

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-

Kosta Chatzisprios

(“Chatzisprios”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/579 & 98/581

DATE OF DECISION: November 25, 1998

DECISION

OVERVIEW

On June 16th, 1998 a delegate of the Director of Employment Standards (the “Director”) issued a determination under file number 061257 against United Health Care of B.C. Inc. (“United Health”), Grosvenor Life Management Corporation (“Grosvenor”), 507701 B.C. Ltd. and 553334 B.C. Ltd. for \$435,905.05 on account of unpaid regular wages, statutory holiday pay, vacation pay, individual compensation for length of service and group termination pay owed to 64 former employees of United Health’s intermediate care facility formerly operated in Port Coquitlam, B.C. This latter facility was closed down on May 7th, 1998. I understand that United Health owns a similar facility in Chilliwack, B.C. and that this facility is under the control of a receiver-manager who was appointed by the B.C. Supreme Court on April 30th, 1998.

Although all 64 complainants were employed by United Health, all four corporations named above were found liable under the determination because all four corporations were declared to be “associated corporations” as defined in section 95 of the *Act*. Accordingly, all four firms were deemed to be “one person for purposes of the *Act*” and “jointly and separately liable” for the employees’ unpaid wages. It should be noted that United Health never contested the employees’ unpaid wage entitlement under the *Act* and, indeed, issued to each of the employees a record of employment setting out the monies owed to each employee. The wages were not paid because United Health was, and I presume still is, insolvent although it had not, at least as of June 16th, 1998, been formally placed into bankruptcy .

The deadline for appealing the June 16th determination, as set out in the determination itself, was June 24th, 1998. No appeal was filed within the appeal period or, I understand, at any other subsequent time.

The present appeal filed by Kosta Chatzispriros (“Chatzispriros”) purports to be an appeal, not only of a subsequent determination issued against him in his personal capacity as a director and officer of 553334 B.C. Ltd., but also an appeal on behalf of 553334 B.C. Ltd. of the June 16th determination. Chatzispriros, for the reasons set out below, does not have the legal status to file an appeal on behalf of 553334 B.C. Ltd. (a bankrupt firm) and even if he did have such status, the purported appeal on behalf of 553334 B.C. Ltd. was filed well outside the statutory time limit set out in section 112(2) of the *Act*. Further, in my view, this is not an appropriate case to extend the time limit for filing an appeal under section 109(1)(b) of the *Act*. Finally, as is discussed in greater detail below, I would not, in any event, conclude that the Director erred in finding that 553334 B.C. Ltd. was an “associated corporation” with the other three firms named in the June 16th determination.

On August 14th, 1998, the determination now under appeal before me, in the amount of \$121,253.56, was issued against Kosta Chatzispriros, in his capacity as a director and officer of 553334 B.C. Ltd. pursuant to section 96 of the *Act*.

On September 4th, 1998, Chatzisiros filed an appeal of this latter determination with the Tribunal. Chatzisiros, in his appeal form, asserts that the determination issued against him “is wrong due to both an error in law and in the Director's findings of fact”. Further, Chatzisiros seeks a suspension of the determination pursuant to section 113 of the *Act* pending the outcome of the appeal and, pursuant to section 114(2)(a) of the *Act*, “a reference back to the Director for further investigation of both the June 16th determination concerning the ESA s. 95 finding that 553334 was an associated corporation and the resulting August 14th determination”.

ISSUES TO BE DECIDED

These reasons for decision address only two of the various matters raised in Chatzisiros' appeal, namely:

- the request to “further investigate” the Director’s finding, embodied in the June 16th determination, that 553334 B.C. Ltd. was an “associated corporation” with the other three firms named in the June 16th determination; and
- the request to suspend the August 14th director/officer determination pending the outcome of this appeal.

The other substantive issue raised by Chatzisiros' appeal of the August 14th determination--the extent of his liability as an officer and director of 553334 B.C. Ltd.--will be addressed at a later point in time after all parties have been given an opportunity to file further submissions with the Tribunal.

