

BC EST #D391/98

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 -

514536 BC Ltd.
operating as National Loans
(the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/398

HEARING DATE: August 31, 1998

DECISION DATE: September 1, 1998

DECISION

APPEARANCES/SUBMISSIONS

Mr. Gareth Davies on behalf of himself

Ms. Tracey Frisby on behalf of herself

Mr. Dave McKinnon on behalf of the Director of Employment Standards

ANALYSIS AND DECISION

This is an appeal by Gareth Davies (“Davies”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on May 20, 1998 which found that Tracey Frisby (“Frisby”) was entitled to \$11,476.47 on account of unpaid wages. The Determination was issued against the Employer. Davies is a former shareholder, director and officer of the Employer. He is not an authorized agent for the Employer with respect to this appeal. I note, in passing, that the Employer has not filed an appeal.

Davies questions the amount owing to Frisby. Among other things he suggests that the relationship between himself and Frisby was akin to a common law marriage and that Frisby was more like an owner of the business. (It is not in dispute that Davies was the sole shareholder, director and officer at the material time). Moreover, he suggests that some of Frisby’s personal expenses--it appears that some of these were household expenses for Davies and Frisby--were paid out of the Employer’s accounts.

The Tribunal held a hearing on August 31, 1998. At that time, the delegate made motion to dismiss the appeal summarily based on the failure of the Employer and Davies to participate in the investigation. The delegate had given advance notice of his intention to seek a summary dismissal of the appeal. In a submission, dated June 29, 1998, he stated:

“We support our application for dismissal as follows:

1. October 17 1997 a demand for employer records was issued to the business address and the Registered and Records office. The request was sent via certified mail .. and acknowledged received on October 22 1997. November 3 1997 a request for extension of time for delivery of records was received and granted to November 14 1997

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2. February 24 a notice of fact Finding Conference on March 17 1998 was sent to the Registered and Records office. ...

3. April 8 1998 a calculation sheet and request for payment was served on the Registered and Records office. The April 8 letter contained prominent notification to provide a written submission on or before April 22 1998 or payment on or before May 1 1998. The notice was sent Certified Mail ... and acknowledged received on April 14 1998”

Davies does not dispute this. He agrees that the documents were sent to, and received by, the registered and records office, which I understand to be the law firm which incorporated the Employer, and agrees that he--personally--received documents from that office at some point. He also agrees that he was aware of the claim but hoped Frisby, because of the nature of their past relationship, would withdraw it before it went “too far”.

I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, and numerous other cases, that the Tribunal will not allow an appellant who refuses to participate in the Director’s investigation, to file an appeal on the merits of the Determination. Davies now seeks to question the amounts owing to Frisby. While I can appreciate the difficulties--emotional, financial and otherwise--of the circumstances Davies now finds himself in, the matters could have been addressed during the investigation. In my view, the Employer refused to participate in the investigation and, in the result, the appeal must fail.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated May 20, 1998 be confirmed in the amount of \$11,476.47 together with such interest as may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal