

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 -

Bill Sitter
("Sitter")

-and-

Parvez Nadeem Tyab, a Director or Officer of Tara Capital Corporation
("Tara")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/538 (Sitter Appeal) &
2000/578 (Tyab Appeal)

DATE OF HEARING: November 20, 2000

DATE OF DECISION: December 13, 2000

DECISION

APPEARANCES:

F. William Sitter	on his own behalf
James C. Gopaulsingh, Barrister & Solicitor	for Parvez Nadeem Tyab
Julie Anne Brassington, I.R.O.	for the Director of Employment Standards

OVERVIEW

I have before me two appeals, both filed pursuant to section 112 of the *Employment Standards Act* (the “Act”), from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 1st, 2000 under file number ER 078-897 (the “Determination”). I should note, at the outset, that Tyab applied for an order suspending the effect of the Determination pending appeal but that application was refused by my colleague Adjudicator Stevenson--see BC EST Decision No. #D443/00.

By way of the Determination, the delegate ordered Parvez Nadeem Tyab (“Tyab”) to pay the sum of \$12,875.36 to Mr. F. William Sitter (“Sitter”) on account of the following items:

• Wages from May 15th to 31st, 2000	\$3,325.00
• Compensation for length of service	\$7,000.00
• Vacation pay	\$4,550.36
• Less credit for repayment of moving allowance	<u>(\$2,000.00)</u>
TOTAL AWARD	<u>\$12,875.36</u>

Tyab was ordered to pay the above sum to Sitter in accordance with the provisions of section 96(1) of the *Act* which provides for a personal liability on the part of corporate officers and directors “for up to 2 months’ unpaid wages for each employee”. Tyab was a director and officer of Tara Capital Corporation (“Tara”), Sitter’s former employer, when Sitter’s claim for unpaid wages crystallized.

These two appeals were heard together on November 20th, 2000 at the Tribunal’s offices in Vancouver. Sitter appeared as the sole witness on his own behalf; Mr. Parvez Nadeem Tyab, who was represented by legal counsel, elected not to present any *viva voce* evidence. The Director’s delegate did not call any evidence but did make a final submission, as did both Sitter and Tyab’s legal counsel.

In addition to the two instant appeals, two other appeals of a corporate determination issued against Tara, also in favour of Sitter, were also heard concurrently with these two appeals. The two appeals of the latter corporate determination, filed by both Sitter and Tara, are addressed in

my reasons issued under BC EST Decision No. #D520/00; those reasons are being delivered concurrently with these reasons for decision.

ISSUES ON APPEAL

As noted above, Both Sitter and Tyab have appealed the Determination. In essence, Sitter (BC EST File No. 2000/538) claims that he ought to have been awarded nearly \$30,000 whereas Tyab (BC EST File No. 578) claims that the delegate exceeded her statutory authority and that Sitter ought to have been awarded approximately \$5,700. Tyab does not dispute that he was a director and officer of Tara during the relevant period.

FINDINGS AND ANALYSIS

In an appeal of a section 96 determination, the principal issue is whether or not the person determined to be liable was a director or officer of the employer during the relevant period (see *Penner and Hauff*, BC EST Decision No. #D371/96). In this case, Tyab does not dispute his status and none of the other defences set out in section 96(2) applies. With respect to the Sitter appeal, the amount that he claims as against Tyab exceeds seeks the 2-month liability ceiling set out in Section 96(1) of the *Act*.

The real dispute between the parties concerns Sitter's entitlement as against Tara; Tyab's liability under section 96(1) cannot be determined until Sitter's entitlement as against Tara is resolved. This latter issue has now been referred back to the Director for further investigation and, accordingly, that disposition is also appropriate here.

ORDER

Pursuant to section 115(1)(b) of the *Act*, I order that Sitter's unpaid wage claim, and Tyab's liability therefore, be referred back to the Director for further investigation and, consistent with these reasons (and those issued in the Sitter/Tara appeal) and as otherwise appropriate, further determination.

Kenneth Wm. Thornicroft

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