

1438436 ALBERTA LTD. O/A MABIS RECRUITMENT AGENCY

ALEX CHEE and VELMA VELORIA

This appeal board decision was issued under s. 179 of the *Fair Trading Act* in response to an appeal by the named parties. As allowed by s. 16 of the Appeal Board Regulation, this appeal board decision is part of the public record.

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APPEAL BOARD DECISION

DIRECTORS ORDER UNDER SECTION 157 OF THE *FAIR TRADING ACT*
TO
1438436 ALBERTA LTD. O/A MABIS RECRUITMENT AGENCY, ALEX CHEE and VELMA VELORIA
(APPELLANTS)

DIRECTOR OF THE *FAIR TRADING ACT* (ALBERTA)
(RESPONDENT)

Definitions

Complainants: Those individuals who lodged complaints relating to the Appellant's breach of the regulations of the *Fair Trading Act* and include _____, _____ and _____ who gave evidence on behalf of the Respondent.

TFWs: Temporary Foreign Workers

Background

1. Director of Fair Trading (as delegated) made an Order under Section 157 of the *Fair Trading Act* (Alberta) (the "Act") on September 29, 2010, that:

1438436 Alberta Ltd: o/a Mabis Recruitment Agency, Alex Chee, Velma Veloria individually or through any employee, representative, agent or associate, must immediately stop demanding or indirectly demanding or collecting a fee, reward or other compensation from a person who is seeking employment, or from a person for securing or endeavoring to secure employment for the person.

2. On October 6, 2010, Counsel for 1438436 Alberta Ltd. o/a Mabis Recruitment Agency, Alex Chee and Velma Veloria filed a Notice of Appeal to the Director's Order stating, under heading D), the grounds of appeal to be:

- i) The Appellants, Alex Chee and Velma Veloria, are not business operators under the *Employment Agency Business Licensing Regulation* AR 189/99. The business operator is 1438436 Alberta Ltd. carrying on business as Mabis Recruitment Agency.

- ii) Money to be paid to a business operator as a deposit for the worker's expenses, which moneys are returned to the workers or paid on behalf of the workers for reasonable rental accommodation, clothing and living expenses when the workers arrive in Canada and which are accounted for by the business operator to the worker are not fees, rewards or other compensation within the meaning of the *Employment Agency Business Licensing Regulation* AR 189/99 Section 9(1).
3. Pursuant to Section 179(2) of the *Act*, on the 27th day of October, 2010, the Deputy Minister appointed Ronald W. Dutchak, QC (Chair), Caren M.L. Mueller and Dr. Nick Tywoniuk to form an Appeal Board to hear the appeal of the Director's Order within 10 months of the date of appointment of the Appeal Board and that the Appeal Board give its written decision not more than 45 days after the conclusion of the hearing of the appeal.
4. The appeal of the Director's Order was heard February 4 and 7, 2011.
5. Pursuant to Sections 179(1) and 179(8) of the *Act*, this appeal is "... a new trial of the issues that resulted in the decisions or order being appealed." Counsel agreed that the decision of the Appeal Board would be based on evidence presented on the "balance of probability" standard. All witnesses gave their evidence under sworn oath.

Agreed Facts

6. The Appellants were engaged in an employment agency business within the meaning of the *Employment Agency Business Licensing Regulation* and had been operating under the name, Mabis Recruitment Agency ("Mabis"), since 2007. Mabis was retained to recruit and arrange foreign workers to work as food counter attendants at a Tim Horton's franchise in Edmonton. Mabis received resumés from _____, _____ and _____, (the Temporary Foreign Workers ("TFWs")), all of whom worked in South Korea and expressed an interest in coming to Canada to work in the Tim Horton's franchise.
7. The franchise owners obtained labour market opinions from the Government of Canada dated November 7, 2008, and December 18, 2008, and entered into employment contracts with the

TFWs who then obtained Visas to work in Canada. Mabis provided airline tickets for the TFWs who, after arrival in Edmonton, worked in a Tim Horton's franchise in Edmonton. The franchise owner reimbursed Mabis for the cost of the airline tickets and paid the fee quoted them for recruiting the TFWs.

