

PUBLIC HEALTH APPEAL BOARD

**IN THE MATTER OF THE *PUBLIC HEALTH ACT*
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF THE APPEAL OF THE ORDER OF
AN EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH
SERVICES DATED DECEMBER 5, 2018**

PANEL: Denis Lefebvre, Esq., Chair
Wendy Lickacz, Vice-Chair
Ike Zacharopoulos, Board Member; and
Barbara Rocchio, Board Member

BETWEEN:)	
)	
)	
2130698 ALBERTA LTD.,)	Erika Norheim,
PAUL MOREAU,)	Erika Norheim Professional Corporation,
SHAIROSE ESMail, and)	for the Appellants
JENNIFER VUONG)	
(Appellants))	
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	Linda A. Svob,
)	Alberta Health Services,
(Respondent))	for the Respondent
)	
)	
)	
)	Stuart Chambers,
)	McLennan Ross LLP,
Heard: January 18, 2019)	Independent Counsel for the Board

DECISION AND REASONS FOR DECISION

This matter came before a panel of the Public Health Appeal Board (the “Panel”) on January 18, 2019, in Edmonton, Alberta. A notice of appeal was received on December 13, 2018. The hearing was subsequently set for January 18, 2019.

The Appeal

[1] This is an appeal (the “Appeal”) to reverse or vary an order of an Executive Officer (“EO”) dated December 5, 2018 (the “Order”).

Board Decision

[2] The Appeal is varied for the reasons provided below.

Background

[3] The subject-matter property is a detached single dwelling in the City of Edmonton, municipally located at 11849 – 79 Street (the “Premises”).

[4] EO Susana Roqara (“Roqara”) responded to a complaint from a Boyle Street Community Worker on behalf of a tenant in the building that the Premises lacked power and heat and attended at the Premises on November 21, 2018.

[5] On the morning of November 22, 2018, EO Roqara and EO Alaa Farhat (“Farhat”) attended at the Premises. Following an inspection, EO Farhat issued a verbal order on November 27, 2018.

[6] The Order was issued to 2130698 Alberta Ltd. (“213”), Paul Moreau (“Moreau”), Shairose Esmail (“Esmail”) and Jennifer Vuong (“Vuong”). The numbered corporation and the individuals were all named as owners of the Premises.

[7] The Order listed a number of public health violations and ordered, among other things, that the occupants of the Premises vacate the Premises on or before November 30, 2018 and that the Premises would remain closed for tenant occupation until such time as all work listed in the Order (the “Work”) are completed to Alberta Health Services’ (“AHS”) satisfaction.

Grounds of the Appeal

[8] In their Notice of Appeal, the Appellants submit five grounds for appeal:

- (a) Ground 1: The EOs acted unreasonably by conducting a full inspection of the [Premises] and issuing the Order notwithstanding that the Premises was vacant and undergoing renovations;
- (b) Ground 2: The EOs failed to make reasonable inquiries prior to issuing the Order;
- (c) Ground 3: The EOs were aware that Jennifer Vuong had sold the Premises at the time the Order was made and had no reasonable basis upon which to conclude that she was an “owner” under the *Public Health Act* (the “Act”);
- (d) Ground 4: The Order is unreasonable in that:
 - i. There is no area used for sleeping accommodations in the basement [of the Premises] as indicated on the Order; and

- ii. It cites contraventions for missing and damaged window screens which are required un the *Minimum Housing and Health Standards* (the “MHHS”) “during the portion of the year when there is a need for protection against flies and other flying insects”, notwithstanding that the Order was issued at a time of the years when there is no need for protection against flies and other flying insects.
- (e) Ground 5: The EOs did not follow the guideline document entitled: *Compliance Options for the Public Health Act and Regulations* (the “Guideline”), which imposes an obligation on the Executive Officer to follow the steps found in the said guidelines prior to issuing the Order.

[9] The Appellants also raised a sixth ground of appeal during the hearing that was not included in their Notice of Appeal. The Appellants allege that the EOs failed to approach this matter with impartiality due to the prior history between Farhat and his supervisors and Vuong. Allegedly, AHS had previously initiated four prosecutions against Vuong, one of which involved EO Farhat and that none of these prosecutions were successful. Farhat is currently a defendant in a malicious prosecution action (the “Action”) commenced by Vuong. As such, Farhat and his supervisor, Meaghan Allen, ought to have recused themselves from any matter involving Vuong.

[10] While an appeal before the Public Health Appeal Board is essentially a hearing *de novo*, it is nonetheless essential for the Respondent to know the case it must meet prior to the hearing. The Panel confirmed the grounds of appeal with the Appellants and the Respondents at the outset of the hearing and this particular ground was not raised. Consequently, the Panel declines to consider this ground of appeal.

[11] Even if the Panel is incorrect in refusing to consider this ground, there was no evidence adduced by the Appellants that would support a finding of an apprehension of bias or lack of impartiality, especially in light of the testimony of Roqara who is not a named defendant in the Action and whose credibility was not put into question. Moreover, the inspection of November 22, 2018, was principally conducted by Roqara with Farhat present mainly to provide support/backup due to concerns Roqara had regarding the negative interactions between the complainant tenant (who resided in the basement suite) and Steven Whitestone (“Whitestone”) (who is alleged to have resided on the Premises) on November 21, 2018.

Timing of Appeal

[12] Section 5(3) of the Act requires the Appellant to serve the notice of an appeal within 10 days after receiving notice of the decision being appealed.

[13] The Public Health Appeal Board Secretariat received a notice of the appeal dated December 13, 2018, (the “Notice of Appeal”) on December 13, 2018. The Notice of Appeal was therefore filed on time.

Jurisdiction

[14] There are no objections to the Panel’s jurisdiction to hear the Appeal.

Documents/Exhibits

[15] Prior to the commencement of the hearing, the following documents were entered as exhibits by agreement of the parties:

- (a) **Exhibit 1** – Document production of the Appellant (eight tabs)
- (b) **Exhibit 2** – Document production of the Respondent (17 tabs)

Legal Issues

[16] The legal issues on this Appeal for consideration by the Panel are as follows:

- (a) Issue 1: Whether the EOs acted unreasonably by conducting a full inspection of the Premises.
- (b) Issue 2: Whether the EOs failed to make reasonable inquiries prior to issuing the Order.
- (c) Issue 3: Whether Vuong was an “owner” as defined in the Act.
- (d) Issue 4: Whether there were areas used as sleeping accommodations in the basement of the Premises.
- (e) Issue 5: Whether missing and/or damaged window screens constituted a violation under the MHHS notwithstanding that the Order was issued at a time of year when there is no need for protection against flying insects.
- (f) Issue 6: Whether the Guideline imposes an obligation on the EOs to follow the steps found therein prior to issuing the Order.
- (g) Issue 7: Whether the order requires the Work to be completed immediately and without delay.

Submissions of the Appellants

[17] The Appellants submit that at the relevant time, the Appellants had not rented the Premises to anyone. They submit that Whitestone is unknown to the Appellants. The Appellants further submit that Whitestone was a mere trespasser and, based on materials submitted by AHS, appears to have taken occupancy of the property without the knowledge or consent of the Appellants and that Whitestone would have vacated the Premises before “his ruse was exposed”.

[18] Mr. Matthew Moira (“Moira”), a witness for the Appellants, testified that he was hired to do general maintenance work at the Premises starting on November 1, 2018 until the end of November. He was also responsible for keeping the Premises secure. He stated that the Premises were vacant while he worked there. However, he had no knowledge of whether tenants were living there prior to being hired. He also testified that he was present on November 21 and 22, 2018. Another person, Whitestone, was also present. According to Moira, he had hired Whitestone for general help at the Premises. As such, Whitestone attended at the Premises from

time to time during the month of November to do some cleaning. According to Moira, Whitestone had made inquiries with the owners to rent the Premises. He had also asked Moira to sign a document (a rent report) for Alberta Works stating that he resided at the Premises. Moira said he refused as he knew that Whitestone was attempting to have him sign a document under false pretences. In any event he could not sign the document, as he did not own the Premises. Moira also testified that there were some personal effects (bedding, clothes, et cetera) at the Premises up to and including November 21, 2018, but those items were gone the following day, November 22, 2018. He has no knowledge of who removed those items or why. The personal property, according to Moira, belonged to prior tenants.

[19] During cross-examination, Moira stated that other persons were present on the Premises. He did not have names, but according to Moira, they were friends of Whitestone. Apparently, Whitestone hired some friends to help him do cleaning at the Premises. At one point, Moira overheard them talking about getting Moira to sign a rent report document for Alberta Works. This is when he confirmed that they (Whitestone and his “friends”) were trying to orchestrate some sort of scam involving Alberta Works benefits. Moira wanted nothing to do with it and refused to sign the document. When asked, Moira confirmed that, to the best of his knowledge, no one lived at the Premises between November 16 and November 22, 2018, and he assumed that the prior tenants (who he never knew or saw) did at one point retrieve their belongings. The only persons that were present at the house while he worked there were Whitestone and his “friends” (who apparently were also his “helpers”). He confirmed that the friend/helpers did not live on the Premises but simply worked with/for Whitestone. The last time he saw Whitestone was November 21, 2018.

[20] When presented with the photos at Exhibit 2, Tab 9, the witness confirmed that the photos were those of the Premises.

[21] Vuong testified that she did not know whether or not the Premises had been rented in November 2018, nor did she rent out the Premises herself at that time. She also explained that while she knew Whitestone (through Moira), she only saw him at the Premises on a couple of occasions. The last time she rented out the Premises was in September 2018. The renters at that time left sometime in mid-September.

[22] When Roqara contacted Vuong on November 21, 2018, Vuong learned that there were tenants allegedly living in the Premises. However, Vuong confirmed that she was unaware of any tenants. The personal belongings found in the Premises belonged to the previous tenants who left in September 2018.

[23] The Appellants also submit that while Vuong assisted the EO by allowing access to the Premises, the proper owner of the Premises was, at all material times, 213. The principals of 213 are Esmail and Moreau. At the time of the inspection on November 22, 2018, Vuong explained to the EO that she had sold to Premises to 213 and was either no longer, or would soon no longer be, the registered owner of the Premises. Vuong testified that Farhat in fact confirmed that Vuong was no longer the registered owner on November 22, 2018, by verifying the title to the Premises. Even though Vuong had sold her interest in the Premises, she continued to assist the EO because of an order of the Court of Queen’s Bench in Action 1703-20177, filed March 9, 2010 (the “QB Order”). The QB Order explicitly directed that Vuong not interfere with the EO’s lawful duties.

Vuong also testified that it was her understanding that the QB Order also imposed upon her an obligation to provide the EO with access to the Premises upon request even though she was no longer the owner. The Appellants therefore submit that Vuong's interest in the Premises ended when the title was transferred to 213 and does not meet the definition of an owner under the Act. As such, it was unreasonable for the executive EOs to issue the Order requiring her to do those things enumerated therein, as she had no legal obligation to do so.

[24] Esmail confirmed that 213 was the owner of the Premises at all material times. She also stated the Premises was, as far as she knew, vacant as 213 never rented the Premises after having acquired it from Vuong. Esmail also testified that 213 engaged a contractor who started renovation work on the Premises on or about October 30, 2018. Esmail spoke of the confusion generated by an inspection by AHS and the subsequent issuance of the Order when the Premises were vacant.

[25] The Appellants submit that, at all material times, they had not rented the Premises to Whitestone or anyone else. They argue that if any tenant took up occupancy of the Premises, it was without the knowledge or consent of the Appellants and as such, that person would be a mere trespasser. The directors of 213 did not intend to use the Premises as rental accommodations when it was purchased from Vuong. Further, at the time of the inspection of November 22, 2018, the Premises were vacant and all personal property left by the previous tenants had been removed. As such, the Appellants argue that it was unreasonable for the EO to proceed with a full inspection of the Premises and to issue a notice to vacate when it was apparent from the EO's inspection on November 22, 2018, that the Premises was, in fact, vacant.

