

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 -

Gerda Larsen, Officer of H.T.D. Custom Woodwork Ltd.
("Larsen")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/651

DATE OF DECISION: December 14, 1998

DECISION

OVERVIEW

This is an appeal by Larsen pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued on September 23, 1998 which determined that Larsen was liable as a corporate officer for two months wages to four former employees of H.T.D. Ltd., (the “Employer”) for a total of \$5,940.43. Two corporate Determinations were issued on July 18, 1997 and May 13, 1998, respectively, against the Employer and were not appealed. The Director’s delegate found that Larsen was an officer of the Employer. The Employer declared bankruptcy in December, 1997.

ANALYSIS

Larsen argues for relief from the Determination. Counsel admits that Larsen was an officer but argues that she had no involvement in the day-to-day running of the Employer and was not aware of any Determination against it. Therefore, she argues, she was not given an opportunity to dispute the claims giving rise to the Determination.

The delegate argues that Larsen admits to being an officer at the material time and, therefore, is liable under Section 96. The delegate also argues that Larsen was, in fact, given an opportunity to respond to the claims. The July 18, 1997 Determination was sent by registered mail to the Employer’s business address as well as to the officer at the registered office and the May 13, 1998 Determination was sent by registered mail to Larsen’s home address as well as to the officer at the registered office.

Larsen replies that she received the May 13 Determination but she did not read it. Rather she gave it to her now-estranged husband “on the belief that it was ‘company business’ and that he would handle it.” Counsel reiterates that she had “only nominal involvement” in the business.

Section 96 of the *Act* provides for the personal liability for corporate directors or officers. They may be liable for up to two month’s unpaid wages for each employee, if they were directors or officers at the time the wages were earned or should have been paid. Larsen does not address any of the issues under Section 96 and, while I have some sympathy for her position, she does not provide any reason why the Determination should be set aside. Larsen was an officer at the material time.

The Determination was served in accordance with the *Act* (Section 122 (1)). There is no distinction in the *Act* between officer/directors who play a major or minor role in the operation of the company and I am not prepared to accept her “nominal involvement” as a defense with respect to liability under Section 96.

In the result, her appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated September 23, 1998 be confirmed and the amount of the Determination paid out to the employees together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal