

An appeal

- by -

John Ruffolo, a Director or Officer of V.I. Renter's Centre Ltd.

- 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:** John M. Orr

**FILE No.:** 2001/508

**DATE OF DECISION:** October 17, 2001



## DECISION

### OVERVIEW

This matter involves an appeal filed on behalf of John Ruffolo (“Ruffolo”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a determination dated October 02, 2000 by the Director of Employment Standards (“the Director”) against him personally as a director or officer of V.I. Renter’s Centre Ltd (“VIRC” or “the company”).

On the same date the Director found that the company was liable for wages owed to an employee, Barbara Miller (“Miller”). The basis for the corporate liability was twofold. Firstly the company had issued a cheque to Miller in April 1999 in the amount of \$476.73. Miller misplaced the cheque and never tendered it for payment. She was seeking replacement of this cheque. The Director found that the cheque represented payment for wages and that the company was liable in this amount.

The second basis for liability arose in August 1999 when Miller alleges that she was dismissed without just cause. The Director found that she was entitled to 2 weeks wages as compensation for length of employment.

Ruffolo appealed his liability for both of these amounts.

In a separate appeal VIRC appealed the corporate liability for these same amounts. The corporate appeal was initially referred back to the Director. Because the corporate appeal was referred back to the Director, this appeal by Ruffolo as a director of the company was also referred back pending the outcome of the corporate appeal.

The Director has now submitted a report and it has been decided that this appeal can be continued by way of written decisions without the necessity of reconvening a hearing.

### FACTS

Barbara Miller (“Miller”) worked as a commissioned sales agent for VIRC from August 5, 1998 to approximately May 15, 1999. In May 1999 Ms Miller says she took an unpaid leave, which was open ended with no specific arrangements for return to work. Mr. Ruffolo was the owner of the company at the time and he claims that Miller took her annual vacation and simply did not return at any time before he sold the company on June 30, 1999.

There are two substantial issues that arise between Miller and VIRC. The first relates to a cheque dated April 23, 1999. Miller misplaced the cheque and never cashed it. She simply wants a replacement cheque. She says that the cheque was payment for services performed as part of her employment contract. Ruffolo claims that the cheque was an advance paid to Miller in expectation of services that she was to perform but never did.



The second substantial issue relates to the termination of Miller's employment. Miller submits that she was on an open-ended unpaid leave from VIRC. She claims that in early August 1999 she contacted Carson, the new owner of VIRC, to let her know that she was now ready to return to work. Carson had no knowledge of Miller and did not re-hire her. The Director's delegate found that the failure to re-hire was unjust dismissal.

Much of the material filed on the two appeals related to whether Miller was an employee or a contractor. The Director concluded that she was an employee.

## ANALYSIS

The appeal of the corporate liability has now been decided and in *V.I. Renter's Centre Ltd.* BCEST #D484/01 the company was found not liable to pay compensation for length of service. However, it was decided in that decision that the cheque for \$476.73 represented commissions earned and not an "advance" as claimed by the company.

This appeal specifically relates to the personal liability of Ruffolo as a director or officer of the company pursuant to section 96 of the *Act*.

Section 96 of the *Act* provides as follows:

**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 month's unpaid wages for each employee.

Ruffolo sold his shares and ceased to be a director or officer of the company on June 30, 1999 but it is admitted that he was a director of the company at the time that the cheque was issued. As found in the previous corporate decision this cheque represented payment for commissions earned.

If not clearly decided in the previous decisions between these parties, I am not satisfied that the onus has been met to persuade me that Ms Miller was not an employee. I therefore accept that the cheque represented commissions paid by an employer to an employee for work and as such constituted wages as defined in the *Act*.

I conclude that John Ruffolo is liable as a director for payment of the \$476.73 jointly and severally with the company, which has also been found liable for payment of this amount.

As decided in the corporate decision the delay in payment was caused by Miller and therefore I find that it should not carry interest prior to the date this decision is issued.

**ORDER**

Pursuant to section 115 of the Act I order that the determination dated October 02, 2000 is varied to find that John Ruffolo must pay to Barbara Miller the sum of \$476.73 without interest up to the date that this decision is issued but with statutory interest thereafter.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**