[26] The Appellants also state that the Premises was not intended to be used as rental accommodation and that a contract was engaged to complete renovations while the new owner, 213, decided what to do with the Premises.

[27] It is also submitted that it was unreasonable for the EO to immediately proceed to the issuance of an order without first considering the other compliance options set out in the Guideline. This is particularly significant, it is argued, given the fact that the new owner of the Premises did not have a history of non-compliance with AHS directives.

[28] With respect to repairs, it is argued that it is unreasonable to order that repairs be made immediately, given the fact that the Premises are vacant. Accordingly, the MHHS do not apply until such time as the Premises are to be used as rental accommodations.

[29] The requirement for screens under the MHHS (Part III, paragraph 2) is as follows:

(b) Windows and exterior doors

(iii) During the portion of the year when there is a need for protection against flies and other flying insects, every window or other device intended for ventilation shall be supplied with effective screens.

[30] Since November through January do not fall within the portion of the year when there is a need for protection against flies and other flying insects, the Appellants argue that missing

screens is not a violation under the MHHS. Consequently, the EOs exceeded their lawful authority.

Submissions of the Respondent

[31] On November 20, 2018, a worker from Boyle Street Community Services called EO Roqara on behalf of a tenant residing in the Premises. According to the worker, the tenant had moved into the basement suite (the Suite”) the previous week and the Suite still had no power or heat. Further, Roqara was advised that the Landlord was Whitestone.

[32] Roqara arranged for a visit the following day, November 21, 2018. Roqara arrived at the Premises at approximately 11:30 am and was greeted by Whitestone who identified himself as the caretaker. She explained why she was there. Whitestone allowed access to the Premises and Roqara conducted an inspection (the “Inspection”).

[33] Upon entering the Premises, Roqara met with the tenants (the “Tenants”) who resided in the Suite. The Suite consisted of a living and sleeping areas as well as a kitchenette with a dining room table. The kitchenette did not have a fridge or stove. A bathroom and a bed (closed off with a curtain) were located on the far side of the Suite. Personal belongings were strewn about the Suite. There were three people residing there at the time of the Inspection.

[34] The Tenants showed a lease agreement dated November 16, 2018, that they had entered into with Whitestone. The Tenants moved in on November 16, 2018, and had been waiting for a refrigerator to be delivered as well as for the power and heat to be turned on. After several days without heat or power, the Tenants asked the Boyle Street Community Worker to put in a complaint to AHS on their behalf. The EO decided to make arrangements for the Inspection.

[35] The Inspection revealed several MHHS violations, which are listed in the Inspection report found at Tab 4 and 5 of Exhibit 2. Roqara testified that it was evident, based on her observations, that the upstairs portion of the Premises had been rented for some time.

[36] During the Inspection, Whitestone also advised the EO that the owner was Vuong and provided the EO with her contact information. Whitestone also confirmed that he lived upstairs and that all tenants in the house were sharing the bathroom. The EO also noted that power cords were being run from outside the Premises through the living room and kitchen windows. The main concern of the EO at the time was the lack of power and lack of heat. Whitestone stated that they were waiting for the electrician to come by later that day. Roqara informed the tenant that she would be returning the next day to conduct a full inspection and to confirm that the power and heat had been turned on.

[37] Roqara and Farhat attended at the Premises on November 22, 2018, to conduct a full inspection (the “Second Inspection”). Roqara approached Vuong as she was exiting her vehicle. Roqara asked Vuong if she was still the owner of the Premises and Vuong responded that she did not know. Farhat contacted his office to request a land titles search prior to entering the home. Upon review of the title certificate for the Premises, Farhat learned that 213 was the registered owner and ordered a corporate search for 213. The corporate search showed that the directors of 213 are Esmail and Moreau. This information was shared with Vuong. Vuong explained to Roqara and Farhat that she was only in attendance to provide access to the Premises.

[38] Roqara and Farhat decided to proceed with the inspection and advised Vuong that they would follow-up with the new owners.

[39] Upon entering, Roqara noticed that the tenants had vacated the Premises, all personal belongings had been removed and the entire Premises had been cleaned out.

