

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.: 98/532
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 a penalty of \$500.00 for failure to supply records concerning an employee. Ms. Cagliuso was an officer or Director of a corporate employer. The Director's delegate gave a clear and unambiguous set of reasons for the imposition of the penalty, which was fixed by the *Regulations* at \$500.00. Liability for the penalty was imposed on Ms. Cagliuso pursuant to section 96 of the *Regulations*.

ISSUES TO BE DECIDED

Did the Director's delegate decide correctly that Ms. Cagliuso should pay a penalty of \$500.00?

FACTS

During an investigation conducted by a Director's delegate, the delegate issued a demand for records pursuant to section 85(1)(f) of the *Act*, concerning an employee, Gene Grzesiuk, of Group of 8 Development Corp. ("Group of 8"). Ms. Cagliuso was a director of Group of 8. In her appeal submission, Ms. Cagliuso submits that she was not given an opportunity to defend herself, and an opportunity to prove that Gene Grzesiuk was not an employee.

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 argument 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 agin 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.

The Director's delegate, imposed a \$500 penalty noting that every officer or director of a corporation who authorizes, permits or acquiesces in a contravention of the act is liable to the penalty.

The Director's delegate issued a penalty of \$500, pursuant to section 28(b) of the *Regulation*, for the employer's contravention of section 46 of the *Regulations*.

ANALYSIS

It is clear that the employer, Group of 8, and its director Cagliuso did not produce the records sought. This matter did not catch the attention of Ms. Cagliuso until the Determinations were made against her as an officer or director of the employer. In the appeal documents filed Ms. Cagliuso does not dispute that she was an officer or director of Group 8. She does not advance any reason for her failure to respond to the Demands for Information.

The Director's delegate, clearly had the authority, pursuant to section 46 of the *Regulation* and section 85 of the *Act*, to demand production of the records sought. The employer clearly violated section 28 of the *Act*, and also section 46 of the *Regulations*.

Ms. Cagliuso has not advanced any cogent argument as to why the Director's delegate erred in the imposition of the penalty.

In my view, the Director did exercise her discretion with regard to the facts of the case. The amount of the penalty is specified as \$500.00 in section 28 of the *Regulations*. I therefore uphold the penalty.

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