8. Some of the TFWs complained to Service Alberta about Mabis. An investigation was conducted by investigators appointed under Section 173(2) of the Act. Investigator Laura Van Soeren made a recommendation to Darren Thomas, Director of Fair Trading (as delegated) on September 24, 2010. The Director's Order, referred to in paragraph 1 above, was issued September 29, 2010, after review of the investigator's report and recommendation.
9. In summation of the Appellant's case, Counsel for Appellant abandoned the first grounds of Appeal and acknowledged that all money paid to the Appellants was to have been returned to sender and that the Appellants did not use any of the money received by them for rental accommodation, clothing, living expenses or settlement expenses for the TFWs.

Summary of Evidence Relating to Director's Order

10. The Appellants run an employment business through Mabis which recruited foreign workers, mostly Philipinos, who were working in Korea, or Grand Camen Islands to come work in Canada. Their business started in 2007.
11. Mabis controlled the process from the moment the TFWs contacted Mabis to the time the TFWs actually started work in Edmonton. The Complainants gave evidence that they were required to pay funds to Mabis in advance of coming to Canada prior to the prospective employer getting a labour market opinion or a form of employment contract, which was needed by the TFWs in order to get Canadian work visas. They sent additional funds to Mabis once they got their work visa prior to their actual arrival in Edmonton; which they did.
12. The evidence of Velma Veloria and Alex Chee was that, when they first started Mabis, they never asked for funds from the TFWs. In at least one case, Ms. Veloria states that a TFW arrived with nominal cash and was forced to borrow funds from their employer for food, clothing, travel

and accommodation which upset the worker and employer. Mabis then changed its policy and indicated to all prospective TFWs that the TFWs would need funds when they arrived in Canada for accommodation deposit, accommodation, clothing, transportation and emergency funds. Their evidence was that they did not set the amount to be sent and returned all money received from the TFWs when they arrived in Canada and had the TFWs sign acknowledgements that they had received the money. All transactions were alleged to have been transacted in cash which Mr. Chee keeps in a safe in his house.

13. The Appellants Counsel called three TFW witnesses. They gave evidence that they were advised that the TFWs would need money in Canada, but two did not send any money in advance and brought money with them. The third witness sent \$700 in advance and had that money returned to him when he arrived along with signing an acknowledgement that he had received their funds.
14. There is common evidence that Ms. Veloria and Mr. Chee would meet the TFWs at the airport on their arrival, take them to Canada Place to get a SIN number, assist them getting an Alberta Health Care Card, take them to get second hand clothing, show them where they could purchase Asian food and arrange accommodation.
15. The Appellant Counsel also called one of the employer clients of Mabis who used Mabis to supply TFWs. His evidence was that he paid for the air fare and \$500 for each TFW supplied by Mabis. He had accommodation which some of the TFWs used and was unsure whether he deducted a damage deposit from the TFWs using his accommodation as his wife looked after payroll. At first, he indicated that probably deductions happened from payroll as it would help the employees. However, when it was pointed out that this was contrary to the regulations under Act, he changed his evidence to that of not being certain.
16. All of the Complainants who gave evidence, indicated they used their own funds that they had brought with them when travelling to Canada. All acknowledged that they signed an acknowledgement saying they were repaid funds that they had wired to Canada, but say they were not given any funds by the Appellants. When questioned as to why they signed the acknowledgement, two Complainants indicated they signed the acknowledgement in blank in

Korea and emailed them back and then signed the acknowledgement again when they got to Canada when the form was presented to them by the Appellants. Their evidence was that they were afraid that if they did not sign the acknowledgement, they would not get the job in Canada.

Complaint to Service Alberta and Investigator's Report

17. A number of foreign workers filed complaints with Service Alberta that monies were paid to the Appellants, or their agents, in Korea or by electronic funds transfer to the Appellants in Edmonton. The payment of funds to the Appellants was the subject of the investigator's report of September 24, 2010. All parties acknowledged that the investigator's report and the evidence she gave at the appeal hearing was credible. Some highlights of the report indicate Service Alberta had opened 24 files based on separate complaints against the Appellants for receipt of funds contrary to the regulations of the Act which were not paid back to the Complainants. In addition to the 24 files open, there is documented in the investigator's report to the effect that an additional 23 complaints from foreign applicants allege paying funds to the Appellants or their agent totaling \$112,637 CDN. The investigation and interviews with the Appellants allege that only \$29,543.50 CDN had been collected from 14 individuals, of which 9 had been refunded in total. To quote from Investigator Van Soeren's report "... the investigator has been provided contradictory evidence by both parties." The investigator's report, with attachments, totaled some 24 pages with a recommendation to the Director that the Appellants must immediately stop demanding, or indirectly demanding, a collection of a fee, reward, or other compensation from a person seeking employment in Canada. The Appeal Board found the Investigator's evidence and report credible and when conflicting with other testimony heard, Investigator Van Soeren's evidence is preferred.