FACTS AND ANALYSIS

The Request for “Further Investigation”

Section 114(2) of the *Act* provides as follows:

114 (2) Before considering an appeal, the tribunal may

- (a) refer the matter back to the director for further investigation, or
- (b) recommend that an attempt be made to settle the matter.

In my view, this section cannot be used to, in effect, revisit an entirely separate determination from the one that is presently under appeal. The request for “further investigation” is simply a thinly disguised attempt to appeal the June 16th “section 95” determination even though the time for so doing has expired [see section 112(2) of the *Act*]. The Tribunal may only resort to Section 114(2)(a) with respect to the matters addressed in the determination that is the subject of the

appeal--the section 95 designation is an entirely separate matter that was not adjudicated in the August 14th, 1998 determination that is now on appeal before me. This latter determination concerns only Chatzisprios' status as an officer or director of 553334 B.C. Ltd. and the calculation of his pecuniary liability bearing in mind the 2-month ceiling and other limitations set out in section 96.

Even if it was open to me to direct that the Director undertake further investigations as to whether or not 553334 B.C. Ltd. was "associated" with the other three firms named in the June 16th determination, I would not do so.

I note that June 16th determination was sent to the registered and records office of 553334 B.C. Ltd. as well as to Chatzisprios personally (mailed to the very same home address indicated on Chatzisprios' appeal form). The June 16th determination was also mailed to Mr. Leo Chamberland, the latter being a director, officer and shareholder of 553334 B.C. Ltd. No appeal has ever been filed by 553334 B.C. Ltd. with respect to the June 16th determination--as noted in the determination itself, the deadline for filing such an appeal was June 24th, 1998. Clearly, the company--as well as its only two officers, directors and shareholders (Chatzisprios and Chamberland)--were put on notice that if they wished to challenge the Director's section 95 declaration, at least as it related to 553334 B.C. Ltd., they had to do so by filing a timely appeal.

As noted earlier, the present appeal purports to be an appeal, not only of Chatzisprios' personal liability under the August 14th determination, but also an appeal of the Director's declaration, contained in the June 16th determination, that 553334 B.C. Ltd. was an "associated corporation" with the other three firms named in the June 16th determination. If such an appeal was properly filed--and it was not--it would nonetheless have been filed outside the statutory time limit set out in section 112(2) of the *Act*.

While the Tribunal does have the statutory discretion to extend the appeal period under section 109(1)(b) of the *Act*, this is not an appropriate case to do so. Clearly, 553334 B.C. Ltd. was properly served with the June 16th determination and yet took no action to appeal the determination until Chatzisprios filed the present appeal--an appeal, it should be noted, that is primarily concerned with his own personal liability; Chatzisprios only challenges the section 95 declaration so as to avoid his own personal liability under the August 14th determination. I might add that there is nothing in the material filed by Chatzisprios which would lead one to conclude that the section 95 determination ought to be set aside.

Once 553334 B.C. Ltd. was determined to be an associated corporation with the other three firms it became "jointly and separately liable for payment of the amount stated in [the June 16th] determination". Thus, 553334 B.C. Ltd. became indebted to the employee complainants for \$435,905.05 in unpaid wages including termination pay. In determining that 553334 B.C. Ltd. was associated with the other three firms, the Director's delegate relied on the following *uncontested* facts:

- United Health employed all employees at both the Port Coquitlam and Chilliwack intermediate care facilities;

- all employees were formerly employed by Grosvenor but their employment was “transferred” (without any interruption in employment) to United Health on or about October 15th, 1997; and
- the assets at both locations--lands, buildings and equipment--were owned by 507701 B.C. Ltd. in trust for 553334 B.C. Ltd.

This latter fact is particularly important. Section 95 of the *Act* is designed to deal with the very scenario raised by this case, namely, where the employees are employed by one corporate entity but the essential corporate assets are held by another corporate entity. Thus, but for section 95, employees would be frustrated in seeking to secure payment of their unpaid wages by reason of the corporate structure as between the nominal “employer” and the firm that holds the “operating assets”.

