

Date: October 10, 2017
Appeal No. SSAB 2-2017

Indexed as: BCSSAB 2 (1) 2017

**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: A PLUMBING AND HEATING COMPANY APPELLANT

AND: BRITISH COLUMBIA SAFETY AUTHORITY RESPONDENT

REASONS FOR DECISION

Introduction

[1] This is an appeal of Monetary Penalty No. MP-2016-0004 (the “Monetary Penalty”) in the amount of \$25,000.00 and Discipline Order DO-2016-0007 (the “Discipline Order”) both issued on December 16, 2016 by the British Columbia Safety Authority (the “Respondent”) against the Appellant for failure to comply with Compliance Order No. CO-2015-0045 issued on October 25, 2015 (the “Compliance Order”). The Compliance Order was issued in order to halt the Appellant’s performance of regulated gas work without obtaining the requisite permits as required by the *Safety Standards Act*, SBC 2003, c. 39 (the “Act”), the *Safety Standards General Regulation*, BC Reg 105/2004 (the “SSGR”) and the *Gas Safety Regulation*, BC Reg 10/2004 (the “GSR”).

[2] The Appellant admits that it breached the Act and regulations by performing regulated gas work without a permit.

[3] The Compliance Order required the Appellant to:

- a) obtain permits for regulated gas work performed at two specific locations in Prince George, British Columbia;
- b) to stop performing regulated gas work without a permit; and
- b) to conduct a review of all regulated gas work performed between October 26, 2013 and October 26, 2016 identifying any work performed where a permit was required and a permit was not obtained.

[4] The Appellant admits that it failed to comply with the Compliance Order.

[5] The Discipline Order issued to the Appellant alongside the Monetary Penalty suspends the Appellant's gas contractor license until the fulfillment of a number of conditions and states that if the conditions are met that the license will be reinstated with additional terms of reporting to ensure ongoing compliance with the Act and regulations.

Issues

[6] The issues before the Board are whether the Monetary Penalty and Discipline Order were appropriately levied by the Respondent.

Position of the Parties

The Appellant's Position

[7] As stated above, the Appellant admits that it was not fully in compliance with the terms of the Compliance Orders when the Monetary Penalty was issued. However, the Appellant states that it was trying to comply and was working closely with the Respondent to solve the problem. The Appellant states that some of the non-compliances occurred as result of the role out of the Respondent's MyConnection system and states that when the system was implemented that it did not work correctly and that it took a long time for the Respondent's technical team to work out the kinks. The Appellants state that this caused them to get behind pulling permits and that they never caught up.

[8] Further, the Appellant states that the amount of the Monetary Penalty is unfair. The Appellant states that this is especially the case given that they are willing to get

back on track using a log book as required in the Discipline Order and are prepared to pay the full amount owing in permit and inspection fees so that they will be in good standing with the Respondent and will have a “fresh start”. The Appellant states that they want the Respondent to know that they are serious about getting into good standing and compliance with the applicable legislation.

[9] The Appellant further submits that the Monetary Penalty should not be levied as a review of the Respondent’s website indicates that the Monetary Penalty is higher than other monetary penalties issued in other cases of non-compliance. The Appellant also states that it cannot afford a \$25,000.00 penalty. In this regard, the Appellant states that if its license is not re-instated that it will have to lay off its employees and close down and that this would not be fair to the Appellant or its five employees.

[10] In support of the above submissions, the Appellant states that it has been in business for twelve years without receiving any complaints and that the Respondent ought to have factored this into its decision to levy the Monetary Penalty and Discipline Order.

The Respondent’s Position

[11] The Respondent states that the Monetary Penalty was appropriately levied and that the Appeal ought to be dismissed. In support of this assertion the Respondent submitted the affidavit of a Senior Safety Officer, sworn March 6, 2017.

[12] Counsel for the Respondent states that the Provincial Safety Manager duly considered the factors set out in section 3 of the Monetary Penalties Regulation and complied with section 40 of the Act when issuing the Monetary Penalty and that accordingly there is no basis in law to vary the Monetary Penalty or set it aside.

[13] With respect to the Appellant working to “catch up” on pulling the permits, counsel for the Respondent submits that there is no question that the Appellant is a “licensed contractor” that performs “regulated work” on “regulated product” within the meaning of the Act and that as such is required to comply with the Act and regulations. In this regard, counsel for the Respondent notes that the Appellant has the following responsibilities under the Act and regulations, which include:

- a) Maintaining current knowledge of the Act, regulations, directives and safety orders; and
- b) Obtaining the appropriate permit before performing regulated work or using a regulated product.

[14] In support of its assertion that the Appellant is responsible for complying with the Act and regulations, counsel for the Respondent states that the Respondent held a Gas Contractor Responsibility Information orientation meeting with the Appellant on June 30, 2010 to review the requirements of the Act and regulations. The Respondent notes that this was in addition to repeated notifications and other efforts by safety officers, including local performance reviews and contractor audits dating back as far as 2007, to assist the Appellant in achieving compliance with the Act and Regulations.

[15] The Respondent submits that despite being made well aware of the Appellant's obligations under the Act and regulations that the Appellant consistently and repeatedly performed unpermitted regulated gas work on numerous occasions at multiple locations. In support of this the Respondent refers to numerous correspondence and certificates of inspection contained in the Appeal Record filed in this Appeal.

