

**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 A.ZERE  
INTERNATIONAL TRADING CORPORATION OF AN ORDER OF  
AN EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH  
SERVICES ZONE 4, EDMONTON, ALBERTA  
DATED NOVEMBER 10, 2017

AND IN THE MATTER OF A MOTION TO EXTEND TIME TO FILE  
A NOTICE OF APPEAL

**DECISION OF THE BOARD**

**Written Submissions**

This is a motion (the “Motion”) initiated by the Public Health Appeal Board (the “Board”) to determine whether the late filing of the Notice of Appeal (the “Appeal”) of A.Zere International Trading Corporation (the “Appellant” or the “Owner”), should be accepted.

Rather than hold a hearing of this Motion, the Board requested written submissions from the parties. The Board met to consider those submissions.

While the Motion was initiated by the Board, the Appellant still has the burden of satisfying the Board, on the balance of probabilities, that an extension to file the Appeal is warranted.

Submissions were provided by:

Taya Anstey and Alex Turner, tenants (as third party intervenors) (the “Tenants”) residing at the premises that is the subject matter of the Appeal; and

Ms. Linda Svob, legal counsel for the Respondent, Alberta Health Services.

The Appellant did not provide any submissions.

**Date of Board Meeting**

March 26, 2018, 10:30 A.M. via teleconference.

Sitting for the Board:

Denis Lefebvre, Chair  
Wendy Lickacz, Vice-chair  
David Rolfe, Member, and  
Ike Zacharopoulos, Member

### **Short Decision of the Board**

[1] The Motion to extend time to file an Appeal is dismissed.

### **Background**

[2] Following an inspection of housing premises located at unit 302, 11015-108 Avenue in Edmonton, Alberta (the “Premises”) Executive Officer, Stephanie Bodnar (the “EO”) issued an order (the “Order”) requiring the Owner to complete the following work, namely:

- (a) Ensure the bedroom windows are capable of being secured. Ensure all exterior windows and doors are capable of being secured.
- (b) Ensure all walls, windows, ceilings, floors, and floor coverings are maintained in good repair, free of cracks, holes, loose or lifting coverings and in a condition that renders them easy to clean, including:
  - i. Ensure baseboards in the hallway outside the bedroom are secured to the wall.
  - ii. Ensure baseboards are installed along the living room wall, on the other side of the kitchen.
- (c) Replace the missing electrical outlet plate covers and light switch plate covers in the unit. Ensure all outlets, switches and fixtures are properly installed and maintained in a good and safe working condition.
- (d) Take any necessary action to eliminate the bed bug infestation in Unit 302 and any other areas of the building that are affected.
  - i. Treat all affected areas and provide this office with detailed documentation of the pest control activities completed, including pest control reports from a certified pest control operator.
  - ii. Utilize IPOM (Integrated Pest Management) techniques to control the infestation.
  - iii. Provide tenant(s) with proper education regarding preparation requirements prior to treatment.
  - iv. Continue pest control measures until the infestation has been cleared.

[3] The Order further stipulated that the work was to be started on or before November 17, 2017 for item (d) above, and was to be completed by December 1, 2017 for items (a) through (c).

[4] The Secretariat received the Appeal on February 28, 2018. Since the Appeal was not filed within the ten-day time limit allowed for pursuant to section 5(3) of the *Public Health Act*, the Board requested (via letter dated March 6, 2018) written submissions from the parties as to why it should (or should not) extend time for the Appeal to be filed.

[5] Submissions were received from Alberta Health Services (“AHS”) and the Tenants of the Premises. No submissions were received from the Appellant.

[6] On March 21, 2018 the Secretariat forwarded the submissions to the Appellant. At the direction of the Board, the Secretariat contacted the Appellant and requested rebuttal submissions. No rebuttal submissions were provided by the Appellant.

[7] The Chair called a meeting of the Board to review the submissions and rendered its decision.

### **Issue**

[8] Whether the Board considers it appropriate to extend the time for the Appellant to file the Appeal.

### **Submissions of the Appellant**

[9] The Appellant has not made any submissions.

