

Indexed as: BCSSAB 12 (1) 2017

**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
Board Member:		Terry Bergen
On Behalf of the Appellant:		A Homeowner
Counsel for Homeowner Protection Office:		Kevin Boonstra

INTRODUCTION

[1] This is an appeal of the decision of the Registrar of the Homeowner Protection Office (the “HPO”), dated August 24, 2017 (the “Decision”) which upheld the decision to cancel the Owner Builder Authorization (the “OBA”) issued to the Appellant for the home located in Langley, British Columbia (the “New Home”).

ISSUES

[2] I must determine whether the Decision should be upheld, varied, or set aside. To do this, I must decide whether the Registrar was correct in their finding that the OBA should remain cancelled due to the Appellant’s failure to comply with the terms of the *Homeowner Protection Act*, S.B.C 1998, c.31 (the Act”).

EVIDENCE SUBMITTED

[3] In support of this appeal, the Appellant has provided the Board with an unsigned, unsworn written submission dated November 7, 2017.

[4] In support of its position, the Respondent has provided the Board with written submissions and the Affidavit of the Compliance Officer, dated November 16, 2017.

[5] In addition to the material submitted by the parties, the Board has also received and reviewed the contents of the Record of Appeal, which includes dozens of pages of emails, completed HPO forms, and correspondence amongst the parties.

FACTS

[6] The Appellant applied for an OBA for the home on October 22, 2014. On the application the Appellant agreed he would “personally engage in, arrange for or manage all or substantially all of the construction of the proposed new home” and that he would not “hire a builder or construction manager to build the proposed new home.”

[7] BC Housing granted the Appellant the OBA on November 3, 2014.

[8] A Construction Company was appointed by the Appellant to act as his agent to the Township of Langley for the construction of the New Home. The Construction Company arranged for inspections of the footings (including foundation), forms, framing, insulation and the final inspection.

[9] The Appellant does not appear on any documents related to arranging for building inspections with the Township of Langley.

[10] The New Home was constructed between November 2014 and March 2017. The Township of Langley issued the Building Permit for the New Home on November 4, 2017 and Final Inspection on March 8, 2017.

[11] The Construction Company applied to BC Housing for a residential builder license in March of 2017. In the application the Construction Company identified the New Home as a project for which he was the “senior manager in charge of construction.” The Construction Company specifically indicated in the license application that his responsibilities for the construction of the New Home included “Demo of existing foundation, framing, all rainscreen and hardy [sic]. Swiss pearl install. Finishing interior. All Eng, septic, structural, geo-teck [sic]. Managing all trades.”

[12] The Appellant wrote a letter in support of the Construction Company's application for a residential builder license on March 20, 2017. The appellant wrote "the Owner of the Construction Company was retained to build a custom, 5200 square foot residence by myself... He oversaw and participated in the complete build of the house from removal of old home on the property to the final landscaping of the new residence... Foundation, reinforcement, framing, and finishing were completed by Him and his personal crew exclusively..."

[13] BC Housing opened a Contravention Investigation following review of evidence submitted by the Construction Company on May 1, 2017 for their license application. In the license application the Construction Company's description of the work it completed at the New Home appeared to indicate that it may have completed substantially all of the construction.

[14] BC Housing conducted a Contravention Investigation and issued the Initial Decision to cancel the OBA for the New Home on July 11, 2017.

[15] The Appellant requested a Registrar's review of the Initial Decision on July 18, 2017 per section 29.1 of the Act. In the reasons for request the Appellant wrote "I hired the owner of the Construction Company to construct my home. He did the majority of the physical work (framing, finishing, etc.) I managed all trades and all payments for the construction. I fail to see how this is not owner built."

[16] BC Housing requested on August 8, 2017 that the Appellant provide evidence to support his claim that he had managed the construction of the New Home. The Appellant responded on August 21, 2017 by email with attached photographs of stack of documents claiming they were "...my paid invoices. I do not have time to scan and send these to you." The Appellant stated that if BC Housing wanted to view them they could "...arrange a visit to my office."

