

An appeal

- by -

Madison Contracting Ltd.  
("Madison")

- 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:** M. Gwendolynne Taylor

**FILE No.:** 2001/670

**DATE OF DECISION:** December 27, 2001



## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") brought by Madison Contracting Ltd. ("Madison Contracting Ltd.") of a Determination issued on August 30, 2001 by the Director of Employment Standards (the "Director"). The Director found that Madison owed Sheila Bissonnette (Bissonnette), a former employee, \$736.55 for unpaid commissions, vacation pay and interest.

Madison's appeal alleges error of facts and bias against Madison by the Director's delegate. Madison agrees that it should compensate Bissonnette for the difference between what she was paid and what she would have been entitled to based on an eight hour day. Madison disputes owing commissions for some of the sales the delegate credited to Bissonnette.

### ISSUE

Does the evidence support Madison's contentions that

- a) the Director delegate erred in finding facts relevant to the Determination; and
- b) the Director's delegate was biased against Madison.

### THE FACTS AND SUBMISSIONS

Madison is owned by Petra and Kevin Bahrís. Petra Bahrís filed the appeal submission. Madison sells and installs carpets and other floor coverings. Bissonnette worked for Madison from February 26, 2001 to March 28, 2001, at a rate of \$1,000 per month, plus commissions.

According to the information provided to the Director by Bissonnette, she would have been entitled to wages, at minimum wage, of \$1,387.00. After subtracting the commissions she was paid, the outstanding wages owed were \$334.48. Madison had submitted that Bissonnette did not work 40 hours per week.

The Director found that Bissonnette was entitled to receive minimum wage for 8 hours per day, 5 days per week, less three lunch breaks. The Director also found that Bissonnette was entitled to commissions for sales for which the Director found she had the initial contact with the customer, even though some of the installations occurred after her employment ended. The Director's determination was based on a calculation of commissions owed on 5 accounts.



### Salary

In the appeal, Madison submitted that Bissonnette was not entitled to the full wages because she was absent for a doctor's appointment one day for 5 hours. Madison acknowledged that they had not kept timesheets and could not formally account for the hours worked.

### Commissions

The Director set out Madison's policy on commissions and examined one sale on which Bissonnette was paid commission, for comparison purposes. The Director noted that Bissonnette was only authorized to go as far as giving a customer a quote; it was then up to Petra or Kevin Bahrís to write up the estimate which became the basis for the sale. Looking at the sales Bissonnette claimed commissions on, the Director found that in each instance the product price was quoted during Bissonnette's employment, the customers confirmed Bissonnette sold them the product, and the product was paid for and installed. For 4 of the 5 sales, Bissonnette provided some documents – invoices or quotes - to support her claim.

Madison submitted that entitlement to commissions goes to the employee who has the first contact with the customer and sales are not eligible for commissions until the customer has agreed to the quoted price and orders goods, which happens when the deposits are made. Bissonnette may have had contact with the customers in question but she was not the first contact.

Madison drew attention to pages 3, 5 and 6 of the Determination to indicate that the Director made errors of fact. On page 3, Madison says the Director failed to recognize that Bissonnette did not work the full week of March 19 to 23. On page 5, the Director incorrectly set out the hours of another employee. And on page 6, the Director says that Petra Bahrís worked full time at a marina, which Ms. Bahrís says is not correct.

The Director submitted that the Determination was based on evidence of the store hours, telephone interview with another employee and customers, invoices provided by Bissonnette, and interviews with the employer. The Director acknowledges that Petra Bahrís may not work for a marina but the import of the evidence is that she does not work daily at Madison. The Director takes issue with the grounds of appeal stating that the Determination was based on the best information available.

## **REASONS AND DECISION**

Madison has alleged that the Director's delegate was biased against the company. I find that allegation has not been substantiated. This case involves a relatively easy application of facts. The Director conducted an investigation and made findings of fact. Madison has not presented evidence that challenges the Director's substantive findings. I find that Madison has not presented compelling evidence to support either ground of appeal.



The Director may have erred in calculating the salary for March 19 to 23, for a difference of approximately \$38.00. However, I am not prepared to vary the Determination on that basis for a couple of reasons. First, I note that Madison had an opportunity to present thorough evidence during the Director's investigation. Madison still has not identified which day, which indicates to me that their records are not reliable. Second, the Director's Determination was based on Commissions owing, not on the salary calculations. Madison did not submit any documents to the Director to counter the claims made by Bissonnette. I am satisfied that the Director's delegate made appropriate inquiries and arrived at a sound conclusion based on the evidence.

The fact that the Director believed that Petra Bahris worked at a marina does not affect the decision.

### **ORDER**

I find that Madison has not demonstrated that the Determination was incorrect, and I dismiss the appeal. The Determination is confirmed.

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**M. Gwendolynne Taylor**  
**Adjudicator**  
**Employment Standards Tribunal**