

Indexed as: BCSSAB 5 (2) 2012-13

**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: A HOMEOWNER APPELLANT

AND: HOMEOWNER PROTECTION OFFICE RESPONDENT

REASONS FOR PRELIMINARY DECISION

[1] This is the second preliminary decision rendered in this Appeal. In the earlier preliminary decision, I held that the Appellant was found to have applied to the Board for late filing of the within Appeal and asked the HPO to provide their response to that application within 7 days of receipt of these reasons for decision. This decision determines the Board's jurisdiction to hear the Appeal of the Registrar's decision dated March 1, 2012.

[2] As my earlier preliminary decision sets out the background to the Appeal and the position of the parties, I will not reiterate this information here. A thorough recitation of the facts before the board can be found in that earlier preliminary decision. I will simply add that the HPO has since filed its response as requested and opposes the Appellant's application for late filing.

[3] In its response the HPO takes issue with my earlier decision to find that the Appellant has applied to the Board for late filing and states that the Board's Rules of Practice and Procedure do not allow for such a decision. This strikes me as an attempt to have the Board revisit a decision that it has already rendered. Whether, that decision is correct or not, the proper channel for making such an argument is by way of an appeal of the Board's decision. Once a decision of the Board has been rendered, it cannot be revisited. Accordingly, I stand by my earlier decision.

[4] In the alternative, the HPO submits that there are no special circumstances excusing the late filing of the Appellant's Appeal with the Board.

Issue


[5] Are there special circumstances that permit the late filing of the Appellant's Appeal of the Registrar's Decision of March 1, 2012?

Decision

[6] What this decision boils down to is whether the Appellant's stated inability to determine how to file the Appeal amounts to "special circumstances" that would permit the late filing of the Appeal pursuant to the Board's rules of Practice and Procedure. In this regard, I note that a full three weeks prior to finally filing the Appeal, the Appellant was able to have her agent contact the HPO to discuss the Appeal. Accordingly, it is clear that the Appellant was aware of the issue by at least May 30, 2012. I also note that the evidence before the Board indicates that on May 30, 2012, the Appellant's agent was advised of the applicable appeal deadlines. Nevertheless, the Appeal was not filed until June 20, 2012.

[7] While it is unfortunate that the Appellant was unable to file her Appeal on time, an inability to file on time without further explanation is insufficient to amount to "special circumstances." Accordingly, the Appellant's Appeal of the Registrar's Decision of March 1, 2012 is dismissed.

[8] As indicated in my earlier preliminary decision, I have found that the Board has jurisdiction to hear an Appeal of the Compliance Order and I have directed that the parties attend a second Appeal Management Conference in this regard. Any matters concerning the Appeal of the Compliance Order that either party may have may be raised and addressed at this Appeal Management Conference.



Emily C. Drown, Vice-Chair