[40] Photographs of the Premises were taken and are found at Exhibit 2, Tab 9 and Tab 12. Roqara went through her investigation and supporting photographs. There were several MHHS violations noted. Those violations are too numerous to list here and are found at Exhibit 2, Tab 8 and Exhibit 1, Tab 5.

[41] Upon the completion of the Second Inspection, the EOs advised Vuong that they would be following up with owners that were on title to the Premises. The Respondent submits that at no point did Vuong indicate that she was not involved with the Premises. Accordingly, on November 27, 2018, an EO contacted Moreau, one of the principals of 213, and issued a verbal order. It was explained to Moreau that the Premises was to be closed for tenant accommodation until necessary repairs was completed to the satisfaction of an EO. On December 5, 2018, the Order was prepared and sent to the Appellants.

[42] The Respondents explained that the educational component of an EO's work is very important. That is, EOs normally work with owners to resolve any violations under the Act and the Regulations and will provide warnings to owners when it is their first time managing rental properties or their first time dealing with a health inspector. EOs would also issue reports and discuss next steps with owners who are working cooperatively with AHS and show clear evidence of progress in dealing and resolving issues pursuant to AHS inspections. Roqara explained that she would have proceeded in that way, that is, issue a report and conduct a further inspection to ensure that any work required per the report was being undertaken. However, Roqara was concerned that, in this case, the owner did not know what was happening at the Premises, no one was able to verify if there were tenants, and there was little security for the Premises. Moreover, the Appellants are individuals who have dealt with AHS before and/or had experience dealing with rental properties. Once the Second Inspection was completed, Roqara had a conversation with her superiors, and from that discussion, decided to issue the Order.

[43] The Respondents submit that they proceeded with the Second Inspection despite the fact that the Premises was completely vacant because it was evident, from their conversation with the Boyle Street worker (who had originally called to make the complaint on behalf of one of the tenants) and from Roqara's Inspection, that the Premises had been rented and there was no indication that the Premises was no longer being used as a rental property. As such, EO Roqara proceeded with the Second Inspection as part of her due diligence.

[44] With respect to the insect screen issue, the Respondents submit that the violation was noted in the Order, despite being November, because, since the Premises was closed per the Order, this meant that the owner could take as much time as is needed to complete the Work. As such, AHS wanted to make sure that the owner was aware that screens would be necessary come summer time.

Analysis and Reasons

Whether the EOs acted unreasonably by conducting a full inspection of the Premises

[45] An AHS EO draws his/her authority under Part 4 of the Act. Section 59(1) and (2) of the Act reads as follows:

Inspection of place other than private dwelling

59(1) An executive officer may inspect any public place for the purpose of determining the presence of a nuisance or determining whether this Act and the regulations are being complied with.

(2) An executive officer making an inspection under subsection (1) may

- (a) at any reasonable hour enter in or on the public place that is the subject of the inspection;
- (b) require the production of any books, records or other documents that are relevant to the purpose of the inspection and examine them, make copies of them or remove them temporarily for the purpose of making copies;
- (c) make reasonable oral or written inquiries of any person who the executive officer believes on reasonable grounds may have information relevant to the subject-matter of the inspection;
- (d) inspect and take samples of any substance, food, medication or equipment being used in or on the public place
- (e) perform tests, take photographs and make recordings in respect of the public place.

[46] The definition of “public place” at section 1(ii)(viii) of the Act includes all rental accommodations.

[47] Based on the evidence presented by Roqara, the Panel is satisfied that tenants did in fact occupy the Premises at the time she was in contact with the Boyle Street Community Worker as well as at the time of the Inspection. The information Roqara received from an employee at Boyle Street Community Services corroborates the information she had gathered from the Inspection on November 21, 2018. The Premises is a public place as defined in the Act and the EOs were authorized to conduct both the Inspection and the Second Inspection and it was reasonable for them to do so in the circumstances.

[48] The fact that the Premises were vacated by the time the EOs arrived for the Second Inspection is immaterial. The information gathered by them supported their conclusion that the Premises was being used for rental accommodations at the time of the complaint.

