

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-

The Spa at the Chateau Whistler Ltd.

(“The Spa”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	1999/479
DATE OF DECISION:	September 30, 1999

DECISION

OVERVIEW

This is an appeal brought by The Spa at the Chateau Whistler Ltd. (“The Spa”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 8th, 1999 under file number ER87-387 (the “Determination”).

On May 7th, 1999 the Director issued a determination against All Seasons Spa Ltd. (“All Seasons”) pursuant to which All Seasons was held liable for \$15,728.94 in unpaid wages owed to its former employee, Judy Shaw (“Shaw”). All Seasons is defunct as an operating entity and apparently has now been dissolved.

The Determination now before me was issued against The Spa on the basis that this latter firm was “associated” with All Seasons (see section 95 of the *Act*) and thus “jointly and separately liable” for Shaw’s unpaid wages or, alternatively, because The Spa was a “successor” (see section 97 of the *Act*) to All Seasons it was obliged to honour Shaw’s unpaid wage claim.

ISSUES TO BE DECIDED

The Spa appeals the Determination on a variety of grounds all of which may be encapsulated as follows:

- the delegate did not carry out a complete and unbiased investigation; and
- the delegate erred in concluding that The Spa was associated with, or was a successor to, All Seasons.

FACTS AND ANALYSIS

The Spa, although requested to do so, has not provided further particulars and/or documents to substantiate its submission that the Determination be cancelled. I note that prior to issuance of the Determination, the delegate wrote to The Spa’s legal counsel and requested a written submission by no later than July 4th, 1999 but no such submission was ever delivered. In light of the foregoing, I cannot conclude that The Spa was denied a reasonable opportunity to respond to the matter under investigation (see section 77 of the *Act*). Further, there is not a shred of evidence to suggest that the delegate’s investigation was tainted by bias.

The sum of the material submitted by The Spa in support of its appeal is a series of wholly unsupported allegations. Given the dearth of evidence provided by the appellant, one could reasonably conclude that this appeal ought to be dismissed as, in effect, abandoned. In any appeal to the Tribunal, the onus is on the appellant to show that the Determination ought to be varied or cancelled and a series of bald and unsubstantiated assertions that the delegate erred in some fashion--particularly as to her findings of fact--does not, in my view, raise even a *prima facie* case in favour of the appellant.

In any event, I am satisfied *on the evidence before me* that the delegate did not err as alleged by The Spa. In my view, one can reasonably infer from the following uncontroverted facts that The Spa and All Seasons were, at all material times, “associated corporations” as defined by section 95 of the *Act* and/or that The Spa was a “successor” to All Seasons as defined by section 97 of the *Act*:

- The Spa offers essentially the identical services that were formerly offered by All Seasons, namely, massage and other “bodywork” treatments;
- All Seasons formerly operated out of premises situated in the Chateau Whistler hotel in Whistler, B.C., the same hotel where the operations of the The Spa are now located;
- The Spa now uses the identical “Reservation and Inquiry” telephone number formerly assigned to All Seasons;
- All Seasons was incorporated on September 7th, 1993 and has only two principals--Sandra Rathwell (president) and Colleen Wight (secretary) both of whom are directors. The Spa was incorporated (under another name) on December 1st, 1995 and, as of the date of the issuance of the Determination, the Registrar of Company’s records indicated that it had but one officer, namely, Ms. Rathwell (president/secretary) who was also one of three directors. Both firms have the same registered and records office.

I note that The Spa has not provided any documentation with respect to its purchase of All Seasons’ business operations and thus I cannot determine whether or not Shaw’s employment with All Seasons was terminated prior to the sale. I draw an adverse inference from The Spa’s failure to provide any documents relating to the purchase of All Seasons’ assets by The Spa. Further, and in any event, the unpaid wages owed to Shaw encumbered--by way of a statutory lien--all All Seasons’ assets that were acquired by The Spa [see section 87 of the *Act* and *Helping Hands Agency Ltd. v. B.C.* (1995) 131 D.L.R. (4th) 336 (B.C.C.A.)] and thus the Director remains entitled to claim against such assets now owned by The Spa in order to secure payment of Ms. Shaw’s unpaid wages.

The Spa could have ensured (but apparently did not) that the unpaid wage claims of All Seasons’ employees (including Ms. Shaw) were satisfied prior to the closing of the asset purchase and sale. If The Spa determined that there were valid and subsisting unpaid wage claims, it could have arranged for those claims to be paid out at closing from the monies otherwise due to All Seasons. Having, apparently, failed to deal with Ms. Shaw’s unpaid wage claim, it must now bear the legal responsibility for satisfying that claim.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination be confirmed as issued in the amount of **\$15,728.94** together with whatever additional interest that may have accrued, pursuant to 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal