

Indexed as: BCSSAB 11 (1) 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 STANDARD APPEAL BOARD**

BETWEEN: **A BUILDER** **APPELLANT**

AND: **HOMEOWNER PROTECTION OFFICE** **RESPONDENT**

**REASONS FOR DECISION
Review of Monetary Penalty**

[1] This is an appeal under the *Homeowner Protection Act, SBC 1998, c.31* (the "Act") concerning a monetary penalty issued by the Homeowner Protection Office (the "HPO") on October 10, 2012 in the amount of \$9,600.00 for failure to comply with the Compliance Order of April 12, 2012 that required the Appellant, A Builder, to apply for and become a licensed residential builder and to enroll the new home with a policy home warranty insurance in compliance with the requirements of the Act (the "Compliance Order").

[2] The Builder requested a review of the Compliance Order on April 28, 2012. The HPO's Registrar reviewed the Compliance Order as provided in section 29.2 of the Act and On July 20, 2012 she rendered a review decision which confirmed the Compliance order and advised the Builder of his right to appeal to the Board within 30 days of receipt of the decision (the "Registrar's Compliance Decision"). The Builder did not appeal the Registrar's Compliance Decision.

[3] Upon receipt of the Registrar's Compliance Decision, the Builder did not comply with the Compliance Order. On October 10, 2012 the HPO imposed a monetary penalty

in the amount of \$9,600.00 on the Builder for failure to comply with section 14(1) and section 22(1) of the Act (the "Monetary Penalty"). On October 15, 2012 the Builder requested a review of the Monetary Penalty. The HPO's Registrar reviewed the Monetary Penalty and on November 6, 2012, the Registrar issued a decision reducing the Monetary Penalty to \$7,200.00 and advising the Builder of his right to appeal to the Board within 30 days of receipt of the decision (the "Registrar's Penalty Decision").

[4] On November 8, 2012, the Builder sent an email to the HPO requesting a further reduction of the Monetary Penalty. The HPO responded on November 9, 2012 by reminding the Builder that he may appeal to the Board within 30 days. On November 10, 2012 the Builder sent a fax to the HPO asking them to reduce the penalty amount from \$7200.00 to \$5000.00. The Board was not served with this fax. The HPO received the fax on November 13, 2012.

[5] On December 19, 2012 the Board received a telephone call from the Appellant's Agent, asking the status of the Appeal. Consequently, the Board's Registrar contacted the HPO and requested a copy of the Notice of Appeal. The Builder's fax of November 10, 2012 was then forwarded to the Board by the HPO.

[6] The HPO has since responded with the position that the Board has no jurisdiction to hear the appeal as it was not formally served with the Appellant's Notice of Appeal. In the alternative, the HPO submits that if the Board does have jurisdiction that the Builder commenced his appeal outside of the 30 day time limit for appeals and must therefore bring an application for an extension of time before the Appeal may proceed before the Board. Finally, in the further alternative, the Board submits that the Monetary Penalty should be upheld as there is no question that the Builder failed to comply with the Act and the Monetary Penalty is significantly lower than the statutory maximum of \$25,000.00 permitted by the Act.

ISSUES

1. Does the Board have jurisdiction to hear the appeal?
2. If so, is the Appellant's Appeal within time?
3. If so, should the Monetary Penalty be varied?

HISTORY OF THE APPEAL

[7] The Builder does not deny the conduct that led to imposition of the Monetary Penalty and indicates that he has tried to become a licensed residential builder but has been unable to obtain home warranty insurance for the new home. He has requested that the Monetary Penalty be reduced to \$5000.00 from the already reduced amount of \$7200.00.

[8] Since commencing his Appeal, the Builder has moved to Bolivia for employment purposes. The Board has attempted to contact him repeatedly in order to schedule an Appeal Management Conference. Unfortunately, the Board was unable to contact the Builder as he did not have mail, email or regular telephone access in Bolivia. Through conversations with the Builder's agent, the Board advised the Builder that without his continued involvement in the Appeal that the Board would render its decision based on the facts set out in the Notice of Appeal and Response already filed by the parties. Via his agent, the Builder agreed to this process.

