

Indexed as: BCSSAB 15 (1) 2014

**IN THE MATTER OF THE *HOMEOWNER PROTECTION ACT*,
S.B.C. 1998, C.31**

**AND IN THE MATTER OF an appeal to the
BRITISH COLUMBIA SAFETY STANDARDS APPEAL BOARD**

BETWEEN: **HOMEOWNER** APPELLANT

AND: **HOMEOWNER PROTECTION OFFICE** RESPONDENT

REASONS FOR DECISION

Introduction

[1] This is an appeal of a decision of the Registrar of the Homeowner Protection Office (the “HPO”) dated September 26, 2014 (the “Decision”) regarding the Homeowner’s application for an Owner Builder Authorization (“OBA”) under section 20 of the *Homeowner Protection Act* (the “Act”) with respect to a new home constructed in Port Coquitlam, British Columbia (the “New Home”). The Decision denied the Homeowner’s application for an OBA. The Homeowner wishes to have the Decision overturned so that she may obtain an OBA for the New Home.

Issues

[2] Is the Homeowner entitled to an Owner Builder Authorization with respect to the New Home pursuant to section 20 of the Act?

History of Appeal

[3] A series of appeal management and settlement conferences were held in this appeal. It was eventually ordered that the appeal would proceed via written submissions and a timeline for the provision of such submissions and any new evidence was provided to the parties. The Homeowner determined that she would rely on her initial Notice of Appeal and advised the Board that she would not be filing further written submissions or evidence. The Respondent has provided the Board with brief written submissions outlining its position as to why the appeal ought to be dismissed.

Facts

[4] The facts in this appeal are not in dispute. The New Home was originally registered with the HPO on November 2, 2011. At this time, the HPO was advised that the New Home would be built by a Construction and Development Ltd., which company was a licensed residential builder. A building permit was issued on November 3, 2011 and the New Home was registered for a policy of home warranty insurance. The Homeowner was the registered owner of the New Home.

[5] At the time the Appeal was commenced, the Homeowner resided at a residence on Marine Drive, Burnaby, British Columbia in a home that was built by her husband, the Homeowner, under an OBA. The occupancy permit for this home was issued on April 7, 2012.

[6] In or about February 2012, the New Home was de-enrolled from home warranty insurance on the basis that it was to be built by another licensed residential builder. The New Home was subsequently constructed by a Development Ltd. The New Home was not re-enrolled in a policy of home warranty insurance.

[7] On February 6, 2014, the Homeowner applied for an OBA for the New Home. On her application form for the OBA she indicated that she would “personally engage in, arrange for or manage all or substantially all of the construction of the” New Home. However, by this time, the New Home was substantially complete.

[8] Trades used to construct the New Home have confirmed with agents of the HPO that they dealt with the Development Ltd. and not the Appellant with respect to the construction of the New Home. The Homeowner does not deny this.

[9] Both the initial decision maker and the Registrar of the HPO found the Homeowner ineligible with respect to her application for an OBA on the grounds that she did not engage in, arrange for or manage all or substantially all of the construction of the New Home.

[10] In her Notice of Appeal, the Homeowner asked the Board to overturn the Decision on the grounds that special circumstances justified a waiver of the eligibility criteria. The special circumstances the Homeowner sought to rely upon were difficult relationship issues between her and her husband that made it so she needed to move out of the Marine Drive residence as soon as possible so that she and her children could live separate and apart from her husband.

[11] Despite not qualifying for an OBA through the HPO, since the commencement of this Appeal the Homeowner has been able to obtain occupancy of the New Home with the assistance of the HPO.

Position of the Parties

[12] The Homeowner submits in her Notice of Appeal that the breakdown of her marriage constitutes special circumstances that ought to permit the HPO to grant her an OBA so that she can move into the New Home and commence living separate and apart from her husband.

[13] The Respondents state that the Homeowner does not meet the legislative criteria for receiving an OBA. Further, the Respondent states that the Homeowners' marital troubles do not constitute special circumstances that permit the HPO to grant her an OBA. However, the HPO has assisted the Homeowner in obtaining an occupancy permit so that she may reside in the New Home absent compliance with the legislation requiring the New Home to be enrolled in a policy of home warranty insurance. The Respondent further states that the standard for review for discretionary decisions of the Registrar is reasonableness and that the Board must give deference to the Registrar's Decision. In this regard, the Respondent states that the Homeowner has been able to move into, occupy and reside in the New Home and that the Registrar's Decision is clearly reasonable and there is no basis that it should be set aside.