[16] With respect to the Appellant's submission that it fell behind in pulling permits when MyConnection came into place, the Respondent states that the Appellant has not shown that this is the cause of the Appellant's failure to obtain permits. In this regard, the Respondent states that MyConnection is an online service that allows permits to be obtained anywhere with an internet connection and became available on April 15, 2013. The Respondent admits that there were difficulties with the program during its first four to six weeks, but states that it provided workarounds to facilitate continued processing of permits and allowed contractors to apply for permits by fax, mail or hand-delivery during this period. The Respondent submits that any technical challenges with MyConnection were resolved by July 2013. Further the Respondent submits that the ongoing non-compliances at issue in the appeal are largely related to work performed after the time period where issues with MyConnection could have played a problem.

[17] With respect to the amount of the Monetary Penalty the Respondent states that the amount is reasonable. In support of this assertion, the Respondent states that the

Appellant has not provided any evidence of the unfairness of the amount or the fact that it cannot afford to pay the penalty as issued. Further, the Respondent notes that the Appellant has not denied that it breached the Act, Regulations and the Compliance Order and still has not fully complied with the Discipline Order. The Respondent submits that the Appellant could have become compliant had it had attempted to do so with greater diligence. The Respondent states that the Appellant's business interest is only a factor that must be considered by the Provincial Safety Manager to the extent that there has been any economic benefit derived from the contravention as required to be considered by section 3(f) of the *Monetary Penalties Regulation*. The Respondent states that the risk of harm to the public is substantial and states that it poses a risk to public safety. The Respondent states that any financial impact on the Appellant's business interest is outweighed by the risk of significant harm to the public.

[18] With respect to the issuance of the Discipline Order the Respondent states that the Appellant's failure to comply with the Compliance Order gives the Respondent jurisdiction to issue the Discipline Order pursuant to section 42 of the Act and that it ought to be upheld as there is no basis in law to vary or set it aside.

Analysis

[19] Section 40(1) of the Act and section 2 of the MP Regulation clearly set out that a monetary penalty may be appropriately levied for a contravention under the Act or its associated regulations. Section 40 of the Act states:

40(1) A safety manager may, in accordance with the regulations, impose a monetary penalty on a person who fails to comply with any of the following:

...

(b) a compliance order;

....

[20] It is clear that the Safety Manager has jurisdiction to issue a Monetary Penalty for failure to comply with a compliance order. In doing so, he must comply with section 3 of the MP Regulation, which states:

3. Before a safety manager imposes a monetary penalty on a person, the safety manager must consider the following:

- a) previous enforcement actions under the Act for contraventions of a similar nature by the person;
- b) the extent of the harm, or the degree of risk of harm, to others as a result of the contravention;
- c) whether the contravention was deliberate;
- d) whether the contravention was repeated or continuous;
- e) the length of time during which the contravention continued;
- f) any economic benefit derived by the person from the contravention.

[21] In addition to complying with section 3 of the MP Regulation, a safety manager issuing a monetary penalty must also comply with the notice provisions set out in section 40(7) to 40(9) of the Act. A review of the Appeal Record filed in this appeal indicates that the Safety Manager complied with these notice provisions. I also note that the Appellant did not appeal the terms of any of the three Compliance Orders.

[22] A review of the appeal record clearly indicates that although the Appellant had taken some steps to comply that the Appellant was not in compliance with the Compliance Order when the Monetary Penalty was issued. I find that the Appellant was given significant time to comply between the initial discovery of the non-compliance, issuance of the Compliance Order and the ultimate issuance of the Monetary Penalty. It is also apparent that the Safety Manager considered the criteria set out in section 3 of the MP Regulation. Upon review of the Monetary Penalty Checklist completed by the provincial Safety Manager in advance of the issuance of the Monetary Penalty, I find the Safety Manager's decision to issue the Monetary Penalty correct and supported by the Act and associated Regulations. As stated by the Appellant, the Monetary Penalty is high when compared to other Monetary Penalties reported by the Respondent; however, the safety violations of the Appellant are far from minor. The Provincial Safety Manager found that there was a significant risk of harm to the public and I see no evidence to contradict this assertion. There is a reason that regulated work is regulated. It is unsafe if not performed by skilled individuals. A permit and inspection system is in place to ensure that this is done. Given that the Respondent has jurisdiction to issue Monetary Penalties up to \$100,000.00 I find the amount of the Monetary Penalty appropriate. While the troubles with MyConnection may well have played an initial role in the non-compliances of the Appellant, the Appellant's failure to rectify such non-compliances in a

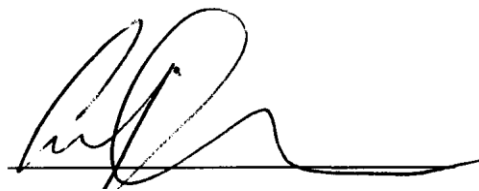
timely fashion cannot be found to be a result of this problem that occurred years before the issuance of the Monetary Penalty and Discipline Order. I agree with the assertion of the Respondent that the Appellant could have brought itself into compliance had it exercised greater diligence.

[23] Section 42(1) of the Act gives a Provincial Safety Manager jurisdiction to issue a discipline order if any person performing regulated work fails to comply with a compliance order. The Act further gives the Provincial Safety Manager wide jurisdiction as to the sanctions that may be included in such a discipline order. Section 42(3) of the Act permits a Provincial Safety Manager to issue any sanction he or she considers necessary in the circumstances. As there is no dispute that the Appellant was not in compliance with the Compliance Order at the time the Discipline Order was issued, the Discipline Order is permitted by the legislation and I decline to vary the decision of the Provincial Safety Manager.

Conclusion

[24] For the reasons set out above, the appeal is dismissed.

Signed:

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long horizontal line extending to the right.