

Citation: Davood Foroughi Shafiei
2025 BCEST 20

EMPLOYMENT STANDARDS TRIBUNAL

An appeal
pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Davood Foroughi Shafiei

- of a Determination issued by -

The Director of Employment Standards

PANEL: M. Diane Irvine
SUBMISSIONS: Davood Foroughi Shafiei, on his own behalf
FILE NUMBER: 2024/137
DATE OF DECISION: February 4, 2025

DECISION

OVERVIEW

1. Davood Foroughi Shafiei is a director and officer of See the Sea Alimentation Ltd., which carried on business as See the Sea Cafe.
2. On September 11, 2024, a delegate (the “**Delegate**”) of the Director of Employment Standards (the “**Director**”) determined that an individual who made an Employment Standards complaint had been an employee of See the Sea, and that See the Sea owed the complainant \$41,491.04 in wages. In addition, the Delegate ordered See the Sea to pay \$4,000.00 in mandatory administrative penalties. I will refer to this September 11, 2024, determination as the “**Corporate Determination.**” See the Sea did not appeal the Corporate Determination.
3. Subsequently, on September 23, 2024, the Delegate determined that Mr. Foroughi Shafiei was a director and officer of See the Sea at the time the wages owed to the complainant were earned or should have been paid. Consequently, he was personally liable for \$5,940 in unpaid wages to the complainant, plus interest (sections 96 and 88 of the *ESA*); and was also personally liable for \$4,000 in administrative penalties. (section 98(2) of the *ESA*) In total, Mr. Foroughi Shafiei was ordered to pay \$9,940 within five working days. I will refer to this September 23, 2024, determination as the “**Section 96 Determination.**”
4. Mr. Foroughi Shafiei appeals the Section 96 Determination on the grounds of a failure of natural justice. His submission says that the Director failed to consider that the original agreement between himself and the complainant was intended as a business partnership, not an employment relationship. Further, he requests that the \$5,940 found owing in the Section 96 Determination “be held” until a lawsuit he has brought against the complainant has concluded, in order to minimize his losses.
5. Although Mr. Foroughi Shafiei’s appeal submission did not cite the grounds of new evidence becoming available, he has submitted a substantial amount of documents in support of his appeal that were not submitted to the Director during the investigation of the complaint including his Notice of Claim against the complainant filed in Small Claims Court on October 25, 2024, and an affidavit sworn by himself on the same day.
6. For the reasons that follow, I conclude this appeal has no reasonable prospect of success. I therefore dismiss the appeal without seeking submissions from the other parties pursuant to section 114(1)(f) of the *ESA*.

DISCUSSION

7. The issue I must decide is whether Mr. Foroughi Shafiei is able to argue the merits of the Section 96 Determination that the complainant is owed wages.
8. The bulk of Mr. Foroughi Shafiei’s appeal submission argue the merits of the Corporate Determination which found that the complainant was an employee of See the Sea and was owed wages.

9. While I appreciate that Mr. Foroughi Shafiei disagrees with the Corporate Determination, as a director/officer of an employer corporation he is not able to argue the merits of that employer's liability under section 96 or 98 of the *ESA*: *Abram Neudorf, a Director or Officer of Styro-Mold Manufacturing Ltd.*, BC EST # D076/07. As noted above, See the Sea did not appeal the Corporate Determination and the findings in that determination stand as final.
10. Instead, Mr. Foroughi Shafiei is limited to arguing the merits of the Section 96 Determination which concerned his personal liability under section 96 and 98 of the *ESA*. As stated in *Abram Neudorf*, he is limited to arguing the following issues:
1. whether he was a director or officer of the company at the time wages were earned or should have been paid;
 2. whether the calculation of the amount determined to be owed by him is correct; and
 3. where a penalty has been imposed, whether he should not be liable for the penalty on the grounds that he did not authorize, permit or acquiesce in the company's contravention.
11. Mr. Foroughi Shafiei has not raised any arguments in respects of those issues to which this appeal is limited. The doctrine of issue estoppel applies to the issues he has raised in the appeal.
12. The appeal does not have any reasonable prospect of success.

ORDER

13. Pursuant to section 114(1)(f) of the *ESA*, I dismiss this appeal.
14. Pursuant to section 115(1)(a) of the *ESA*, I order the Determination dated September 23, 2024, be confirmed in the amount of \$9,940.00, together with any interest that has accrued under section 88 of the *ESA*.

/S/M. Diane Irvine

M. Diane Irvine
Member
Employment Standards Tribunal