



Government  
— of —  
Saskatchewan

Saskatchewan Labour Relations Board

1600-1920 Broad Street  
Regina, Canada S4P 3V2

Tel – (306)787-2406

Fax – (306)787-2664

[www.sasklabourrelationsboard.com](http://www.sasklabourrelationsboard.com)

April 20, 2015

Mr. John P. Kwok  
Kwok Law Office  
202 Whitney Ave.  
SASKATOON SK S7L 3M3

Ministry of Justice  
Civil Law Division  
900, 1874 Scarth Street  
REGINA SK S4P 4B3

**Attention: Ms. Lee Anne Schienbein**

Dear Sir and Madam:

**RE: LRB File No. 250-14; Appeal from a decision of an Adjudicator**

1. Al-Ro Acrylic Stucco Ltd. (the “Company”) and Robert Mellau (the “Corporate Director”) (collectively referred to as the “Applicants”) filed an appeal from a decision of an adjudicator under *The Saskatchewan Employment Act*<sup>1</sup> (the “SEA”) wherein the adjudicator upheld a wage assessment issued by the Director of Employment Standards in respect of wages owed to Volodymyr Pastukh, Sergil Martynovskyl, Mohamed Omer, and Oleksandr Dzhura (collectively referred to as the “Employees”) against the Company and the Corporate Director.
2. A hearing of the Appeal was scheduled to be heard by the Board on March 24, 2015. On March 20, newly retained counsel for the Applicants requested an adjournment of this hearing. A telephone hearing was held with the Executive Officer of the Board and the adjournment was granted. The matter was then set to be heard on April 17, 2015 at the Board’s hearing room in Saskatoon, Saskatchewan commencing at 9:30 AM. A Board Order specifying this time, date, and location was provided to

counsel for the Applicants and counsel for the Director of Employment Standards.

3. At the appointed date and time, no-one appeared for the Applicants. The hearing clerk attempted to contact Mr. Kwok by telephone, but was unsuccessful and left a message. The Board waited for someone to appear, but at 10:00 AM commenced the hearing. Ms. Schienbein appeared by telephone and requested that the appeal be dismissed for want of prosecution.
4. This application was heard by Chairperson Kenneth Love, Q.C., pursuant to Section 6-95(3) of the *SEA* in Saskatoon on April 21, 2015.

#### **Decision**

5. The application for dismissal of the appeal was granted. An appropriate Order dismissing the appeal will accompany these reasons.

#### **Reasons for Decision**

6. The Board cannot speculate as to the reasons for the non-appearance of the Applicants or their counsel. The date, time and place for the hearing was known to them and had been provided in the Board's Order of March 23, 2015 by the Board's Registrar.
7. In the Board's Order of March 23, 2015, the Applicants were also granted leave to file a Brief of Law with the Board on or before 5:00 PM on April 6, 2015. No Brief was filed with the Board. On April 9, 2015, counsel for the Applicant's wrote to the Board's Registrar as follows:

*Hi Mr. Bayer and Ms. Schienbein,*

*I confirm that I have not prepared a brief for the purpose of filing, for what was to be a new Appeal date of April 17th, 2015 before the LRB. It was made very clear to my client and I during arguments submissions, that the sum of \$17,525.20 (less the \$500.00 deposit made) MUST BE PAID by not later than Friday, March 27, 2015, as a "condition precedent", in order for the Adjournment to be granted to April 17th, 2015.*

*This was a condition demanded by Ms. Schienbein, and which Mr. Love concurred, and confirmed in his Board Order dated March 23, 2015.*

*Despite his best efforts, my client could not come up with the said sum required by the stated deadline.*

*I respectfully submit that the Appellant does not deem the appeal to be abandoned, but takes the position that the imposition of the entire sum of money to be deposited within 3 days, in order to have a brief adjournment of the appeal, violates the principles of fairness and natural justice.*

*If I am wrong in my understanding, that the Appeal could still proceed on the return date of April 17th, notwithstanding the non deposit of monies as ordered, and I can and could have filed a Brief in order for the Appeal to proceed, then I ask for written clarifications in this regard, and for a further adjourn date in order to perfect the Brief for the Appeal.*


*Thank you.*

*John Kwok  
Solicitor for AL-RO Acrylic Stucco*

8. In his email, counsel for the Applicants referenced another provision of the Order made by the Board on March 23, 2015, which was that the Applicants pay in the amount of wages in dispute to the Director of Employment Standards not later than 5:00 PM on March 27, 2015.

9. From this email, it would, we think, be reasonable to presume that the Applicant or its counsel would have appeared at the hearing, if for no other purpose than to advance the issues raised counsel's email.
10. The onus of proof falls upon the Applicants in this case. Absent any appearance or arguments raised, that onus cannot be met. The Appeal must, therefore, be dismissed.

Yours truly,



Kenneth G. Love, Q.C.  
Chairperson