

Date Issued: March 6, 2012

File No. 7-11-12

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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: Home Owners Appellants

AND: Homeowner Protection Office Respondent

REASON FOR DECISION

Review of Monetary Penalty

Vice Chair: Emily Drown

On behalf of the Appellant: The Appellant

Counsel for the Homeowner Protection Office: Wendy Acheson

REASONS FOR DECISION

[1] This is an appeal under the *Homeowner Protection Act, SBC 1998, c. 31* (the “Act”) concerning a monetary penalty issued on August 26, 2011 in the amount of \$240.00 for each day the Appellants continued to contravene the *Act* in not having become a Licensed Residential Builder under the *Act* or not enrolling the home they were renovating for home warranty insurance pursuant to the provisions of the *Act* or failing to apply for an Owner Builder Authorization pursuant to the provisions of the *Act* (the “Monetary Penalty”).

[2] The Appellants requested a review of the issuance of the Monetary Penalty on October 8, 2011. The Registrar denied the Appellants request for review in a decision dated November 21, 2011 citing the fact that the Appellant was out of time for requesting such a review. The Appellants then appealed to this Board requesting that the Monetary Penalty be reconsidered. The Respondent states that the Appellant’s appeal is out of time in that the initial request for review was filed after the legislated 30 day time limit for requesting a review of the Monetary Penalty. In the event that the Appeal is not out of time, the Respondent states that the Monetary Penalty was correctly issued.

Issue

- [3]
1. Are the Appellants out of time?
 2. If not, should the Monetary Penalty be set aside or varied?

History of Appeal and Position of the Parties

[4] The parties are largely in agreement with respect to the facts that led up to the issuance of the Monetary Penalty and notably, the Appellant does not deny the conduct that led to the imposition of the Monetary Penalty.

[5] The Appellants purchased their home in the City of Port Moody with the intention of renovating the home and adding a new garage. Prior to commencing the renovations the Appellants applied for and received the appropriate building permits from the City of Port Moody.

[6] As renovations were underway it became apparent to the Appellants that the home required more work than they initially anticipated and at some point they notified the Homeowner Protection Office. The Appellants admit that they received correspondence from the Homeowner Protection Office and further admit that they did not complete the online forms for registration due to the fact that they could not afford payment at the time due to the rapidly increasing costs of the renovation.

[7] The Appellants state that when they received notice of the Monetary Penalty on August 30, 2011 that she immediately contacted the Homeowner Protection Office and paid the sum of \$425.00.

[8] The Respondent states that the Monetary Penalty was in effect for every day that the Appellants continued to contravene the Compliance Order issued August 6, 2010 and Amended Compliance Order issued January 27, 2011 and that contravention did not cease until Homeowner Protection Office issued an Owner Builder Authorization on September 23, 2011.

[9] The Appellant admits that she first requested a review of the Monetary Penalty on October 8, 2011. The date of the request for review is not disputed by the Respondent.

[10] On November 21, 2011 the Registrar denied the Appellants' request for a review on the grounds that they had not requested the review within the 30 day legislated time limit for doing so.

Analysis

[11] As submitted by the Respondent, the section 29.1(1)(i) of the *Act* states that a person may request a review by the registrar of a monetary penalty. Section 29.1(2) requires that such a request must be made within 30 days after receiving notice of the Monetary Penalty. Section 29.1(2) also provides the Registrar with the ability to extend or modify the 30 day time frame for requesting a review if the Registrar is satisfied that special circumstances exist which precluded the filing of the request within the 30 day time period so that an injustice would result if the time for requesting a review was not extended.

[12] The Appellant admits and a review of the evidence submitted supports that the Appellants received notice of the issuance of the Monetary Penalty on August 30, 2011.

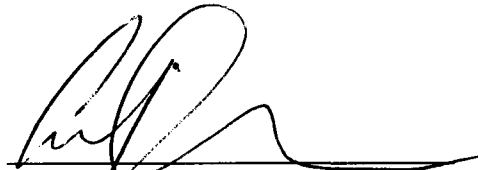
[13] A review of the evidence submitted, and particularly a review of the request for review, clearly shows that the Appellants' request for a review of the Monetary Penalty was not made until October 8, 2011, well after the 30 day time period for requesting a review of a monetary penalty.

[14] Further, a review of the email setting out the Appellants' request for review of the Monetary Penalty does not highlight any special circumstances whereby the Registrar ought to have exercised her discretion to extend the time limit for filing the request for review.

Conclusion

[15] The Appellants' appeal is dismissed as the Appellants did not submit their request for review of the Monetary Penalty within the 30 day time limit prescribed by the *Act*.

Signed by:



Emily C. Drown, Vice-Chair