[17] The Registrar reviewed the request for review, including the supporting evidence, and issued a Decision on August 24, 2017 upholding the Initial Decision, and the OBA remained cancelled.

POSITION OF THE PARTIES

The Appellant

[18] The Appellant relies upon their letter dated November 7, 2017. In it the Appellant objects to the cancellation of the OBA for the New Home, stating that the Appellant lived on site for two and a half years during construction and personally oversaw the entire project from start to finish.

[19] The Appellant states they maintained records of invoices and receipts, and can provide excruciating detail of the multitude of decisions made during the construction of the New Home.

[20] The Appellant states that the Construction Company's crew were incredibly experienced tradesmen and in possession of a vast repertoire of abilities, and also that some of the sub-trades for the construction of the New Home were referred by the Owner of the Construction Company. The Appellant further states that although the Construction Company was initially contracted for the foundation and framing of the New Home and its scope grew to include the built-in gutter systems, custom window installation, hydraulic wall/door installation, flashing and waterproofing installation, most interior finishing, 2' perimeter foundation wall around the property, fencing, and hardware and appliance installation.

[21] The Appellant recognizes that the Construction Company Owner was present for approximately 80% of the construction of the New Home; however, the Appellant states that in no way was he acting as a builder, project manager, project coordinator or general contractor for the construction of the New Home.

The Respondent

[22] Counsel for the Respondent provided written submissions outlining its position in this appeal along with the Affidavit of the Compliance Officer's, sworn November 16, 2017 (the "Affidavit"). In the Affidavit, He deposes that he reviewed all of the information available to him in the Respondent's files and records and has confirmed that:

- a) An OBA was granted to the Appellant for the construction of the New Home;
- b) The OBA was cancelled by the Deputy Registrar following a compliance investigation;
- c) The Appellant filed a Registrar Review Request; and

- d) The initial ruling by the Deputy Registrar was confirmed in a Decision by the Registrar following review of further evidence submitted by the Appellant.

[23] Counsel for the Respondent notes that Subsection 20(1) of the Act provides that a person may be issued an OBA if the prescribed criteria are met. The prescribed criteria are in s.4.1 of the Homeowner Protection Act Regulation (the "Regulation"). Subsection 4.1(2)(f) states:

"(f) the person must intend to engage in, arrange for or manage all or substantially all of the construction of the new home;"

[24] Counsel for the Respondent further notes that Section 20.2 of the Act allows the Registrar to cancel an OBA "for any reason that would disqualify the person for an OBA if he/she were an applicant under section 20" or "if the person has made a false statement in the application for an OBA."

[25] Counsel for the Respondent notes that a under s.1 of the Act, a "residential builder" is "a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a... general contractor."

[26] Counsel for the Respondent further notes that section 1 of the Regulation defines "general contractor" as a "residential builder that is engaged under contract by an owner, developer or vendor to perform or cause to be performed all or substantially all of the construction of a new home, and includes a construction manager and project manager."

[27] Counsel for the Respondent submits that the Appellant, in the Appellant's submitted evidence, incorrectly attempted to minimize the role of the Construction Company in the construction of the New Home. In the Appellant's letter of November 7, 2017 the Appellant contradicts itself in the correspondence and previous evidence of both the Appellant and the Construction Company.

[28] In this regard, Counsel for the Respondent summarizes the conflicting statements of the Appellant's November 7, 2017 correspondence to the Record of Appeal.