Whether the EOs failed to make reasonable inquiries prior to issuing the Order

[49] Having gathered information from the Boyle Street Community Services Worker, Roqara proceeded to conduct the Inspection. Once the Inspection was completed, Roqara was able to confirm the information received from the initial complaint and that there were persons residing in the Premises, which prompted her to return for the Second Inspection.

[50] The Second Inspection revealed numerous MHHS violations, many of which are significant. The notes prepared by Roqara (Tabs 3, 4, 5, and 8 of Exhibit 2) as well as the photos taken (Tabs 6 and 9 of Exhibit 2) are telling. During questioning in chief (direct questioning) and cross-examination, both Roqara and Farhat provided credible testimony in support their written reports.

[51] The Panel is satisfied that above-noted inquiries as well as the Inspection and Second Inspection as supported by the reports, photos and testimony of the EOs are sufficient for the EOs to issue the Order.

Whether Vuong was an “owner” as defined in the Act

[52] Inquiries were made to ascertain the registered owner of the Premises. For example, Farhat did order a title search and determined that 213 was the registered owner. Having then ordered a corporate search, was able to determine who the directors of 213 were. However, at s.1 (ff) of the Act, an “owner” means “the registered owner, and any person in the actual or apparent possession or control of land or a premises.” (Emphasis added.) While Vuong was no longer a registered owner, nor was she a director of the corporate owner, 213, she may still nonetheless be an “owner” if she had actual or apparent possession or control of the Premises.

[53] During cross-examination, Farhat testified that following the Second Inspection, he called Moreau rather than Vuong because he did not know what the association was between Moreau and Vuong, nor did he know “what her actual powers with the property is (*sic*).” He also stated that he generally includes the names (on the Order) of all those persons involved with the Premises and/or those persons he deals with. Since Vuong was involved during the Inspection and the Second Inspection and he had dealings with her in the past (assuming with other properties), he included her in the Order.

[54] Clearly, Farhat knew that Vuong was not a registered owner. However, he did not know what her relationship was with the registered owner 213 (or the directors of 213) and did not know what her role was with the Premises, except that she allowed access. Based on these facts, Farhat should have made further inquiries to determine if she had actual or apparent possession or control of the Premises. He did not and assumed she was an owner based upon the fact that she was the person he was dealing with at the time of the Second Inspection.

[55] The Panel finds that Farhat failed to make sufficient inquiries as to Vuong’s involvement with the Premises to determine if Vuong was in fact a person in the actual or apparent possession or control of the Premises. As such, the Panel finds that she was not an “owner” as defined in the Act.

Whether there were areas used as sleeping accommodations in the basement of the Premises

[56] As stated above, the information Roqara received from an employee at Boyle Street Community Services corroborates the information she had gathered from the Inspection on November 21, 2018. The Panel finds Roqara’s testimony to be credible. She gave an account as to her observations of the Suite during her Inspection, which, among other things, consisted of a living and sleeping areas as well as a kitchenette with a dining room table.

[57] The Panel finds the testimony of Moira to be questionable and self-serving. The Panel was not persuaded that Moira (who was hired as the contractor to renovate the Premises) hired the alleged landlord, Whitestone, to help him, while Whitestone then hired his “friends” to help him. The Panel understood that this narrative was provided to explain the reason for the presence of persons on the Premises who were not living there and who were, arguably, mere trespassers. The Panel will make no further comments on Moira’s testimony.

Whether missing and/or damaged window screens constituted a violation under the MHHS

[58] Part III, section 2(b)(iii) of the MHHS states as follows:

During the portion of the year when there is a need for protection against flies and other flying insects, every window or other device intended for ventilation shall be supplied with effective screens.

[59] The Inspection and Second Inspection occurred on November 21 and November 22, 2018, respectively. It would be highly unusual for flies and other flying insects to be out during that time of year. In any event, the Respondent provided no evidence of the presence of any flying insects.

[60] The Panel is unable to accept the Respondent’s arguments that it wanted to make sure that the owner was aware that screens would be necessary come summer time. An order is meant to communicate a violation that exists at the time of the inspection, not one that may exist sometime in the future. Consequently, missing screens in November, when there are no flying insects present, is not a violation under the MHHS.

