

[4] The Appellant was ordered to enroll the Home in a policy of home warranty insurance.

[5] The HPO submits that the Appellant has not taken any steps to secure warranty coverage on the Home after his appeal was dismissed in September, 2014. The Appellant submits that he has started to take steps to inquire about obtaining home warranty coverage, but he says that he is not familiar with the process of obtaining home warranty insurance. He contacted the Homeowner Protection Office at the end of January, 2015 and met with the Compliance Officer of HPO on February 2, 2015. The Appellant and the Compliance Officer disagree as to what precisely was said in the course of this meeting, but it is clear on the evidence submitted by both that the need for the Appellant to obtain home warranty insurance on the home was discussed and that the Appellant was aware that he had been ordered to secure that warranty insurance.

[6] Following that meeting the Appellant sought a review of the monetary penalty imposed in the Compliance Order and later still sought an appeal to this Board from the Decision of the Registrar confirming the monetary penalty.

DECISION

[7] In his submissions to this Board the Appellant continues to assert that he was not the residential builder of the home and that he should not be responsible for securing home warranty insurance. That issue has already been finally determined in the earlier appeal brought by the Appellant which the Board disposed of in its September, 2014 Decision which found that the Appellant was required to obtain warranty coverage on the Home. I do not intend to revisit that issue.

[8] In answer to the assertion that he has, since being ordered to obtain home warranty insurance, not taken any steps to comply with that Order, the Appellant has not brought forward any evidence of pro-active steps in that regard beyond contacting the Compliance Officer at the HPO in February, 2015. While the evidence as to what was discussed at that meeting is somewhat scant, it appears as though the Appellant was more concerned about re-arguing the issue of whether he, rather than the owner, ought to be required to warranty the Home. There is no evidence before this Board that the Appellant made any enquiries with the providers of warranty insurance between September, 2014, when he was aware that he had to obtain that

warranty coverage, and February, 2015 when he met with the Compliance Officer. He has not taken any steps since meeting with the Compliance Officer to enroll the Home, or even to begin that process. I cannot conclude on the evidence before me that the Appellant has either complied with the Order, or taken any real steps to comply.

[9] The Homeowner Protection Office has the power to levy monetary penalties for non-compliance with the *Homeowner Protection Act* pursuant to Section 28.3(1)(b) which provides as follows:

The Registrar, in accordance with the Regulations, may impose a monetary penalty on a person who fails to comply with any of the following:

- (b) A Compliance Order
- (2) A monetary penalty may be:
 - (a) A single amount or
 - (b) An amount for each day that the contravention continues.
- (4) The total monetary penalty imposed on a person under this section for a contravention must not be greater than \$25,000

THE AMOUNT OF THE PENALTY

[10] The Monetary Penalty imposed a daily penalty of \$260 for each day until warranty coverage was in place, to a maximum of \$7,800.

[11] The evidence is clear that the requirements to warrant the Home have not been met. I find that a Monetary Penalty is justified according to the provisions of the *Act*.

[12] The daily penalty that was imposed by the Compliance Order is capped at \$7,800. Such a penalty is consistent with previous Decisions of this Board which upheld monetary penalties for failure to secure warranty coverage in compliance with the *Act*. In a previous Decision dated September 18, 2013 a builder who was required to place warranty insurance on two homes and failed to do so was given a monetary penalty of \$385 per day to a maximum of \$15,400, or roughly \$7,700 per home.

[13] In a September 18, 2013 Decision this Board confirmed a monetary penalty of \$7,200 for the builder's failure to enroll a home in warranty protection.

[14] We note that the *Act* provides for a statutory maximum of \$25,000 for monetary penalties.

[15] Considering the whole of the evidence, and these previous Decisions, the Board finds that the Monetary Penalty in this instance of \$7,800 is reasonable and appropriate.

[16] The *Act* makes provision for monetary penalties to be assessed on a daily basis. The imposition of a daily penalty has two effects. Firstly, it encourages timely compliance with the provisions of the *Act* and secondly, it affords an opportunity to the party receiving the penalty to reduce the amount from the maximum.

[17] The daily penalty in this instance is reasonable and consistent with previous Board Decisions.

EFFECTIVE DATE FOR MONETARY PENALTY

[18] The *Act* affords any party who is alleged to have contravened the *Act* opportunities to seek review of any resulting compliance order. Section 29.1 firstly provides for a review of compliance orders by the Registrar of the HPO. Subsequent to that step being taken, Section 29.3 provides for an appeal of the Registrar's decision to this Board. The Appellant has availed himself of all of those opportunities and as set out in these reasons, I have concluded that the Monetary Penalty is appropriate.

[19] That said, the review and appeal procedures the *Act* provides would become illusory, at least in the context of monetary penalties, if those penalties were allowed to accrue while the appeal process is underway.

[20] Accordingly, the Board orders that the daily penalty of \$260 will begin to run from the date of these Reasons and to be capped at a maximum of \$7,800.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

Jeffrey A. Hand, Vice-Chair