- a) Prior to the appeal, the Appellant and the Construction Company consistently confirmed they had a contract under which it managed the construction of the New Home on a cost-plus basis.
- b) The Appellant supported, in writing, its application for a residential builder license stating “the Owner of the Construction Company oversaw and participated in the complete build of the house from removal of old home on the property to the final landscaping of the new residence.” This is the opposite of the statement in the November 7, 2017 correspondence in which the Appellant states the Appellant “personally oversaw the entire project.”
- c) In the request for review of the Initial Decision, the Appellant submitted that the Appellant “hired the Owner of the Construction Company to construct my home.”
- d) In the Construction Company’s application for a residential builder license it stated he was responsible for “managing all trades”. This is consistent with the Appellant’s written support for the license application.
- e) The Township of Langley confirmed that the Construction Company was on record as the Appellant’s authorized agent and that it arranged for inspections of footings (including foundation), forms, framing, insulation and final. The Appellant’s name does not appear on any arrangements for inspections.

[29] Counsel for the Respondent submits that the Appellant acted contrary to the Act. In the OBA application the Appellant stated that he would not “hire a builder or construction manager” and that intended to “personally engage in, arrange for or manage all or substantially all of the construction” of the New Home.

[30] In this regard, Counsel for the Respondent submits the Appellant made a false statement in the OBA in respect of whether he would hire a builder or construction manager. The Appellant clearly hired the Construction Company to construct most of the New Home and as such, the Registrar can cancel the OBA under s.20.2(b) of the Act.

[31] Counsel for the Respondent further submits that scope of work performed by the Construction Company meets the definition of a “residential builder” in relation to construction of the New Home. The Registrar is therefore also entitled to cancel the OBA under s.20.2(a) of the Act as the Appellant did not meet the prescribed criteria under s.4.1(2)(f).

ANALYSIS

[32] Subsection 20(1) of the Act permits that a person may be issued an OBA if he or she meets the prescribed criteria. The prescribed criteria are set out in section 4.1 of the Regulation. The criteria applicable to the Appellant in this Appeal is set out in subsection 4.1(2)(f), which states:

“(f) the person must intend to engage in, arrange for or manage all or substantially all of the construction of the new home;”

[33] Section 20.2 of the Act permits the Registrar to cancel an OBA. The Section states:

20.2 The registrar may suspend or cancel an authorization

(a) for any reason that would disqualify the owner builder for an authorization under section 20 if the owner builder were an applicant under that section,

(b) if the owner builder has made a false statement on a material matter in the application or refuses to provide information on a material matter when requested to do so by the registrar, or

(c) if the owner builder fails to comply with a compliance order or to pay a monetary penalty as required under section 28.3 (10).

[34] The roles of various parties to construction of residential homes are defined in the Act and the Regulation. The definition of “residential builder” applicable to the Appellant in this Appeal is defined in s.1 of the Act:

"residential builder" means a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a developer and a general contractor;

[35] The definition of “general contractor” applicable to the Appellant in this Appeal is defined in section 1 of the Regulation:

"general contractor" means a residential builder that is engaged under contract by an owner, developer or vendor to perform or cause to be performed all or substantially all of the construction of a new home, and includes a construction manager and project manager;

[36] The evidence submitted by the Appellant for this Appeal attempts to define the Construction Company as a skilled and experienced sub-trade working under the daily guidance of the Appellant for two and a half years. However, thorough review of the submitted evidence and correspondence in the Record of Appeal demonstrates the Construction Company was acting in the capacity of “residential builder” or “general contractor” to perform or substantially perform the construction of the New Home.

[37] In hiring the Construction Company to provide these services, the Appellant contravened the criteria applicable for issuance of an OBA as set out in subsection 4.1(2)(f) of the Act. Without determining whether the Appellant made a false statement on the OBA application, or in the November 7, 2017 correspondence, it is clear that the Appellant did not qualify for the OBA.

[38] Accordingly, I find that pursuant to section 20.2(a) of the Act the Registrar had the discretion to cancel the OBA.

CONCLUSION

[39] For the reasons set out above, this appeal is dismissed.

A handwritten signature in blue ink, consisting of a vertical line with a loop at the top and a horizontal line extending to the right.

Terry Bergen
Member, Safety Standards Appeal Board