Whether the Guideline imposes an obligation on the EO to follow the steps found in the guidelines prior to issuing the Order

[61] An EO has the discretion to decide, based on the totality of the circumstances after an inspection, whether to issue a warning or move directly to an order. There is no evidence to suggest that the EO acted inappropriately when issuing the Order rather than initiating one of the other enumerated steps per the Guideline. The Guideline provides guidance and are not legislation and therefore do not have force of law.

Whether the Order requires the Work to be completed immediately and without delay

[62] The Order states that the Owner “immediately and diligently pursue the completion of the following work in an about the above noted premises...”

[63] The Appellant argues that the window screens do not need to be replaced/repared immediately given the time of year. The Respondents argue that it is not necessary to complete the work immediately, and that all work can be completed at the Appellant’s own pace because the Premises will remain closed until such time as all of the work is completed per the Order.

[64] There appears to be a problem with the use by the EOs of a precedent letter: the author must remember to review it carefully to make sure that it clearly says what it should say in the circumstances.

[65] The plain reading of the Order makes it clear that the Respondents must take all necessary steps to comply with the Order immediately. This would mean, for example, immediately installing the screens, or at least immediately taking the steps to make that happen.

[66] Quite simply, if it was the Respondent's intent to allow the Appellants to complete the Work at their leisure, it should not have included the word "immediately".

Findings and Conclusion

[67] After reviewing the evidence and submissions made by the Parties, the Panel makes the following findings:

- (a) With respect to legal issue 1, the Board finds that the EOs acted reasonably by conducting a full inspection of the Premises and issuing the Order notwithstanding that the Premises was vacant at the time of the Second Inspection on November 22, 2018.
- (b) With respect to legal issue 2, the Panel finds that the EOs made reasonable inquiries prior to issuing the Order with respect to the violations proper. However, the Panel finds that the EO did not make reasonable enquiries with respect to ownership of the Premises.
- (c) With respect to legal issue 3, the Panel finds that Vuong was not an owner as defined in the Act and the Regulations at the time the Order was issued.
- (d) With respect to legal issue 4, the Panel finds that the basement had been used as a sleeping area as indicated in the Order.
- (e) With respect to legal issue 5, the fact that window screens were not in place as at the date of the inspection is not a violation of the MHHS.
- (f) With respect legal issue 6, the Board finds that the Guideline does not impose an obligation on an EO to follow the steps found therein.
- (g) With respect to legal issue 7, the Panel finds that the use of the word "immediately" at paragraph 2 of the Order expresses AHS's expectation that the Order be complied with without delay, failing which further legal action may be taken. The Board cannot accept the Respondent's submissions that the Appellants could proceed with the work at their leisure. Such an interpretation is simply inconsistent with the clear wording of the Order.

[68] Based on the aforementioned findings, the Panel varies the Order as follows:

- (a) Vuong is to be removed as an owner of the Premises.
- (b) The word "immediately" shall be removed from paragraph 2 of the Order to read as follows:

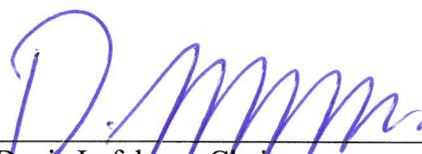
“That the Owner undertakes and diligently pursues the completion of the following work in and about the above noted premises, namely:”

- (c) While the notation regarding missing window screens at paragraphs (c), (m), (s), (yy) and (ccc) of the first part of the Order shall remain, any reference that missing window screens are contraventions under the Regulations at the time of the inspections shall be struck from the Order. Paragraph (d) of the Second Part of the Order shall be removed and paragraph (c) of the third part of the Order shall be amended by inserting the following:

“When there is need for protection against flies and other flying insects, repair or replace all missing ...”

[69] The Panel has directed that AHS comply with the decision of the Panel and issue an amended Order within the ten (10) calendar days from the date of this decision letter. This directive has been complied with.

[70] The varied Order shall remain in force until such time as AHS rescinds the Order in accordance with the *Public Health Act*.



Denis Lefebvre, Chair
On behalf of the Panel

Date: June 28, 2019