc. as the appellant and is signed by Pete Coumans. One of the reasons given for the appeal is that Platinum Marketing Inc. is not associated with Global International Marketing Inc. Another reason for the appeal is that "...records as requested were delivered as requested."

Upon receipt of the appeal, the Tribunal requested the Director to provide any additional relevant documents. All documents which were submitted by the Director's delegate were forwarded to Platinum and Global with a requirement that any reply must be sent to the Tribunal by August 7, 1997. The Tribunal did not receive any reply submission.

The Director's delegate submitted to the Tribunal a copy of "BC Online: Companies - Corporation Search" reports for Global International Marketing Inc. And Platinum Marketing Inc. He also submitted a copy of "documents provided...in response to the Demand."

ANALYSIS

Section 95 of the *Act* states:

Associated corporations

95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and
 - (b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

Clearly, Section 95 gives the Director (or her delegate) the discretionary power to treat associated corporations as one entity for purposes of the *Act*. However, one of the requirements of Section 95 is that there be "common control or direction."

The Demand makes a finding that the two companies are associated companies but contains no reason for or explanation of that finding.

Section 81(1)(a) of the *Act* requires that a determination must include the reasons for the determination. As noted, no reasons are given by the Director's delegate for associating the companies under Section 95.

When I review the company search documents provided by the Director's delegate I am unable to conclude that there is common control or direction of the two companies. The sole director of Global International Marketing Inc. is Pete Coumans of Westbank, BC. The sole director of Platinum Marketing Inc. is Noreen Kant of Kelowna, BC. Each company has a different address as its registered office. Furthermore, the Director's delegate offers no explanation of the documents which he submitted to the Tribunal.

A recent decision of the Tribunal (*Monchelsea Investments Limited*: BC EST #D315/97) described the Director's powers as follows:

Section 85 of the *Act* provides the Director with broad powers of entry and inspection. A combination of Sections 28 and 46 of the *Regulation* provide for a penalty if a third party does not "produce or deliver records to the Director ... as and when required" (Section 46 of the *Regulation*).

These are onerous provisions. In my view in order to rely on these provision the Director must have reasonable grounds to issue a Demand and he must act within established procedure.

I agree with that analysis. When I review the Determination and the related documents which have been submitted to the Tribunal, I am unable to conclude that the Director's delegate had reasonable grounds to issue the Demand or the Determination. I reach that conclusion because I can find no ground on which to conclude that the two companies are under common control or direction.

ORDER

I order, under Section 115 of the *Act*, that the Determination be cancelled.

Geoffrey Crampton
Chair
Employment Standards Tribunal