

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Yukiya Murata, Director/Officer of Pet Station Animal Care Ltd., and
Natsumi Murata, Director/Officer of Pet Station Animal Care Ltd.
("Y. Murata") and ("N. Murata")

- of two Determinations issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Michelle Alman

FILES Nos.: 2000/576 and 2000/633

DATE OF DECISION: December 8, 2000

DECISION

OVERVIEW

This decision addresses appeals filed pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Yukiya Murata (“Y. Murata”) and Natsumi Murata (“N. Murata”) from Determinations issued against them individually on August 17, 2000 by a delegate of the Director of Employment Standards (“the Director”). The Determinations found Y. Murata and N. Murata liable as directors or officers of Pet Station Animal Care Ltd. (“Pet Station” or “the Company”), pursuant to s. 96 of the *Act*, for two months’ wages owing to Melody Rennie (“Rennie”). A Determination issued March 20, 2000 found Pet Station liable to Rennie for wages and vacation pay, plus interest to that date, in the amount of \$2,727.37. Pet Station appealed, but its appeal was dismissed. The Director’s delegate issued the two Director Determinations which are the subject of these appeals when Pet Station failed to pay the amount of the Corporate Determination.

Y. Murata made written appeal submissions on behalf of himself and N. Murata on the issue of whether or not he and N. Murata were directors or officers of the Company at the time relevant to Rennie’s complaint. The Director’s delegate made no significant submission in reply.

ISSUE

The issue is whether Y. Murata and N. Murata were directors or officers of Pet Station at the time of Rennie’s employment with Pet Station.

THE FACTS AND ANALYSIS

Pet Station is an enterprise incorporated in British Columbia on September 24, 1998. Rennie was employed between December 16, 1998 and March 8, 1999 by Pet Station. The Corporate Determination issued against the Company on March 20, 2000 found that Pet Station had failed to pay Rennie at least the minimum wage and vacation pay for hours worked, and had failed to pay her the monies owing to her within 48 hours of having terminated her employment.

Pet Station appealed from the Corporate Determination and lost. The Company never paid the amount owing on the Corporate Determination, so the Director’s delegate issued identical Director Determinations for two months’ wages in the amount of \$1,777.16 each against Y. Murata and N. Murata on August 17, 2000. In those Determinations, the Director’s delegate relies on a Corporate Registry search of information on Pet Station conducted on an unspecified date. No copy of the search was provided. The search revealed the date of Pet Station’s incorporation and listed Y. Murata and N. Murata as Company directors. The Director’s delegate apparently presumed that Y. Murata and N. Murata were directors from the date of the Company’s incorporation, although on-line corporate searches do not give the dates on which a listed director began his or her service. Because the date of a listed director’s commencement of responsibility is not included in the on-line search, due diligence requires further investigation, for example by asking the directors of a company to provide copies of the company’s register of

directors. This document, which s. 116 of the *Company Act* requires every company to keep at its Records Office, maintains information concerning the dates on which company directors were appointed and ceased to hold office as directors. Here, the Director's delegate gave no information of any efforts to obtain further information from Y. Murata and N. Murata subsequent to his conducting of the on-line corporate search.

The decisions of the Tribunal in *Kerry Steinemann*, BC EST #D180/96, and *Perfekto Mondo Bistro Corporation*, BC EST #D205/96, make it clear that where a Corporate Determination appeal is not filed (or is unsuccessful), the only issues which a director or officer may appeal are:

1. that they were not directors or officers at the material time; or
2. that the Determinations issued against them exceeded the two-month wage limit set out in section 96(1) of the *Act*.

In their appeals Y. Murata and N. Murata raise only the issue of whether they were directors or officers at the material time.

Y. Murata's Appeal

Y. Murata alleges that he was not appointed as a director of Pet Station until June 9, 1999. He provides a copy of a document entitled, "Resolutions of the Members of Pet Station Animal Care Ltd.". There are three resolutions listed, including a resolution that there be three directors of the Company, and a resolution that Y. Murata be appointed a director of the company "to hold office for the ensuing year." The document is dated "effective the 9 day of June, 1999," and is signed by three Company Members, one of which is a corporate entity called, "N & Y International Marketing Inc." ("N & Y"). Y. Murata signed the Resolutions on behalf of N & Y. He also submitted his own and N. Murata's appeal documents with correspondence on N & Y letterhead.

Y. Murata additionally submitted with his appeal a copy of a completed Notice of Directors, Form 10/11, from the British Columbia Ministry of Finance and Corporate Relations ("the Ministry"). That form is required to be filed with the Registrar of Companies pursuant to s. 113 of the *Company Act* within 14 days after the appointment or election of a director. The Notice of Directors indicates that Y. Murata was a new director of Pet Station as of June 6, 1999. The Notice was signed on that same date by "Heather E. Barnett," as a then-current director, officer or company solicitor of Pet Station, and a note on the form, initialed by "HB," indicates it was forwarded to the Registrar of Companies on June 21/99. Only three directors, Y. Murata among them, are listed on the Notice as at the date of the addition of Y. Murata as a director. This fact, taken together with the resolution that the Company's directors be three in number, leads to a strong inference that Y. Murata became a director of Pet Station on June 9, 1999. In light of the Director's delegate's minimal response to the appeal documents and lack of any information as to his having sought these documents from Y. Murata before issuing the Determination against him, I find that Y. Murata became a director of Pet Station after the end of Rennie's employment. This makes Y. Murata exempt from the liability imposed by s. 96 of the *Act*. His appeal succeeds.

N. Murata's appeal

N. Murata's appeal submissions were prepared for her by Y. Murata. They consist of identical copies of the submissions Y. Murata made on his own behalf, plus copies of two additional documents. One of those documents is another set of Resolutions of the Members of Pet Station dated "effective the 30th day of November, 1999." There are only two resolutions, one increasing the number of the Company's directors to four, the other appointing N. Murata as a director of the Company "to hold office for the ensuing year." The same three Company Members signed the November 30, 1999 resolutions.

The second document is a Notice of Directors Form 10/11 reporting to the Registrar of Companies the addition of N. Murata as a Company director on November 30, 1999. The Notice is again signed by "Heather E. Barnett" as a current director, officer or company solicitor, with a note indicating it was forwarded to the Registrar of Companies on December 17, 1999. Only four directors are listed on the Notice as at the date of the addition of N. Murata on November 30, 1999, and two of those directors are Y. Murata and N. Murata. As I said above in dealing with Y. Murata's appeal, I find the combined passing of a Company resolution to increase the number of directors to four, and the listing of only four Company directors on the notice signed November 30, 1999 to report the appointment of N. Murata on that date to lead to the strong inference that N. Murata became a Company director only on November 30, 1999. Because that date is after the end of Rennie's employment, I find that N. Murata is exempt from the liability imposed on directors under s. 96 of the Act. N. Murata's appeal also succeeds.

ORDER

Pursuant to section 115 of the *Act*, I cancel the Determinations issued against Y. Murata and N. Murata and grant their appeals.

Michelle Alman

Michelle Alman

Adjudicator

Employment Standards Tribunal

MA/bls