18. Three of the Complainants gave evidence that the reason why they made the complaints was based on their finding out, after they had spent some time in Canada, that the Appellants activities of charging for the services to find employment in Canada was contrary to the Act. The Complainants who gave evidence were not sophisticated individuals. They came from overseas to work in Canada for minimum wage, a good portion of which is sent back to their families in the Philippines. The monies that had been charged varied from \$700 to over \$5,000, with most

being in the \$1,500 to \$3,000 range. This equates to a significant sum of money for these individuals who are faced with the rules, regulations and processes of a foreign country (Canada), all of which would be daunting to anyone unless they felt strongly about their situation. The Complainants giving evidence at the appeal hearing also indicated that, while they thought that the payments made to the Appellants were payments of fees for getting a job in Canada at the time, they were prepared to make those payments to get employment in Canada. It was only after they learned that those payments were illegal under the Act, that they filed the complaint against the Appellants.

Findings of the Appeal Board

19. The investigators report backs up the Complainants version on a number of important areas which include the following:
 - a. Lawyer for the Appellants indicated that the Complainants conspired to cause problems for the Appellants yet the large number of complaints (47), most of which are still overseas, does not support this conspiracy theory.
 - b. The documents that were signed by the Complainants, indicating that they were given their money back in cash, was acknowledged to be signed by the Complainants, however, the Appeal Board accepts their explanation that they feared that if they did not sign the document, they would not get employment in Canada.
 - c. The Appellants indicated that they had no agents overseas, yet, the investigator's report indicates that there are emails that seem to contradict that. Also, there is evidence from one of the complainants that they had given money to Maricel De Leon in South Korea and later received from that person, after paying funds, the required documents to apply for a work Visa in Canada.

20. Evidence was presented that two of the Complainants had produced resumés that contained inaccurate representations of work experience. This was acknowledged by the complainant witnesses who indicated that they were desperate to provide for their families and they


prepared their resumé to impress their prospective employers in order to get a job in Canada. It was argued by Counsel for the Appellant that the Complainants' misrepresentation on their resumé be taken into account on the credibility of giving evidence under oath. The Appeal Board finds that the puffery that the Complainants acknowledged in their resumé could not be equated to the evidence that they gave at the hearing under oath and accepts the Complainants explanation as truthful.

21. Evidence was provided by two of the Complainants showing the damage deposits for accommodation that they were renting from their employers were deducted from their paychecks as they had no money which is consistent with their not being reimbursed the money that they had sent to the Appellants before coming to Canada.
22. When taking all of the evidence into consideration, the Appeal Board viewed the arrangement as being in the control of the Appellants. The Appellants could easily have avoided this controversy by opening a trust account with a chartered bank and having all money pass through that account with the use of cheques or traceable money orders, but they chose not to. The Complainants did get some benefit in coming to Canada, but they are not becoming wealthy by doing the work they do. On the other hand, the Appellants would seem to be benefiting much more and on the balance of probabilities, the evidence of the Complainants is preferred.


Order of the Appeal Board

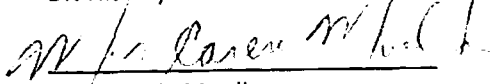
1. Counsel for the Respondent requested that the Appeal Board, as part of this appeal, order witness fees for the Respondents 3 complainant witnesses. The Appeal Board so orders the witness fees be paid to _____ and _____.
2. Pursuant to Section 179(6) of the Act, the Appeal Board hereby confirms the Director's Order of September 29, 2010.

DATED this 11th day of February, 2011



Ronald W. Dutchak, QC
Chair



Dr. Nick Tywoniuk


Carén M. L. Mueller