Analysis

[14] Section 20 of the Act sets out the potential for OBAs to be issued to individuals building new homes for their own personal use. Section 20 of the Act states:

20(1) On application to the registrar, a person who intends to build, for personal use, a new home of a prescribed type may be issued an authorization if the person

- a) Meets the criteria prescribed for owner builders, and
- b) Pays the prescribed fees.

(2) The registrar may issue an authorization under subsection (1) to a person who does not meet the criteria referred to in subsection (1)(a) if the registrar is satisfied that special circumstances justify doing so.

(3) An owner builder, with respect to the new home for which the owner builder's authorization is issued, is not required

- a) to obtain home warranty insurance, or
- b) to be licensed under this Act.

[15] The criteria referred to in section 20 of the Act are set out in section 4.1(2) of the *Homeowner Protection Act Regulation* (the "Regulation"), which states:

4.1(2) The following criteria are prescribed for the purposes of section 20(1)(a) of the Act:

- a) the person must be an individual;
- b) the person must intend to use the new home for personal use for at least one year from the date of first occupancy of the new home;
- c) if the person has previously been issued an authorization, the person must not have been issued an authorization for at least the following period of time, determined from the date of first occupancy of the new home built under the most recent previous authorization:
 - i) 18 months, if the person has been issued only one previous authorization;
 - ii) 3 years, if the person has been issued two previous authorizations;
 - iii) 5 years, if the person has been issued three or more previous authorizations;
- d) the person must not ordinarily be resident with a person who does not meet the criteria set out in paragraph (c)
- e) the person must

- i) have a registered interest in the land on which the new home is to be built and intend to maintain that interest for at least one year from the date of first occupancy, or
- ii) be a director of a family farm corporation, within the meaning of the *Property Transfer Tax Act*, that
 - a. has a registered interest in the land on which the new home is to be built, and
 - b. has passed a resolution affirming that it will not dispose of the interest referred to in clause (a) for at least one year from the date of first occupancy;
- f) the person must intend to engage in, arrange for or manage all or substantially all of the construction of the new home;

the person must not have made a false statement in a previous application for an authorization;

the person must not have failed to comply with sections 20.1(a), 21(2) and 22 of the Act or section 19(1) of this regulation.

[16] Applying the above legislation to the fact in this case, it is clear that the Homeowner did not qualify for an OBA given the criteria set out in the legislation. She was ordinarily resident with the husband who had received an OBA recently enough to prohibit the granting of a second OBA in such a short timeframe and did not substantially construct the New Home. Accordingly, the only hope the Homeowner had to obtain an OBA was the Registrar of the HPO finding the existence of special circumstances pursuant to section 20(2) of the Act that would permit an exemption from the legislative requirements.

[17] The Registrar's ability to exempt individuals from the legislative requirements of the Act is discretionary. Accordingly, such decisions are treated with deference by the Board and are only overturned if they are unreasonable. With the assistance of the HPO, the Homeowner is now able to reside in the New Home despite the fact that it is not registered in a policy of home warranty insurance. While the Homeowner's relationship troubles are unfortunate, I find that they do not amount to adequate circumstances to permit non-compliance with the legislative criteria and find that the Registrar acted reasonably in denying the Homeowner application for an OBA. The Homeowner has been able to obtain occupancy of the New Home with the help

of the HPO. This solution manages to assist the Homeowner while maintaining consumer protection potential future owners of the New Home.

[18] Pursuant to section 29.4(1) of the Act, the Board must also consider the purposes of the Act when hearing appeals. The purposes of the Act are as follows:

- a) to strengthen consumer protection for buyers of new homes,
- b) to improve the quality of residential construction, and
- c) to support research and education respecting residential construction in British Columbia.

A further purpose of the Act is to administer the reconstruction loan portfolio, but that purpose is not relevant to this appeal. The consideration of strengthening consumer protection for buyers of new homes and improving the quality of residential construction both support the Registrar's findings in the Decision. As stated above, I find that the Registrar acted reasonably in denying the Homeowner's application for an OBA.

Conclusion

[19] For the reasons set out above, the Appeal is dismissed.

Signed:

A handwritten signature in black ink, appearing to read 'Emily C. Drown', is written over a light gray rectangular background.

Emily C. Drown