### **Submissions of the Tenants**

[10] The Tenants submit that the Owner has a history of not responding to AHS. They state that, on January 19, 2018, they witnessed the Owner’s representative, Tsehaye Zere Kahsai (“Kahsai”), “[flee] from the Health Inspector who was trying to serve him documents.”

[11] The Tenants argue that the Owner was given sufficient time to respond to the Order and an extension to file the Appeal should not be granted.

### **Submissions of the Respondent, AHS**

[12] AHS state that the Order was served upon the Owner as follows:

- (a) On November 10, 2017, the Executive Officer issued the Order and sent it by registered mail. The registered mail was sent to the Owner’s corporate office in Calgary as well as to Kahsai.
- (b) The EO sent a copy of the Order by e-mail to the Owner on November 14, 2017.
- (c) On November 24, 2017, the registered mail for the Calgary address was returned as “return to sender.” On the same day, November 24, 2017, the EO left a voicemail message for Kahsai.

- (d) On December 14, 2017, the EO left hard copies of the Order under the doors of Unit 204 and Unit 411 of the Premises, which are the units for the caretaker and for the Owner (as indicated on a corporate registry search), respectively.
- (e) On December 19, 2017 the registered mail sent to the Premises was returned as “return to sender.”
- (f) On January 19, 2018 the Order was hand delivered by the EO to Kahsai at approximately 11:00 in the morning.

[13] AHS submits that the Owner received notice of the Order on one of the following dates:

- (a) On November 14, 2017, when the Owner was sent the Order by e-mail, which is 106 days before the Appeal was commenced; or
- (b) On November 24, 2017, when the Owner was verbally advised of the Order by telephone, which is 96 days before the Appeal was commenced; or
- (c) On December 14, 2017 when hard copies of the Order were left at the corporation’s registered address, which is 76 days before the Appeal was commenced; or
- (d) On January 19, 2018 when the Order was hand delivered to the Appellant, which is 40 days before the appeal was commenced.

[14] The Respondent submits that even if the Owner did not receive notice of the Order sometime in November 2017 for whatever reason, the latest date on which the Owner could be said to have notice of the Order was January 19, 2018. This means the Appeal was filed at least 40 days after receiving notice of the Order, which is well beyond the 10-day statutory deadline.

[15] Given the significant period of time that has lapsed since the Owner received notice of the Order, AHS submits that the Board should not extend the time for the Appellant to file the Appeal.

## **Law**

[16] The Board may extend time to file an appeal pursuant to s.5(9) of the Act, which states as follows:

**5(9)** Notwithstanding subsections (3) and (4), the Board may, if it considers it appropriate to do so, extend the time within which an appeal may be taken under subsection (3) or within which the Board must act under subsection (4).

[17] Whether the extension is “appropriate” is a very broad test. The Board has therefore decided to consider a list of criteria to guide its decision (the “Criteria”) as follows:

- (a) Whether the Appellant had a *bona fide* intention to appeal before the expiration date of the appeal period;

- (b) Whether the Appellant, either expressly or impliedly, informed the Respondent of his or her intention to appeal;
- (c) Whether the Respondent would be unduly prejudiced by an extension of time;
- (d) Whether there was merit in the Appeal in the sense that there was a reasonably arguable ground;
- (e) Whether the Appellant had a valid explanation for the late filing of his or her Appeal; and
- (f) Whether it was in the interests of justice that the extension be granted.

[18] The Board is not bound by the Criteria in the exercise of its discretion pursuant to the Act. Ultimately, the Board is required to determine if it considers it appropriate to extend the time within which an appeal may be accepted.

### **Analysis/Reasons**

[19] Since the Appellant has not provided any submissions, the Board is of the view that the Appellant has abandoned the Appeal.

[20] If the Board is incorrect, then the Board has determined that, based on the facts and evidence before it, it does not consider it appropriate to extend the time within which the Appeal could be accepted.

### **Decision of the Board**

[21] For the above reasons, the Board has unanimously decided not to grant an extension of time to file the Notice of Appeal.

[22] The Order of November 10, 2017 remains in force.



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Denis Lefebvre, Chair  
On behalf of the Public Health  
Appeal Board

**Date: July 17, 2018**