

An appeal

- by -

Jack Chia
("Chia")

- 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: David B. Stevenson

FILE No.: 2001/640

DATE OF DECISION: November 28, 2001

DECISION

APPEARANCES:

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Jack Chia (“Chia”) of a Determination that was issued on 16 August 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Chia had contravened Part 3, Sections 16, 17, 18, Part 4, Sections 35 and 40, Part 5 Sections 44, 45 and 46 and Part 7, Section 58(3) of the *Act* in respect of the employment of Changbin Shi (“Shi”) and ordered Chia to cease contravening and to comply with the *Act* and to pay an amount of \$3,732.08.

The appeal does not allege any error in the Determination. The appeal raises a technical and procedural issue. Chia says the Director should not have processed the complaint through him personally or served the Determination to him personally, but the complaint should have dealt with through his company, Chia’s Management Ltd, and the Determination should have been served on the company.

ISSUE

The issue in this appeal is whether Chia has given any reason for the Tribunal to exercise our discretion under Section 115 of the *Act* to vary or cancel the Determination or to refer the matter back to the Director.

FACTS

Shi worked for Chia for approximately two months, commencing September 15, 1999 as a renovation worker at a rate of \$8.00 an hour. He was not paid any wages.

The Determination provided a chronology of events from June, 2000 to August 7, 2001, related to efforts to have Chia provide a written response to the complaint, to have Chia respond to requests for information and statements from third parties allegedly supporting Chia’s position, to settle the complaint and to have Chia comply with the terms of settlement. The record indicates the fact of a settlement, but no details, and states that Chia failed, despite considerable effort by the delegate, to carry out the terms of the settlement. Chia was given five separate opportunities to pay the settlement amount and failed to do so. On three of those occasions Chia was put on notice that failure to pay the settlement amount would result in the issuance of the Determination.

ARGUMENT AND ANALYSIS

Chia says that the delegate was given his company's name at the beginning of the investigation. The Director acknowledges that Chia took the position early in the investigation that the complaint had not been properly served because it had been served on him personally rather than on his company. As a result of that position the Director performed a search of the corporate registry. That search revealed that Chia's Management Ltd. had been dissolved and removed from the Registry on 26 February 1999 for failure to file.

Based on that information the Director took the view that the "company" was a non-entity and that from the perspective of administering a complaint under the *Act*, the Director was dealing with a sole proprietorship and, on that basis, the process used by the delegate was correct.

In his reply to the appeal, Shi submits that the settlement was "not still standing" because Chia did not meet his end of the agreement by the deadline imposed.

I agree with the Director. Even if service on Chia personally did not in the circumstances meet the requirements of the *Act* for service had there been an existing corporate entity (and I am not convinced that proposition is correct in any event), there was in fact no company in existence during the time the complaint was being served and investigated or at the time the Determination was served. There is no factual basis for the appeal.

Chia has provided no reason for the Tribunal to interfere with the Determination and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated 16 August 2001 be confirmed in the amount of \$3,732.08, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal