

An appeal

- by -

Bernard Viel also known as Bernard J.M. Viel also known as Bernard Joseph
Marc Viel, a Director or Officer of Local Pages Directory Inc.

("Viel")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: April D. Katz

FILE No.: 2002/210

DATE OF DECISION: October 17, 2002

DECISION

OVERVIEW

This is an appeal filed by Bernard Viel (“Viel”) pursuant to section 112 of the *Employment Standards Act* (“Act”). On December 12, 2001 a Determination was issued by the Director of Employment Standards (“Director”) which found that Local Pages Directory Inc. owed Connie Chim \$601.35. Local Pages Directory Inc. was the named employer and Viel was the sole Director and President/Secretary of Local Pages Directory Inc. On March 26, 2002 the Director issued a Determination naming Viel as a Director or Officer of Local Pages Directory Inc. and finding him liable for the wages owed. On April 18, 2002 Viel filed this appeal. This appeal proceeded by written submissions.

ISSUE

Did the Director err in finding that Viel was a director or officer of Local Pages Directory Inc. or that he owed \$601.35 as a result of the Determination issued against Local Pages Directory Inc.?

ARGUMENT

In his appeal Viel, as President of Local Pages Directory Inc., argued that Connie Chin entered into an agency contract not an employment relationship with Local Pages Directory Inc.. He argued that the Determination should be cancelled based on the merits of the findings against Local Pages Directory Inc. Viel argued that the Director has accepted this interpretation of the same contractual relationship on two other occasions and should have accepted that Connie Chin was a business, which operated independently and she was not in an employment relationship.

The Director’s Delegate argued that Viel did not dispute that he was a director or officer of Local Pages Directory Inc. or the calculation of the amount owed set out in the Determination. The Director argued there was no basis for the appeal and therefore asked that the Determination be confirmed.

FACTS

1. On July 26, 1999 Connie Chim doing business as CC Marketing Consultant entered into a Local Pages Independent Authorized Agent Agreement with Local Pages Directory Inc. The Director found she was employed until July 2000.
2. Bernard Viel is and was an officer and director of Local Pages Directory Inc. throughout the period covered by this complaint and appeal.
3. Connie Chin filed a complaint with the Director of Employment Standards, which resulted in a Determination being issued on December 12, 2001.
4. On February 16, 2001 Bernard Viel, in his capacity as President, of Local Pages Directory Inc. wrote a 5 page letter to the Employment Standards Officer arguing that Connie Chin was not an employee but an independent contractor of Local Pages Directory Inc.

5. After receiving the letter the Director issued the Determination finding she had jurisdiction and that Connie Chin was an employee.
6. Local Pages Directory Inc. did not appeal the Determination issued on December 12, 2001.
7. Local Pages Directory Inc. did not pay the amount ordered by the Director in the Determination.
8. The Director issued a Determination finding that Bernard Viel was director or officer of Local Pages Directory Inc. during the period of the complaint and therefore liable to pay Connie Chin \$ 601.35, the equivalent of two months wages.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal, in this situation, Bernard Viel.

Section 96 (1) of the *Act* sets out a director's or officer's liability under the *Act*. The section reads as follows.

Liability resulting from length of service

96. (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months unpaid wages for each employee.

From this section a director or officer may raise one or both of two grounds for appeal. The grounds may be that the person was not a director or officer at the relevant time or that the amount calculated to be owing was incorrectly calculated. Neither of these grounds was raised in Viel's argument. In his appeal documents, Viel confirmed he was the President of Local Pages Directory Inc.. No issue was raised about the amount owing, just the fact that the Director found any amount owing.

The question of the status of Connie Chin as an employee could have been considered on an appeal from Local Pages Directory Inc. within the appeal period, i.e. before January 4, 2002. The company did not appeal. The issue had been argued and the Determination found that the complaint was substantiated. Viel may not argue the merits of the Director's Determination in December 2001 on this appeal. That issue was closed when the company failed to appeal by January 4, 2002.

CONCLUSION

Based on the submissions made there is no evidence to support the appeal. The Determination is therefore confirmed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated March 26, 2002 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal