

ISSUES

- (1) The issue before the Board is whether the Appellant has complied with the *Homeowner Protection Act* (the "Act") and the applicable regulations such that she can obtain an OBA.
- (2) If the Appellant has not complied with the Act and the regulations, will the Appellant suffer undue hardship if an OBA is not granted?

FACTS

[4] There is no controversy that the Appellant has constructed three previous homes as an owner builder, but it is useful to restate the history of the Appellant's construction activity.

[5] Beginning in 2006, the Appellant constructed a new home as an owner builder on West 44th Avenue, Vancouver (the "First Home"). The City of Vancouver granted final occupancy of the First Home on May 21, 2008.

[6] On March 29, 2010, the Appellant applied for an OBA for a second new home to be constructed on West 46th Avenue, Vancouver (the "Second Home").

[7] Five months later, on August 24, 2010, the Appellant sought permission to construct a laneway house on the West 46th Avenue property (the "Third Home"). The HPO allowed the Appellant to construct this laneway home as an owner builder and notwithstanding that it was less than three years since occupancy had been granted on the First Home.

[8] The Second Home received an occupancy permit from the City of Vancouver on April 14, 2011. The Third Home did not receive final occupancy from the City until September 6, 2012.

[9] When the Appellant obtained the OBA for the Third Home, she advised HPO that it was her intention to have the Third Home occupied by her son who was expected to return from England. However, beginning in April 2011, the Appellant rented the Third Home to tenants.

[10] On July 31, 2015, the Appellant sold the Second Home and the Third Home. The Appellant did not disclose to the purchasers that those homes had been constructed as an owner built homes and accordingly did not have the requisite 2-5-10 New Home Warranty.

[11] On August 17, 2015, the Appellant applied to the HPO to construct a fourth owner built home located on West 20th Avenue, Vancouver (the "Fourth Home").

[12] On September 4, 2015, the HPO denied the application for the OBA on the Fourth Home on two grounds:

- (a) The prescribed 5-year period in Section 4.1(2)(c)(iii) of the Regulation had not passed; and
- (b) The Appellant had failed to comply with Section 21(2) of the Act when she failed to provide the required disclosure and notice to the purchasers of the Second Home and Third Home.

[13] In December 2015, the Appellant provided the purchasers of the Second Home and Third Home with the disclosure notice required under the Act confirming that the house did not have Home Warranty insurance.

[14] The Appellant sought a Registrar's review of the decision to refuse her an OBA. The Registrar delivered that decision on January 14, 2016 declining to issue an OBA to the Appellant. This appeal is taken from the Registrar's decision.

ANALYSIS

[15] The legislation applicable to this appeal is as follows:

Section 20(1) of the Act states:

- (1) On application to the Registrar, a person who intends to build, for personal use, a new home of a prescribed type may be issued an authorization if the person:
 - (a) meets the prescribed criteria of an owner builder; and
 - (b) pays the prescribed fees.

[16] The prescribed criteria in Section 4.1(2) of the Regulation provides:

- (2) The following criteria are prescribed for the purposes of Section 20(1)(a) of the Act:

- (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 three or more previous authorizations;
- ...
- (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.

Section 21(2) of the Act provides:

- (2) An owner builder, and any subsequent purchaser of the new home built by an owner builder, before selling his or home during the purchase period must provide to the prospective purchaser of the new home:
 - (a) A disclosure notice in a form satisfactory to the Registrar stating whether or not the home is covered by home warranty insurance.

[17] With the foregoing sections of the Act and Regulations in mind, in order for the Appellant to meet the criteria for an OBA in respect of the Fourth Home, she would have to wait a period of five years from the date of occupancy on the Third Home. The City of Vancouver records indicate that occupancy was not granted on the Third Home until September 6, 2012 meaning that the Appellant would not qualify for further owner builder approval until September 6, 2017.

[18] While the Appellant submits that the Third Home was effectively completed in 2011, and perhaps as early as April 2011, when she began to rent the home, the City records are clear that an Occupancy Permit was not issued until September 6, 2012. The Appellant submits that it was through her own inadvertence that she did not call for the final inspection and had she done so at an earlier point, occupancy may well have been granted in 2011.

[19] Section 4.1(1) of the Act states that the time limits in issue run from the date that an occupancy permit is issued. In this case the date is September 6, 2012 since that is a date that can always be determined with certainty based on the permits issued by the City of Vancouver.

[20] It would not be a workable approach to interpreting the legislation to have those time limits begin to run when builders simply claim that their houses are ready for occupancy.

[21] The Board finds that the evidence clearly discloses that the Appellant would not qualify for an OBA on the Fourth Home until September 6, 2017 at the earliest. On this basis, the refusal to issue an OBA was correct.

WILL THE APPELLANT SUFFER UNDUE HARDSHIP?

[22] Notwithstanding that the Appellant does not meet the prescribed criteria for owner builders, Section 20.1(2) of the Act allows an OBA to be issued if the Registrar is satisfied that the Appellant would suffer undue hardship if the OBA is not granted.

In this regard, the Appellant submits:

- (a) She wishes to build a new home in place of the old home on West 20th Avenue;
- (b) She wants to construct a home with an elevator for her ease of use when she gets older;
- (c) She wants to undertake the construction herself utilizing building trades of her choice and not using a registered builder.

[23] The Board rejects all of these reasons as constituting undue hardship.

In the Board's view, undue hardship typically arises unexpectedly and through no fault of the Appellant.

[24] The fact that the Appellant wishes to replace an older home with a new home does not create undue hardship. No evidence is submitted to explain how or when the Appellant came to own the property on which she hoped to construct the Fourth Home nor is there any explanation offered as to why the previously constructed homes were not suitable for the Appellant's needs.

[25] Similarly, there is no explanation offered as to why the Appellant did not choose to plan for an elevator in the homes the Appellant previously constructed. The evidence discloses that the Appellant knowingly constructed three new homes in a very short period of time, any of

which could have been made suitable for her to live in for a very long time and she offers no explanation as to why she made no effort to ensure that that was so.

[26] Lastly, the Appellant's desire to construct a home without utilizing a registered builder is not a circumstance that gives rise to undue hardship.

[27] The Board finds the Appellant has not established undue hardship under the provisions of Section 20.1(2) so as to allow her to receive a fourth OBA.

BREACHES OF THE ACT AND REGULATIONS

[28] If the Board is wrong in finding that five years had not yet passed since the occupancy of the third home was granted, we also find that the Appellant would not qualify for an OBA because of breaches of the Act and its regulations committed by the Appellant.

[29] The evidence is clear that in breach of the requirement to deliver a notice of disclosure to prospective purchasers of the Second and Third Homes, the Appellant sold these properties without disclosing that the homes were not covered by a new home warranty, she did so in contravention of Section 21(2) of the Act.

[30] In order to be eligible for an OBA, the applicant must not have committed previous breaches of the Act and Regulations. The fact that the Appellant sought to deliver the required notice after she had sold the properties does not cure her earlier breach of the Act. It is also noteworthy that as a condition of receiving an OBA, the Appellant acknowledged that she was required to provide the disclosure statement to prospective purchasers. Clearly, she did not do so.

CONCLUSION

[31] The Appellant was not entitled to an OBA when she made application for it on August 17, 2015.

[32] The decision to refuse to issue the OBA was correct.

[33] The appeal is dismissed.

Signed By:

A handwritten signature in black ink, appearing to read "J. Hand", written in a cursive style.

Jeffrey A. Hand, Vice-Chair
