

ONTARIO LABOUR RELATIONS BOARD

1141-12-ES Patricia Simigran, a director of Tabi International Corporation, Applicant v. Maria Amaral and others and Director of Employment Standards, Responding Parties.

1316-12-ES Andrea Weiss, a director of Tabi International Corporation, Applicant v. Maria Amaral and others and Director of Employment Standards, Responding Parties.

Employment Practices Branch File No. **70090166-9**

BEFORE: Tanja Wacyk, Vice-Chair.

APPEARANCES: Adam Ezer, Patricia Simigran and Andrea Weiss appeared on behalf of the applicants, no one appeared for the Director of Employment Standards; Marina Antchupalovskaia appeared on her own behalf; no one appeared on behalf of the other responding parties.

DECISION OF THE BOARD: February 4, 2014

1. These are applications under section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended for review of Orders to Pay issued against the two applicants in their capacity as directors of Tabi International Inc. against whom unsatisfied orders to pay had previously been made. The Orders were for vacation pay owing of \$53,594.15. In addition, the applicants are required to pay a collection fee of \$10,718.83 pursuant to section 127 of the Act.

2. The following responding party claimants have communicated with the Board, indicating they do not wish to pursue their claims:

1. Mary Daly
2. Maria Lyn Lacson-Wen
3. Jennifer Liu
4. Laura McAuley
5. Susan McBride
6. Beverley Phillips
7. Lillian Remani
8. Iris Richardson
9. Janette Sasso
10. Betty Weiler
11. David Ricci
12. Wai Yung Tan.
13. Judith Yeatman

3. The two directors testified by Skype. Their uncontested evidence is set out below.

Andrea Weiss

4. Ms. Weiss testified the Employment Standards Officer (“ESO”) had erroneously determined that she remained a director of Tabi International Inc. until September 17, 2010, when in fact she resigned on February 17, 2010. In support of her testimony Ms. Weiss tendered a copy of her letter of resignation, dated February 17, 2010, which she testified she delivered to Tabi International Inc. that day. In addition, Ms. Weiss relied on a copy of correspondence dated March 1, 2010, from Larry Gatien, the head of an investment group which purchased Tabi International Inc.’s bank debt, advising all associates that Ms. Weiss and Ms Simigran had left the company and were no longer officers or directors.

5. Ms. Weiss also tendered a copy of a Form 4, Notice of Directors or Notice of Change of Directors, under the *New Brunswick Business Corporations Act*, dated September 17, 2010. In addition to adding several new directors, the form indicated Ms. Weiss and Ms. Simigran had ceased to be directors. The form was dated September 17, 2010, and Ms. Weiss suggested the corporation had simply delayed filing the form until new directors were in place, resulting in the ESO erroneously believing she and Ms. Simigran remained directors until September 17, 2010.

6. The quantum of the Order to Pay was calculated from February 19, 2011, backward. Accordingly, when Ms. Weiss calculated the vacation pay owing to the remaining claimants based on her resignation date of February 17, 2010, she demonstrated she was responsible for vacation pay only for the following claimants, in the amended amounts:

| | |
|-------------------------|-----------------|
| Ann Matyi | \$ 866.32 |
| Marina Antchupalovskaia | 4,888.23 |
| Maria Paisely | 21.92 |
| Prisca Lee | <u>2,187.41</u> |
| Total: | \$7,963.88 |

Patricia Simigran

7. Ms. Simigran also testified the ESO had erroneously determined that she remained a director of Tabi International Inc. until September 17, 2010, when in fact she resigned on January 31, 2010. In support of her testimony, Ms. Simigran tendered a copy of her letter of resignation, dated January 31, 2010, which she testified she delivered to Tabi International Inc. that day. She too relied on the copy of Mr. Gatien’s March 1, 2010 correspondence, advising all associates that Ms. Weiss and Ms. Simigran had left the company and were no longer officers or directors.

8. When Ms. Simigran calculated the vacation pay owing to the remaining claimants based on her resignation date of January 31, 2010, she demonstrated she was responsible for vacation pay only for the following claimants, in the amended amounts:

| | |
|------------------------|-----------------|
| Ann Matyi | \$ 299.88 |
| Marina Antchpalovskaia | 4,646.67 |
| Maria Paisely | 8.61 |
| Prisca Lee | <u>2,187.41</u> |
| Total: | \$7,142.57 |

Collection Fees Pursuant to Section 127 of the Act

9. The applicants also request relief from the collection fee. They indicate they did not receive notice of the Orders to Pay until the Orders had gone to a collection agency, as the applicants resided out of the country.

