

PUBLIC HEALTH APPEAL BOARD

IN THE MATTER OF THE PUBLIC HEALTH ACT,
CHAPTER P-37, R.S.A. 2000
AND ITS REGULATIONS
IN THE MATTER OF A STAY APPLICATION TO
THE CHAIR OF THE PUBLIC HEALTH APPEAL BOARD BY SARAH FASSMAN,
1443028 AB LTD, GOHAR TASNEEM, HOME PLACEMENTS SYSTEMS, GOHAR
(CARMEN) PERVEZ OF THE EXECUTIVE OFFICER'S ORDERS
ISSUED BY ALBERTA HEALTH SERVICES
ZONE 4 EDMONTON
DATED JUNE 15, 2015
STAY HEARING HELD JULY 8, 2015

Appearances

Mr. Gohar (Carmen) Pervez, Appellant
Ms. Sarah Fassman, Appellant

Mr. Ivan Bernardo, Legal Counsel, Alberta Health Services/Respondent

Chair of Board's Decision

The Chair has decided not to grant a stay of the Orders.

Introduction

The Executive Officer's Orders Unfit for Human Habitation are dated June 15, 2015. The Orders were pursuant to the *Public Health Act* (the "Act"), the *Nuisance and General Sanitation Regulation* and the *Minimum Housing and Health Standards*.

The Orders set out the contraventions of the *Act*, *Regulations* and *Minimum Housing and Health Standards*. The Orders pertain to the condition of 2 residential properties located at 10741 93 Street and 10727 93 Street, Edmonton that are used as rentals in the Appellant's home placement business. The Orders directed the Appellants to complete certain work on the properties prior to them being occupied. No time frames were set out in the Orders by which the work was to be completed. The properties were not occupied at the time the Orders were issued and are currently not occupied.

An appeal hearing date was set for July 29, 2015. Attempts were made to set the hearing for the week of July 20th but the Appellant was not available that week.

The stay hearing was held on July 8, 2015 by way of a telephone conference.

Issue

Whether a stay of the Executive Officer's Orders dated June 15, 2015 ought to be granted.

Appellant's Submissions

The Appellant submitted that the process by which the Orders were granted was unfair and there was an abuse of process. The properties were not rented as renovations and repairs were going to be completed and the premises had been boarded up.

The Appellant submitted that he was unable to rent the properties out now even though most of the repairs had been completed. He also submitted that the Orders set an unfair precedent and this could affect him in the future as he had other rental properties.

In addition, the Appellant would suffer harm as he could not have trades people work on the property because of the requirement to have the air quality of the premises tested prior to other work being completed.

Alberta Health Services' Submissions

Alberta Health Services submitted that the Appellant did not meet the test set out for granting a stay by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

Alberta Health Services submitted that the Appellant failed to show that irreparable harm would result to the Appellant if the stay was not granted.

In addition, the Respondent submitted that when weighing the balance of inconveniences that would result if the stay was or was not granted, the Public Health concerns resulting from a stay being granted outweighed the inconveniences of the Appellant in the event a stay was granted.

Reasons

The Board is empowered to grant a stay pursuant to section 6 of the *Public Health Act*. This section states:

An appeal taken pursuant to section 5 does not operate as a stay of the decision appealed from except so far as the chair or vice-chair of the Board so directs.

The test for a stay is set out in the Supreme Court of Canada decision in *RJR MacDonald*. It is a 3 part test that can be summarized as follows:

1. Is there a serious question to be tried.
2. Would the Appellant suffer irreparable harm if the stay was not granted.
3. Assess the balance of inconvenience to the Appellant and Respondent – the inconvenience to the Respondent if the stay is granted and the inconvenience to

the appellant if the stay is not granted. In this part of the test the inconvenience of other parties may be considered as well as the public's interest.

Application of the test

Is there a serious question to be tried? This part of the test is a low threshold and can be met if the appeal is not frivolous or vexatious. The Appellant showed that there is merit to the Appeal and that it is not frivolous or vexatious.

The second part of the test is whether the Appellant will suffer irreparable harm if the stay is not granted.

The Appellant does not meet the test for showing irreparable harm. The Orders being appealed only direct the Appellant not to rent the 2 vacant housing premises until the work set out in the Orders have been completed. There are no dates set out in the Orders for completing the work required in the Orders. The Appellant has the option of waiting until the Public Health Appeal Board decides whether the Orders ought to be varied or vacated at the Appeal hearing before undertaking any work that is outstanding. He would lose some rental income but it would be for a short period of time and the period of time would have been less had the Appellant been available for the Appeal hearing the week of July 20th.

The inability to have tradespeople work on the house immediately is also not irreparable harm. It is more of a timing issue than a harm that cannot be mitigated.

The Appellant submitted that the Orders would set a precedent and because he owns other rental properties this would cause irreparable harm. This is not irreparable harm as any precedent value would most likely result from the Board's decision of the Appeal on the merits and not from a short lived stay of the Orders.

The third part of the test is the assessment of the inconveniences to the parties if the stay is or is not granted. As the Appellant failed to meet the second part of the test, it is not necessary to review the inconveniences of granting or not granting the stay for each party.

For the above reasons, the Chair of the Public Health Appeal Board has not granted a stay of the Orders.

Per: _____
Julia Jones, Chair

Olga Sarcanean.
For Julia Jones at her request

Date: July 13, 2015