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IN THE MATTER OF THE SAFETY STANDARDS ACT, SBC 2003, CHAPTER 39

AND IN THE MATTER OF

an appeal to the British Columbia Safety Standards Appeal Board

BETWEEN:

Property Owner

APPELLANT

AND

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, LICENSING AND
CONSUMER SERVICES BRANCH**

RESPONDENT

Member, Safety Standards Appeal Board

David Martin

On behalf of the Appellant:

The Appellant

Counsel for the Respondent:

Kevin Boonstra

REASONS FOR DECISION

Introduction

[1] This is an appeal of a decision of the Registrar of the Licencing and Consumer Services Branch of B.C. Housing dated February 27, 2018, that upheld the decision to deny an Owner Builder Authorization (“**OBA**”) applied for by the Appellant for the home located in Grand Forks, British Columbia (the “**Decision**”).

Issue

[2] I must determine whether the decision should be upheld, varied or set aside. To do this, I must decide whether the Registrar was correct in her finding that the OBA should remain

denied due to the Appellant's failure to comply with the terms of the *Home Owner Protection Act*, SBC 1998, c.31 (the "**Act**") and the *Regulation to the Act* (the "**Regulation**").

Facts

[3] The evidence is not in dispute. It is clear that the Appellant built two homes prior to the home in issue (the "**New Home**"). The first home built was in 2008 on a property (the "**First Home**"), under the OBA of his then spouse. This home was sold in 2012. The second home built was on another property (the "**Second Home**").

[4] The First Home was registered in the joint names of the Appellant and his spouse. A building permit was issued in the Appellant's name. All of the documents relating to the First Home were in the name of the Appellant, with one of those names having a different spelling. The Appellant admits his involvement in the OBA for the first home and explained the name confusion due to his immigration to Canada. The Home Owner Protection Office (as it was then known) issued an OBA and a New Home Registration Form on May 7, 2008.

[5] On September 6, 2017, the Appellant's new spouse applied for an OBA to construct the Second Home. By that time, the Second Home was already completed and occupied. The Appellant claimed that he and his spouse were not aware of the OBA requirement, which by Section 20 of the *Act*, requires that they apply for and obtain an OBA before building the home. Therefore, the Second Home was built in contravention of Section 22 of the *Act*.

[6] In reviewing the application for the Second Home, B.C. Housing was advised by the Regional District that no occupancy or final building permit had been issued for the Second Home. The Regional District was investigating the Second Home for being an illegal structure.

[7] B.C. Housing issued an OBA for the Second Home and also issued an Owner Builder Disclosure Notice so that the Second Home could be sold. Based on documents provided by the Appellant, B.C. Housing recognized the occupancy date of the Second Home as July 27, 2016. That OBA was approved retroactively on October 13, 2017 on the basis of the Appellant's explanation despite the fact that the home was built without a building permit and despite his failure to comply with the *Act*.

[8] On November 22, 2017, the Appellant applied for an OBA for the New Home he wished to construct. His signed application for the OBA included a statement that this was the first

home that he, or anyone ordinarily resident with him, had built as an owner/builder. The application did not disclose that he had built the First Home or the Second Home, or that his spouse was ordinarily resident with him, as required by the *Regulation*.

[9] At the time of the Appellant's application for an OBA for the New Home, B.C. Housing was unaware of his involvement in the First Home because he was using a different name. As such, under the time limitations in section 4.1(2)(c) of the *Regulation*, B.C. Housing concluded that he had only been issued one prior OBA and would be eligible for a second OBA within 18 months of the occupancy date of the Second Home (July 22, 2016).

[10] It was on that basis, and once the Appellant had disclosed his spouse, B.C. Housing allowed him to write the OBA examination required by the *Act* and in Section 4.1(2)(i) of the *Regulation* and gave him information on preparation to write the examination.

[11] The Appellant wrote the examination but failed to achieve a passing score of 70% (his score was 51%). As a result, B.C. Housing denied his OBA Application.

[12] As he was entitled to do, the Appellant sought a review of the denial of his OBA Application for the New Home. In his application, he said that he had built his own houses, the First Home and the Second Home. He said that he was residing with the owner/builder applicant at the time the First Home was built.

[13] This was the first time he had disclosed the First Home to B.C. Housing. B.C. Housing's files indicated that "the Appellant", (the spouse of first wife) not "the Appellant with the different spelling" (the spouse of the second wife) had done so. As a result, B.C. Housing sought information from the Appellant about his involvement in the First Home and the Appellant responded as follows:

"I was the owner/builder of 5305 and 5325.

5305 built 2008. My son and I who is a journeyman carpenter built a house. We did the land clearing, the foundation work, the sub floor, all the framing. We had a manufactured trusses which we installed and also the roof, we did the plumbing ourselves, the drywall, insulation and windows. And also the sidings, the electrical was done by a licensed electrician. And also the same with the second property which I put in the name of my wife as the owner/builder."

[14] On February 26, 2018, the Regional District advised B.C. Housing that no occupancy permit had been issued for the Second Home.

