

An appeal

- by -

Silver Screen Talent and Entertainment Inc.  
("Silver Screen")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2002/462

**DATE OF DECISION:** November 21, 2002

## DECISION

### OVERVIEW

This is an appeal filed by Silver Screen Talent and Entertainment Inc. (“Silver Screen”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Silver Screen, a “talent agency” as defined in section 1 of the *Employment Standards Regulation*, appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on August 8th, 2002 (the “Determination”). The Director’s delegate determined that Silver Screen unlawfully deducted the sum of \$26.75 (\$25 plus \$1.75 G.S.T.) from wages paid to Mr. Gordon Scott (“Scott”) and, accordingly, issued the Determination in favour of Mr. Scott for that latter amount.

By way of a letter dated November 4th, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

### FINDINGS

As noted above, Silver Screen is a talent agency. Among other provisions, talent agencies must comply with section 38.1 of the *Employment Standards Regulation*. Section 38.1(1)(c) of the *Regulation* provides as follows:

38.1(1) A talent agency must comply with all of the following: ...

- (c) the talent agency must not charge an actor, performer, extra or technical creative film person a fee *for taking and providing photographs* of the actor, performer, extra or technical creative film person, unless the fee
    - (i) does not exceed \$25 a year, and
    - (ii) is only deducted from payment of wages received by the actor, performer, extra or technical creative film person;
- (my *italics*)

According to the material before me, Mr. Scott worked as an “extra” on a film production known as the “I Spy” project. On January 4th, 2002 Silver Screen issued Scott his first paycheque for that work and deducted the sum of \$25 (plus G.S.T.) as a “Sign fee”. As noted in the Determination (at p. 2): “Silver Screen acknowledges that \$25.00 + GST was deducted from this cheque [Scott’s January 4th cheque] for a photograph and that no photo of Scott was taken.”

The central issue in this appeal, so far as Silver Screen is concerned, relates to an altercation that apparently took place at Silver Screen’s offices on or about January 9th, 2002. This altercation--which may or may not have been precipitated by the wage deduction--resulted in a police attendance but no charges have yet been filed and, indeed, charges may never be filed.

Silver Screen’s appeal documents and submissions go on at some length about Mr. Scott’s alleged criminal behaviour, behaviour that is alleged to amount to, among other things, “assault”, “extortion”,

“fraud” and “robbery”. However, as properly determined by the delegate, the alleged events of January 9th have absolutely no bearing on whether or not Silver Screen improperly deducted the amount in question from Mr. Scott’s January 4th paycheque. Silver Screen says that Scott’s behaviour taints his complaint and that the latter is frivolous and vexatious. However, I fail to see how a meritorious complaint could be so characterized and thus, having found a contravention of section 38.1, the delegate would not have been acting judicially if she simply refused to issue a determination in Scott’s favour because of some assault allegedly perpetrated by Mr. Scott on a Silver Screen employee.

If one or more Silver Screen employees wish to pursue criminal charges or, perhaps, a civil action under the law of tort they are, of course, free to do so. However, the events of January 9th are simply not relevant to the question properly before me, namely, Silver Screen’s liability under section 38.1 of the *Regulation*. I intend to say nothing further about the alleged events of January 9th.

Turning to the matter of the wage deduction, Silver Screen apparently concedes that no photograph was taken and that the \$25 deduction ought not to have been made. It would appear that this \$25 “fee” is charged to all Silver Screen clients as a matter of course as part of its “contractual” entitlement. Of course, any such contract must comply with section 38.1 of the *Regulation*, a point that appears to have escaped Silver Screen’s attention.

Silver Screen says that it originally offered to refund the \$25 fee and credit the payment on Mr. Scott’s next cheque that would have been issued on January 18th. However, Mr. Scott refused to consider this option and thus, so far as I can determine, the refund payment was never made. Therefore, the matter ends as it began; Silver Screen improperly deducted a \$25 charge (plus GST) from Mr. Scott’s wages and a Determination was properly issued in Mr. Scott’s favour for that amount.

The appeal is dismissed.

## **ORDER**

Pursuant to subsections 114(1)(c) and 115(1)(a) of the *Act*, I order that this appeal be dismissed and that the Determination be confirmed as issued in the amount of **\$26.75**.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**