ANALYSIS

[9] There is no dispute that the Builder requested a further appeal of the Monetary Penalty on November 10, 2012 when he faxed the Board. In fact, the fax commences in bold font with the following: "I would like to make one more appeal to reduce penalty amount from 7200 to 5000." Unfortunately, the Builder only served the HPO with his fax and not the Board. The first the Board learned of his intention to Appeal was when his agent contacted the Board on December 19, 2013.

[10] While the HPO is correct that the Board was not served with the Notice of Appeal, the Board did receive the Notice of Appeal on December 19, 2012 when the same was forwarded from the HPO at the Board's request. The *Administrative Tribunals Act, SBC 2004, c. 45* states in section 24(2) that a tribunal may extend the time to file an Appeal if special circumstances exist. I also note that section 20 of the *Administrative Tribunals Act* states that failure to properly serve a document does not invalidate a proceeding if such failure does not prejudice an individual or if any prejudice to an individual can be remedied by an adjournment or other means.

[11] Within days of issuance of the Registrar's Penalty Decision, the HPO was aware that the Builder wished to appeal. Accordingly, I find that the Appellant's failure to serve the Board with the Notice to Appeal does not invalidate the procedure. Once the Board became aware of the Builder's intent to appeal on December 19, 2012 and received the fax he sent the HPO, the Board was in receipt of a Notice to Appeal, albeit after the 30 day appeal period had expired.

[12] Section 24(2) of the *Administrative Tribunals Act* gives the Board jurisdiction to extend a deadline to appeal if special circumstances exist. In the circumstances before me, I find that the Builder thought he had appealed when he provided the HPO with his fax of November 10, 2012, so much so that he had his agent follow up with the Board in December when he had not heard anything further. Accordingly, I find that the deadline for filing an appeal may be extended by the Board. The HPO cannot be said to experience prejudice be either the acceptance of the Notice to Appeal or extension of the timeline for the filing of the same when they had notice within days of the granting of the Registrar's Penalty Decision that the Builder wished to appeal the decision. Any prejudice that may exist is easily remedied by giving the HPO the time they are properly allotted to file their Response to the Appeal, which has occurred.

[13] This now brings us to the larger issue of whether or not the Monetary Penalty should be varied. Unfortunately, due to the Appellant's location in Bolivia, the Board has been unable to arrange an Appeal Management Conference with the parties and thus has been unable to arrange for further evidence and/or submissions to be submitted to the Board. Based on the Notice of Appeal and Response materials filed with the Board, there is insufficient evidence for the Board to properly consider the Appeal. Accordingly, I find that the Appellant, by reason of his inability to attend an Appeal Management Conference or provide further submissions, has failed to diligently pursue his appeal and I am ordering the Appeal dismissed pursuant to section 31(1)(e) of the *Administrative Tribunals Act*.

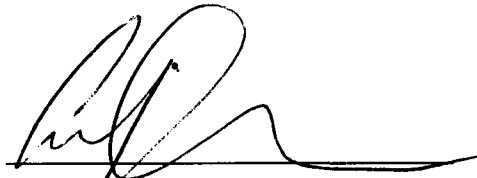
[14] In any event, based upon what I have of the Builder's argument as set out in his brief Notice of Appeal, he appears to be asking for "further mercy" without articulating how the Registrar erred in her reduction of the Monetary Penalty from \$9600.00 to \$7200.00. There is no suggestion that he did comply with the Act and given that the

standard of review for such an appeal is reasonableness, without evidence that the \$7200.00 Monetary Penalty approved by the Registrar was reached unreasonably, the Appellant's appeal was bound to fail.

CONCLUSION

[15] The Appellant's appeal is dismissed.

Signed:



Emily C. Drown, Vice-Chair