[15] The Registrar of B.C. Housing, in a decision dated February 27, 2018, upheld the denial of the OBA for the New Home for not meeting the requirements of section 4.1(2) of the *Regulation*, stating that the Appellant was ineligible for an OBA for three reasons:

- (i) failure to pass the OBA examination;
- (ii) ineligibility under the waiting period requirements due to the previously built owner/builder homes; and
- (iii) ineligibility based on previous noncompliance with the Act.

[16] The Registrar determined that the original decision to deny his application was accurate and correct and found that the reasons the Appellant provided for not complying with the requirements of the *Regulation* were not sufficient to waive the requirements of the *Act* and *Regulation*.

Position of the Parties

Appellant

[17] The Appellant in his written submissions acknowledged that he built the First Home and the Second Home and that he built the Second Home without a building permit and without an OBA, but he explained that he was not aware of those requirements.

[18] In his submission, the Appellant relied upon his assertion that he had 50 years' experience building houses, that the examination he wrote did not reflect his knowledge of house building, the fact that he was older and not in good health, and that he just wanted to build a two-bedroom rancher for his family, which includes a young daughter and five dogs.

Respondent

[19] Counsel for the Respondent provided written submissions outlining its submission on this appeal. Counsel submits that the Registrar's decision not be interfered with and that the appeal be dismissed.

[20] With respect to the OBA for the Second Home, counsel for the Respondent submits that the Appellant and his spouse did not comply with section 20 of the *Act* as that required that an

OBA be obtained before building an owner-built home and, as such, they contravened section 22 of the Act.

[21] With respect to the Appellant's claim that he and his spouse were not aware of the OBA requirements, counsel submitted that the assertion is not credible as the Appellant and his spouse had applied for an OBA for the First Home and must have been aware of the requirements.

[22] With respect to the application for an OBA for the New Home, the Respondent's counsel points out that it contained this statement:

"This is the first time I, or anyone ordinarily resident with me, has built as an owner/builder."

[23] The Respondent's counsel says that this statement was not true given the OBA for the First Home and the Second Home. As well, counsel points out that the application also failed to disclose that his spouse was ordinarily resident with him.

[24] Counsel for the Respondent submits that the Appellant does not meet the requirements for an OBA set out in section 4.1 of the *Regulation* which requires a three year waiting period from the date of occupancy of the last OBA (which would mean the Appellant would not be eligible to apply for an OBA until July 2019).

[25] Counsel also notes that the Appellant failed to comply with section 4.1(2)(h) of the *Regulation* which requires that "a person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider." He points out that the Appellant admitted violating this section of the *Act* by building the Second Home without home warranty insurance. Last, counsel refers to two further reasons for the Appellant not meeting the requirements of the *Regulation* and the *Act*, which are:

- (b) His failure to pass the OBA examination as required by Section 4.1(2)(i) of the *Regulation*; and
- (c) No Special Circumstances existing to justify waiving the requirement for an OBA as may be allowed pursuant to section 20(2) of the *Act*.

[26] With respect to the lack of special circumstances, counsel said that the Appellant did not explain why they sold the Second Home and could not have continued to reside there. As well, the Appellant did not explain why he cannot purchase another home and just live elsewhere.

[27] Therefore, says counsel, the Registrar did not err in the exercise of discretion in determining that no special circumstances existed.

Analysis

[28] Section 20(1) of the *Act* permits that a person may be issued an OBA if he or she meets the prescribed criteria. The prescribed criteria are set out in section 4.1 of the *Regulation*.

Subsection 4.1(2)(c) and (d) states:

(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).

[29] Also applicable is subsection 4.1(2)(h), which states:

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

And: subsection 4.1(2)(i), which states:

(i) the person must have successfully completed an examination set and administered by the registrar in respect of basic home building knowledge.

[30] With respect to the waiting periods set out in section 4.1(2)(c) and (d) of the *Regulation*, the New Home would be the third owner-built home that the Appellant or one of his spouses (persons with whom they ordinarily reside) have constructed.

[31] As such, I find that the Registrar was correct in concluding that the Appellant would have to wait three years from the “date of first occupancy” of the Second Home which, on the evidence, was July 27, 2016. Therefore, I find that the Registrar was correct and that the Appellant cannot be eligible for another OBA prior to July 27, 2019.

[32] With respect to subsection 4.1(2)(h), section 22(1) of the *Act* requires that “a person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider.” As the Appellant has admitted violating this section of the *Act* by building the Second Home without home warranty insurance, I conclude that the Registrar was correct in finding previous failures to comply with the *Act*.

[33] It is not disputed that the Appellant failed the OBA examination which is a requirement to obtain an OBA under section 4.1(2)(i) of the *Regulation*. Therefore, the Appellant does not meet that requirement.

[34] The Registrar found that the reasons the Appellant provided are not sufficient for waiving the requirements of the *Regulation*. I cannot conclude the Registrar was wrong in reaching a decision that no special circumstances existed for waiving the requirements for an OBA.

Conclusion

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

David Martin

Member, Safety Standards Appeal Board