In addition to the above-noted facts, the corporate records of the four firms show the following interrelationships among the four firms:

<u>Company:</u>	<u>United</u>	<u>Grosvenor</u>	<u>507701</u>	<u>553334</u>
Same Registered and Records office?	YES	YES	YES	YES
Shareholders (Voting):	Chamberland	Chamberland	Chamberland	Chamberland Chatzisprios
Director(s):	Chamberland	Chamberland Chatzisprios	Chamberland	Chamberland Chatzisprios
Officer(s):	Chamberland	Chamberland Chatzisprios	Chamberland	Chamberland Chatzisprios

In light of the foregoing, there was overwhelming evidence upon which the Director’s delegate could reasonably determine that the four firms were “carried on...under common control or direction”. Even if the June 16th determination could be re-opened on the issue of whether or not 553334 B.C. Ltd. was associated with the other three firms named in the determination (and I am of the view that it cannot), the determination would, inevitably, be confirmed. Simply put, there is absolutely no reason why any “further investigation” of the section 95 determination ought to be undertaken given that the original determination was entirely proper.

As a final point, I note that 553334 B.C. Ltd. is now apparently in bankruptcy, having made a voluntary assignment under the federal *Bankruptcy and Insolvency Act* and thus only its licensed trustee in bankruptcy has the legal authority to apply to set aside the June 16th determination as it relates to that company. There is nothing in the material before me to suggest that the trustee has ever filed such an application or has authorized Chatzisprios to file such an appeal on the company’s behalf.

The Suspension Request

Chatzisiros does not deny that he was at all material times a director and officer of 553334 B.C. Ltd. While he asserts--and quite correctly it appears--that he was never an officer or director of United Health, that assertion is entirely beside the point. His liability flows from his status vis-à-vis 553334 B.C. Ltd. not United Health. By reason of the section 95 declaration, those two firms (as well as the other two firms named) are considered to be "one person for the purposes of [the] *Act*". On a *prima facie* basis, Chatzisiros' appeal appears to have a rather limited prospect of success given that 553334's liability is now a matter of *res judicata* and Chatzisiros' status with that latter firm is not in dispute.

Chatzisiros claims that if he is required to pay the entire amount of the determination he "will be forced to seek protection under the Bankruptcy and Insolvency Act" (letter to the Tribunal dated September 23rd, 1998). In other words, the appellant admits that he has no intention of paying the monies due to the 64 complainant employees. He suggests that the determination be suspended upon his depositing \$1,000--he submits that this is "adequate in the circumstances of the appeal". The Director's legal counsel, on the other hand, suggests that an "adequate amount" would be 10 percent of the determination, \$12,125.

Given the apparent dubious likelihood of this appeal succeeding, the fact that the appellant has already stated that he has no intention of paying the monies due under the determination should it be confirmed on appeal, and the fact that \$1,000 represents less than \$16 per complainant employee--*i.e.*, virtually no security at all--I consider the Director's counsel's proposed security figure to be very reasonable in the circumstances.

Summary

The request pursuant to section 114(2)(a) of the *Act* for "further investigation" of the Director's finding that 553334 BC. Ltd. is an "associated corporation" under section 95 of the *Act* is refused on several grounds. First, that request cannot be advanced in the present appeal which is, primarily, an appeal of a section 96 determination--the section 95 issue is now *res judicata*. Second, any purported appeal with respect to the section 95 determination is now statute-barred and this is not an appropriate case to extend the appeal period. Third, there is ample evidence to support the Director's section 95 determination. Fourth, the present appellant does not have the legal status to file an appeal of the section 95 determination. Finally, the request for a suspension of the section 96 determination is granted on the terms proposed by the Director's legal counsel.

ORDER

The appellant's request, pursuant to section 114(2)(a) of the *Act*, for "further investigation" is refused.

Pursuant to section 113(2)(b) of the *Act*, the August 14th, 1998 determination now under appeal is suspended provided that the appellant deposits with the Director, by November 30th, 1998, or

such longer period as may be agreed to, in writing, by the Director, the sum of **\$12,125** (twelve thousand one hundred and twenty-five dollars). In the event that the monies are not posted as ordered, the Director shall be at liberty to seek to enforce the determination in accordance with the provisions of Part 11 of the *Act*.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal