

An appeal

- by -

Walter Edward Loftus, a Director or Officer of Fetchomatic.Com Online Inc.
and Fetchomatic Global Internet Inc.(Associated pursuant to Section 95 of the
Employment Standards Act)

("Loftus")

- 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.: 2001/578

DATE OF DECISION: December 27, 2001

DECISION

OVERVIEW

Wayne Edward Loftus, a Director or Officer of Fetchomatic.Com Online Inc. and Fetchomatic Global Internet Inc. (Associated pursuant to Section 95 of the *Employment Standards Act*) (“Loftus”) has appealed a decision of the Director of Employment Standards (the “Director”) dated July 17, 2001 (the “Determination”). The Determination concluded that Loftus, as a Director or Officer of Fetchomatic.Com Online Inc. and Fetchomatic Global Internet Inc., was liable under Section 96 of the *Act* in an amount of \$105,287.20. The corporate Determination was issued on July 13, 2001. An appeal of the corporate Determination has been dismissed, see BC EST # D686/01. As a result, this appeal stands or falls on the grounds set out in the appeal form.

The appeal, in its entirety, states:

The employer has appealed the Determination dated July 13, 2001 and as points referred to in this appeal are also relevant to mine, I will await the outcome of same.

The Determination dated July 13, 2001 refers to all directors while the July 17, 2001 only refers to myself. As Fetchomatic.com Online Inc. is a wholly owned subsidiary of Fetchomatic Global Internet Inc. I obviously was not the only director at the time wages were earned and made payable. All payroll was issued directly from Fetchomatic Global Internet Inc. from November 15, 2001 to date of closing approximately June 3, 2001.

It appears the reference to November 15, 2001 is a typographical error, and should have been November 15, 2000.

The Tribunal has decided this appeal can be considered without the requirement of an oral hearing.

ISSUE

The issue in this appeal is whether Loftus has shown the Director erred in issuing the Determination.

FACTS

The Determination indicates that Fetchomatic.Com Online Inc. is a provincially registered company and that Loftus was a director or officer of that company during the period wages were

earned and became payable. It also indicated that Fetchomatic Global Internet Inc. is a company registered in the state of Nevada. Loftus is shown as a director of that company.

Neither of these facts are challenged.

ARGUMENT AND ANALYSIS

In an appeal from a director/officer Determination, the Tribunal has stated that absent special circumstances, which do not exist in this case, a person named in a director/officer Determination is limited to arguing only those issues that arise under Section 96, whether the person was a director or officer at the time the wages were earned or should have been paid and whether the amount of the Determination falls within the scope of the liability described in Section 96, see *Kerry Steinemann, a Director or Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST #D180/96.

The appeal of the corporate Determination has been decided and Loftus is bound by that decision. There is no issue raised about his status as a director or officer of both Fetchomatic.Com Online Inc. and Fetchomatic Global Internet Inc. His only argument appears to be based on a concern that he is the only director or officer against whom a Determination has been issued.

The applicable provision of the *Act* in this appeal is Section 96, which reads, in part:

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 months' unpaid wages for each employee.*
- (2) *Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for*
- (a) *any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,*
 - (b) *vacation pay that becomes payable after the director or officer ceases to hold office, or*
 - (c) *money that remains in an employee's time bank after the director or officer ceases to hold office.*

...

- (3) *This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1) or (2.1).*

The liability found in that provision is personal to each director or officer. There is no limitation or restriction on the numbers of directors or officers against whom a Determination may be issued. Specifically, there is nothing in Section 96, or any other provision of the *Act* that compels or requires the Director proceed against all of the directors or officers of a corporation that are potentially liable for wages under the *Act*.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 17, 2001 be confirmed in the amount of \$105,287.20, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal