

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 -

Sandra Cagliuso, a Director/Officer of Group 8
Development Corp.
("Cagliuso")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Paul E. Love
File No.: 98/524
Date of Decision: October 5, 1998

DECISION

OVERVIEW

This is an appeal by Ms. Cagliuso of a Director's Determination dated July 15, 1998 imposing liability on her, as a corporate officer or director, for the sum of \$847.65 in wages due and owing by Group of Eight Development Corporation ("Group of Eight") to Gene Grzesiuk (the "employee"). The corporate employer did not participate in the investigation and did not appeal the Determination issued against the corporate employer. The undisputed evidence was that Ms. Cagliuso was an officer or director of Group of Eight.

ISSUES TO BE DECIDED

Did the Director's delegate decide correctly that Ms. Cagliuso should be liable for the wages owing?

FACTS

The Director's delegate issued a Determination against a company, Group of Eight Development Corporation with regard to wages owing to Gene Grzesiuk. The employer has not paid the amount owing in the Determination or disputed the Determination.

The Director's delegate conducted a search of the records of the Companies officer and determined that Sandra Cagliuso, the appellant herein, was a director of the employer at the time that the wages were earned.

Ms. Cagliuso does not dispute that she was a director of the employer. She alleges that Gene Grzesiuk was not an employee and she told him to file a lien against lands. She also indicates that she did not had an opportunity to participate in the investigation.

In the written submission of the Director's delegate, the delegate sets out the sequence of events in his investigation, including the attempts to contact Cagliuso. I quote from the Director's submission as follows:

May 12 - 1998 - sent letter to Group of Eight Development Corp. - advising of complaint and requesting information. No response was received from the company in reply to this letter.

May 28, 1998 a telephone message was left on the companies answering machine asking them to call me. (sic)

May 29, 1998 - a Demand for Employer Records was sent by certified mail to the company requesting information regarding the complaint. Ms. Cagliuso signed for the registered mail on June 10, 1998. No response was received by Ms. Cagliuso with regard to the Demand nor were records sent in as requested.

June 18, 1998 - Corporate Determination issued and sent out by certified mail. Again Ms. Cagliuso signed for the certified mail on July 8, 1998. Once again there was no response with regard to the Corporate Determination.

June 18, 1998 - Corporate Penalty Determination sent out in the same certified mail pouch as the Corporate Determination. No response to the Penalty Determination.

July 15, 1998 - Director/Officer Determinations sent out by certified mail.

July 15, 1998 - Director/Officer Penalty Determination sent out in the same certified mail pouch as the corporate Determination.

The Demand for Records and Corporate Determination was served by mail and service was proven by way of an acknowledgement of receipt card.

In the absence of any records or participation by Ms. Cagliuso or Group of 8 the Director's delegate relied on the evidence of the employee and issued the corporate Determination.

ANALYSIS

It is apparent from the submission of the Director's delegate, which I accept, that Ms. Cagliuso had an ample opportunity to participate in the investigation. I reject her assertion that she did not have an opportunity to make her case. It is well established that this Tribunal will not permit an employer or director or officer of an employer to sit in the weeds, fail to participate in an investigation and then advance a story at the Tribunal hearing or submissions before the Tribunal: Tri-west Tractor Ltd., BC EST #D 286/96 . In any event, it is my view that the corporate employer did not dispute the finding of liability to pay wages. This issue of the employer's obligation to pay wages is, therefore, *res judicata* or determined.

There is no dispute that Ms. Cagliuso was an officer of the employer at the relevant time.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated July 15, 1998 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal