

Date Issued: March 13, 2017

Indexed as: BCSSAB 21 (1) 2015

**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 HOMEOWNER** **APPELLANT**

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

REASONS FOR DECISION

Vice Chair: **Jeffrey Hand**

On Behalf of the Appellant: **Appellant's Counsel**

Counsel for Homeowner Protection Office: **Kevin Boonstra**

INTRODUCTION

[1] This is an appeal of a Decision of the Registrar of the Homeowner Protection Office dated November 20, 2015 (the "Decision") which confirmed a June 11, 2015 Compliance Order issued to the Appellant requiring him to:

- (a) apply for and become a licenced residential builder; and
- (b) register the new home located on 152nd Street, Surrey (the "New Home") for coverage by Home Warranty Insurance.

[2] The Respondent says that the Appellant lost his authorization to be an owner/builder of the New Home when he sold the property less than 12 months after an occupancy permit had been granted.

[3] The Respondent says that he was forced to sell the New Home at the time he did due to health and financial reasons. Since receiving the Compliance Order the Respondent says that he has been taking steps to attempt to comply with the Compliance Order.

ISSUES

1. Has the Appellant demonstrated undue hardship pursuant to 20.1(2)(a) of the *Homeowner Protection Act* (the "Act")?
2. If the party who purchased the home did not take possession of the New Home until after 12 months from the date of the occupancy permit, does this satisfy the time requirements set out in the Act?
3. Was the Registrar permitted to impose a Compliance Order considering all of the circumstances in this case?

FACTS

[4] On May 16, 2011, the Appellant applied for an owner/builder authorization to allow him to construct the New Home. This authorization was granted by the Homeowner Protection Office ("HPO") on June 6, 2011.

[5] Construction of the New Home was subsequently completed and the City of Surrey granted occupancy on July 3, 2012.

[6] On April 23, 2013 the Homeowner entered into a Contract of Purchase & Sale to sell the New Home. The new owners took possession on July 16, 2013.

[7] The Appellant did not seek permission from the Registrar of the HPO to sell the New Home within the 12 month period set out in Sections 20.1(1) of the Act and Section 4.1(4) of the Home Owner Protection Act Regulation.

[8] The Appellant did not provide the purchasers of the New Home with a Disclosure Notice stating whether or not the home was covered by Home Warranty Insurance, as set out in Section 21(2)(a) of the Act.

[9] In October, 2013 the Appellant applied for another owner/builder authorization in relation to a proposed new home on 59A Avenue, Surrey, British Columbia. The HPO denied this application.

[10] On March 19, 2015, the HPO cancelled the Appellant's owner/builder authorization in relation to the New Home.

[11] On June 11, 2015 the HPO issued the Compliance Order requiring the Appellant to:

- (a) register as a residential builder; and
- (b) register the New Home under a policy of home warranty insurance;

[12] The Appellant sought a Registrar's review of the Compliance Order on July 16, 2015 and the Registrar issued the Decision on November 20, 2015.

[13] Since receiving the Compliance Order the Appellant has attempted to obtain warranty coverage on the New Home. Inspections performed by various potential warranty providers revealed a number of construction defects such that no warranty provider was prepared to warrant the home until after July 3, 2017.

[14] On December 10, 2015 the Appellant filed this Appeal from the Decision.

ANALYSIS

[15] The Appellant does not take issue with any of the foregoing facts.

[16] There is one preliminary procedural matter that the Appellant raises if not expressly, at least implicitly in its submissions to this Board. The Appellant's submission dated January 20, 2017 indicated that the Appellant only then had been advised that his submissions were to be "detailed submissions including evidence". The Appellant does not submit that there has been any procedural unfairness or that his ability to prepare his submissions has been in some way prejudiced.

[17] Regardless, the Board finds that there is no basis on which to conclude that the Appellant has not been given a full opportunity to avail himself of the appeal process. This appeal has been managed through a detailed appeal management process involving any

number of appeal management conferences with the Appellant which included the scheduling of deadlines for the filing of submissions and evidence.

[18] Having initiated the appeal in December of 2015 the Appellant has had ample opportunity to prepare his case for submission to this Board. There is no evidence on which the Board can conclude that the Appellant has not had the opportunity to submit whatever evidence he sees fit in the course of this appeal.

[19] As an owner/builder of the New Home the Appellant is subject to Section 20.1 of the Act which provides:

- (1) subject to subsection (2), an owner/builder must not sell or offer to sell a new home:
 - (a) while the new home is being constructed or
 - (b) within the prescribed period of time after the new home has been builtUnless the Registrar permits the sale or offer under Section (2)
- (2) On application to the Registrar, an owner/builder may be permitted to sell or offer for sale a new home despite the requirements of Subsection 1 if:
 - (a) the Registrar is satisfied that the person would suffer undue hardship if the permission is not granted; and
 - (b) the person pays the prescribed fee

[20] Section 4 of the *Homeowner Protection Act* Regulation establishes the time period for the sale of owner built homes is 12 months from the date an occupancy permit is granted.

[21] The unchallenged evidence before this Board confirms that the City of Surrey granted occupancy of the new home on July 3, 2012 and accordingly, the Appellant was not permitted to sell or offer to sell the New Home before July 3, 2013.

[22] The Appellant does not dispute that he entered into a Contract of Purchase & Sale dated April 23, 2013.

[23] Before the Registrar, the Appellant made two submissions in answer to the allegations that he sold the home before he was entitled to do so. Firstly, he says the purchasers of the New Home did not take possession until July 16, 2013, which is beyond the 12 month period

from the date of the occupancy permit. The prohibition on any sale within 12 months referred to above does not refer to the date of possession. The legislation is clear that owner built homes cannot be sold any earlier than 12 months from the date the occupancy permit is granted and thus the Appellant's submission is no answer to this non-compliance.

[24] Secondly, the Appellant says that he should be relieved of the 12 month requirement because strict adherence to that time period would impose an undue hardship on him.

[25] We first observe that the Appellant cannot avail himself of this potential exception to the 12 month rule because the legislation is clear that it requires the Appellant to apply to the Registrar and obtain permission to sell the home before listing it for sale and to satisfy the Registrar of the conditions that result in undue hardship if the permission is not granted. The Appellant did not do so and that is likely sufficient to refuse this ground of appeal. However, the Board adds that even if the Appellant were to avail himself of this potential exemption in the legislation, the Appellant has not submitted evidence on which it could be determined that the sale of the home in April of 2013 was undertaken to avoid undue hardship.

[26] The Appellant has put forward some evidence that he was under a doctor's care beginning some time in 2013 for what might be described as an acute hemorrhoid condition for which he eventually underwent successful surgery in 2015. No explanation is offered as to why the sale of the home in 2013 was necessary to address his medical condition. The Appellant also suggests that his decision to sell was motivated by financial concerns but again, there is no evidence before the Board of that financial hardship. To the contrary, the only other evidence is that the Appellant sought an owner/builder authorization for the construction of another new home in October, 2013 during which time his medical condition presumably still persisted.

[27] The Board finds that the Appellant has not demonstrated he is entitled to any exemption from the 12 month waiting period for the sale of the New Home and accordingly, the Board finds that the sale of the New Home was done in contravention of the Act.

COMPLIANCE ORDER

[28] As part of the process of obtaining an owner/builder authorization the Appellant acknowledged and agreed:

"I intend to reside in the home for at least one year".

"I will not sell the new home while it is under construction or for at least one year after the new home has been built, unless exempted in writing by the Registrar".

[29] When the HPO came to learn that the New Home had been sold in contravention of the provisions in the Act for owner/builder authorizations, they notified the Appellant and cancelled his owner/builder authorization.

[30] Without the owner/builder authorization, the Appellant was then subject to the requirements under the Act requiring that all new homes be constructed by registered licensed residential builders and that home warranty insurance is obtained for all such homes.

[31] The Respondent is authorized pursuant to Section 28.1 of the Act to issue a written Compliance Order to any person who has failed to comply with the Act or the Regulations and the Respondent did so on June 11, 2015. The evidence clearly establishes that the Appellant is not a licensed residential builder and that the New Home is not covered by home warranty insurance. The Board finds that there are ample grounds justifying the issuance of the Compliance Order.

[32] The fact that the Appellant says he is taking steps to comply with the Compliance Order is not a basis for setting it aside.

CONCLUSION

[33] The Appellant lost his authorization to construct the New Home as an owner/builder when he elected to sell the home less than 12 months after the date of the occupancy permit. He did not seek permission from the Registrar to do so, and in any event has not submitted evidence of undue hardship that required him to sell the home at the time that he did.

[34] Without an owner/builder authorization the Act requires the Appellant to register as a licensed residential builder and to provide warranty insurance for the New Home. The Compliance Order requiring these steps to be taken is properly issued pursuant to the Act.

[35] The appeal is dismissed.

Signed:

A handwritten signature in black ink, appearing to read "Jeffrey A. Hand".

Jeffrey A. Hand, Vice-Chair