10. Section 127 of the Act states:

127. (1) The Director may authorize a collector to exercise those powers that the Director specifies in the authorization to collect amounts owing under this Act or under an order made by a reciprocating state to which section 130 applies.

...

(3) Despite clause 22(a) of the *Collection Agencies Act*, the Director may also authorize the collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect amounts owing under this Act.

11. Section 128 of the Act deems the collection fee to be added to the amount of the Order to Pay.

128. (1) A collector may exercise any of the powers specified in an authorization of the Director under section 127.

(2) If a collector is seeking to collect an amount owing under an order or notice of contravention, any fees and disbursements authorized under subsection 127(3) shall be deemed to be owing under and shall be deemed to be added to the amount of the order or notice of contravention.

(3) Subject to subsection (4), a collector,

(a) shall pay any amount collected with respect to wages, fees or compensation,

(i) to the Director in trust, or

(ii) with the written consent of the Director, to the person entitled to the wages, fees or compensation;

(b) shall pay any amount collected with respect to administrative costs to the Director;

- (c) shall pay any amount collected with respect to a notice of contravention to the Minister of Finance; and
- (d) may retain any amount collected with respect to the fees and disbursements.

(4) If the money collected is less than the full amount owing to all persons, including the Director and the collector, the money shall be apportioned among those to whom it is owing in the proportion each is owed and paid to them.

ANALYSIS:

Andrea Weiss

12. In light of Ms. Weiss' uncontested evidence, I find she resigned as a director of Tabi International Inc. on February 17, 2010.

13. Accordingly, her appeal is allowed in part.

14. I find Ms. Weiss' liability is limited to the following:

| | |
|-------------------------|-----------------|
| Ann Matyi | \$ 866.32 |
| Marina Antchupalovskaia | 4,888.23 |
| Maria Paisely | 21.92 |
| Prisca Lee | <u>2,187.41</u> |
| Total: | \$7,963.88 |

15. Order to Pay #80015984-DO is amended to \$7,963.88.

Patricia Simigran

16. In light of Ms. Simigran's uncontested evidence, I find she resigned as a director of Tabi International Inc. on January 31, 2010.

17. Accordingly, her appeal is allowed in part.

18. I find Ms. Simigran's liability is limited to the following:

| | |
|-------------------------|-----------------|
| Ann Matyi | \$ 299.88 |
| Marina Antchupalovskaia | 4,646.67 |
| Maria Paisely | 8.61 |
| Prisca Lee | <u>2,187.41</u> |
| Total: | \$ 7,142.57 |

19. Order to Pay #80015992-DO is amended to \$7,142.57.

Collection Fees Pursuant to Section 127 of the Act

20. By decision dated December 18, 2012, I extended the time to file these applications for the same reasons now put forward in support of relieving against the collection fees i.e. that the applicants were out of the country and unaware of the Orders to Pay. However, I was persuaded to do so primarily on the basis of the significant amount of the Orders, and because it appeared there was a real issue to be determined regarding the status of the directors at the time at issue.

21. I am less sympathetic with regard to the collection fee. The applicants knew the company was in financial trouble, and that they, as directors, may bear some liability with regard to unpaid wages. Having resigned their directorship, it appears they then left the country with no forwarding address and apparently no consideration of the consequences.

22. Accordingly, assuming I have the authority to do so, I would not relieve against the collection fee in its entirety. In any event, it appears the collection agency has not been given notice of the applicants' request that I relieve against the collection fee.

23. Accordingly, prior to determining this issue, I will give both the collection agency – the identity of which is not apparent, as well as the Director of Employment Standards, an opportunity to make submissions in that regard.

24. The Director of Employment Standards has 10 days from the date of this decision to file its submission, and deliver a copy to the other parties, including the collection agency.

25. The applicants are directed to deliver a copy of their applications, as well as this decision, to the collection agency, and file a certificate of delivery indicating they have done so.

26. The collection agency will then have 10 days from the date it receives a copy of the applications and this decision, to file submissions with the Board, and deliver them to the applicants, and the Director of Employment Standards.

27. The applicants will have 10 days to file their response.

"Tanja Wacyk"
for the Board