

2012. With respect to the request to lift the condition on the Appellant's license, the Registrar determined that the Appellant was out of time to request such a review, the Conditional License having been issued on May 15, 2012 with more than a year passing before a request for review.

[3] In the Notice of Appeal filed with the Board the Appellant indicates that he was advised by a representative of the HPO that there was no use appealing the Conditional License as the process was lengthy and would not get a favourable result. This subject matter was brought up again at the initial Appeal Management Conference held in the Appeal. Due to the allegation that the Appellant was being advised by the HPO not to Appeal the Compliance Order, I ordered that the issue of whether the Conditional License could form part of the within appeal needed to be determined as a preliminary matter before the appeal proper was heard by the Board.

[4] Accordingly, at issue is whether the Board will hear an appeal of the Conditional License.

ISSUE

1. Are there special circumstances that support a time extension for the Appellant's filing of a request for review and/or appeal of the Conditional License?

POSITION OF THE PARTIES

[5] The Appellant has filed a written statement with the Board in which he states that he was advised by a Licensing Officer of the HPO that an appeal of the Conditional License was a lengthy process and could take over six months. He also states that he was told that if he disputed the Conditional License that he would not be able to enroll a duplex until the outstanding construction project was resolved.

[6] The Appellant submits that because of these representations by the Licensing Officer of the HPO that he was induced not to file a request for review and that he should be permitted to have the issue of the Conditional License heard as part of the within Appeal.

[7] The Respondent filed the sworn affidavit of the Licensing Officer in which it was admitted that the Appellant did have a telephone conversation with him on May 18, 2012. The Licensing Officer states that the issue of a request for review of the Conditional License was raised by the Appellant in that conversation. The Licensing Officer further deposes that he advised the Appellant that a request for review must be made within 30 days and said nothing to discourage an appeal. In particular, he states that no mention was made as to how long a review would take and denies stating that a review “won’t get any result.” The Licensing Officer recalls that he may have told the Appellant that he would be unable to enroll any other new home until the conditions on his license were satisfied.

[8] The Respondent submits that there was no wrongdoing on the part of the HPO and states that Appellant made a business decision to satisfy the condition so that he could proceed with other construction projects without the delay of a review or appeal, but ultimately ended up not proceeding with such enrollment due to the cost of the new home warranty insurance.

THE LAW

[9] Pursuant to Part 10.1 of the Act, the Appellant had 30 days from receipt of the decision to attach conditions to the Appellant’s License to request a review of such decision by the Registrar of the HPO. Had the Appellant done so the Registrar would have reviewed the Conditional License and would have issued a Review Decision, which itself would have been able to be appealed to this Board within 30 days of its receipt. If special circumstances existed that precluded the filing of a request for review within the 30 day time period and an injustice would result the Registrar has discretion under the Act to extend the time for filing a request for review.

ANALYSIS

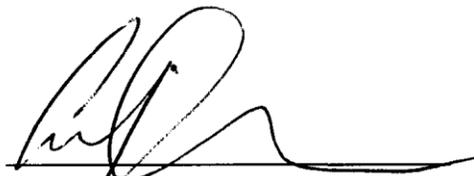
[10] Based on the evidence submitted, I find that the Appellant was not misled by the Licensing Officer. It is clear that at all material times the Appellant was aware that he had 30 days in which to request a review of the Conditional License. I find that the Appellant had a conversation with the Licensing Officer on May 18, 2012 in which the

issue of requesting a registrar's review of the Conditional License was raised. I am satisfied that the Appellant was advised that regardless of whether he appealed or not that he would not be able to proceed with other projects until the issue with the Conditional License was determined and accordingly chose to enroll the residence in a policy of new home warranty insurance. Subsequently, the Appellant chose not to proceed with such enrollment. The appeal process and enrollment in a policy of new home warranty insurance are not exclusive of each other. The Appellant could have appealed while enrolling the residence. The Appellant could also have appealed and waited for the Registrar's decision before determining whether to apply for a new home warranty. While the Appellant has come to regret his decision not to request a review, that regret alone does not amount to special circumstances justifying an extension of time for requesting such review.

CONCLUSION

[11] An appeal of the Conditional License is out of time. After a thorough review of the material before the Board, I can find no reason for a time extension. A review of all of the evidence indicates that the Appellant made a business decision when he chose to obtain Home Warranty Insurance rather than request a review of the conditions placed on the Conditional License. Having found Home Warranty Insurance prohibitively expensive, the Appellant now wishes, well after the appeal period has passed, to argue that the conditions should not have been placed on the Appellant's license. Accordingly, the Appeal will proceed without including the Conditional License as part of the appeal.

[12] The parties shall attend a second Appeal Management Conference. The Board's Registrar will contact the parties with arrangements for such conference forthwith.



Emily C. Drown, Vice-Chair