

**CALGARY
ASSESSMENT REVIEW BOARD
DECISION WITH REASONS**

In the matter of the complaint against the Property/Business assessment as provided by the *Municipal Government Act*, Chapter M-26. Section 460(4).

between:

ALTUS GROUP LTD., COMPLAINANT

and

The City Of Calgary, RESPONDENT

before:

***Earl K Williams, PRESIDING OFFICER
Ray Deschaine, MEMBER***

This is a complaint to the Calgary Assessment Review Board in respect of Property/Business assessment prepared by the Assessor of The City of Calgary and entered in the 2010 Assessment Roll as follows:

ROLL NUMBER: 114155005 & 114155013

LOCATION ADDRESS: 7740 18th Street SE

HEARING NUMBER: 59516

ASSESSMENT: \$12,310,000

This complaint was heard on 28th day of July, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 6.

Appeared on behalf of the Complainant:

- Altus Group Limited – R. Brazzell and A. Izard

Appeared on behalf of the Respondent:

- City of Calgary – K Hess and R Ford

Board's Decision in Respect of Procedural or Jurisdictional Matters:

No Procedural or Jurisdictional Matters were identified.

Property Description:

Background:

This Composite Assessment Review Board ("CARB") was convened to hear a preliminary matter related to Matters Relating to Assessment Complaints Regulation ("MRAC") Section 8 (2).

On July 21, 2010 the property was scheduled for a merit hearing, however, at the outset of the hearing the Respondent brought forward a Preliminary Matter related to late filing and non compliance with section 8(2) of MRAC. They City stated that the Complainant had not disclosed their evidence respecting the complaint on or before the deadline as prescribed by section 8(2) of the MRAC and as set out by the Assessment Review Board Notice of Hearing ("Notice") dated April 6, 2010.

The Board rendered a verbal decision that the Preliminary Matter related to late filing and non compliance with section 8(2)(a) of MRAC would be heard on July 28, 2010.

Issue:

The Respondent advised that in regard to Roll Number: 114155005 and 114155013 the Complainant had not complied with the Disclosure of Evidence time frame of 42 days before the hearing required by section 8(2)(a). As set out by the Assessment Review Board Notice of Hearing dated April 6, 2010, the evidence was required by June 8, 2010. The Complainant filed at 00:16 a.m. and 00:18 a.m. on June 9, 2010.

Based on the Complainant's late filing the Respondent requested that because of the non compliance with MRAC that a postponement not be granted.

Board's Decision in Respect of the Issue:

Complainant and Respondent presented a wide range of relevant and less relevant evidence in respect of the issues.

Respondent

Referring to section 8(2)(a) of MRAC the Respondent argued that this provision contains the imperative "must" and therefore this requirement of "at least 42 days before the hearing" is mandatory leaving the CARB without Authority to consider evidence filed later than 42 days before the hearing. Further, it was argued that section 9(2) reaffirms this requirement again

using the word "must". Specifically a CARB must not hear any evidence that has not been disclosed in accordance with section 8. The abridgement provision in section 10 requires the consent of the person entitled to the evidence and the Respondent will not provide their consent.

Respondent presented as evidence exhibits marked as Exhibit 7 Assessment Review Board Notice of Hearing ("Notice") and Exhibit 8 CARB Board Order 0830/2010.

In respect of Roll Numbers 114155005 and 114155013 the Complainant's Disclosure Due Date was Thursday June 8, 2010 as specified in Exhibit 7, the Notice of Hearing mailed from the Assessment Review Board on April 6, 2010. The Complainant filed the evidence electronically at 00:16 a.m. and 00:18 a.m. on June 9, 2010. The covering emails with the disclosure of evidence provided no explanation for the late filings. The 00:16 a.m. email advised "that due to the extensive nature of this document it will be submitted in two separate parts"; the 00:18 a.m. email advised that the attached was Part II of II.

The Respondent advised that this late filing is not a single event rather there is a history of late filings by the agent representing the Complainant. In support of the repetitive behavior of non compliance with MRAC section 8(2) by the agent the Respondent presented Exhibit 8 which is CARB Border Order 0830/2010 to grant a postponement for 3 properties which were scheduled for merit hearings on July 6, 2010. At the July 6, 2010 CARB hearing the Respondent raised as a preliminary matter the non compliance with section 8(2)(a) by the agent for the 3 properties. The disclosure in each case was late; specifically 1hr 7 minutes; 1 hour 45 minutes and 3 hours 3 minutes late respectively. Although the CARB Border Order (Exhibit 8) did grant a postponement; on page 5 of the Board Order the CARB expressed their concern that in addition to the late filings related to this decision there have been other instances of the same behavior by the same agent in the past. The Respondent argued that the repetitive behavior of non compliance with MRAC section 8(2) by this agent must not be overlooked when deciding on the granting of a postponement.

It was argued that the Respondent is prejudiced by this repetitive behavior of the Complainant and the practice of late filings has a financial and non financial impact on the appeal process. There are delays in decisions, the required preparation for hearings on preliminary matters, preparation for appeals to the MGB, and overall reallocation of resources which impacts through the system.

In summary, the Respondent argued that:

- the Respondent is prejudiced by the actions of the Complainant,
- the requirements of section 8(2) of MRAC must be met,
- the repetitive behaviour by the agent of not compiling with MRAC section 8(2) is disrespectful and that the practice must be considered, and
- a postponement in respect of Roll Number 114155005 and 114155013 not be granted.

Complainant

The Complainant presented an evidence package identified as: Exhibit 6: Glenmore Square, 7740 18th Street SE 2010 Assessment Review Board – Preliminary Issue Submission.

Exhibit 6 included the email correspondence related to the evidence submission. The chronology of the relevant emails was:

- 00:16 a.m. June 9, 2010 – evidence was forwarded electronically and the email contained the sentence: *"Please be advised that due to the extensive nature of this document it will be submitted in two separate parts."*
- 00:18 a.m. June 9, 2010 – evidence submission Part II of II was forwarded

Mr. Izard, the agent responsible for the submission, advised the CARB that the reason for the late submission was technical difficulties encountered with the insertion of a large electronic file into the submission. Further the size and complexity of the material is supported by the submission being sent in two parts. The Complainant did not disagree that the evidence had been filed late.

The Complainant argued that consideration must be given to the evidence that supports the late filing was the result of technical problems related to the size of the file and was not disrespect for the process or the Respondent. Further, it was argued that the Respondent was not prejudiced by the actions of the Complainant.

In the written and oral arguments the Complainant referred the CARB to the Interpretation Act, Matters Relating to Assessment Complaints Regulation ("MRAC") and relevant decisions of the Court of Queen's Bench of Alberta and MGB Board Orders to support their contention that the Board should not disallow their evidences based on a technicality and should exercise its discretion to ensure that the procedural fairness and the tenants of natural justice are served.

It was argued by the Complainant that the decision made by the Alberta Court of Queen's Bench (A.B.Q.B. No. 0701/04629) in the City of Calgary v Gaspar Szentor Holdings et.al. supports that the primary purpose of regulations like MRAC is not administrative efficiencies but rather to provide access to the tribunal and procedures that accord natural justice.

It was argued that substantial compliance has been met and procedural fairness can be achieved through the Board's exercising its discretion as provided for in MRAC. Disallowing the complainant's evidence and not proceeding with a hearing would be tantamount to dismissing the complainant. Such a decision of the Board would be disproportionate to the technicality of a late filing of disclosure documents.

In summary, the Complainant argued a number of points:

- time is a narrow issue and in their view does not affect the outcome of the appeal of the assessment value,
- no one is harmed by a late filing of evidence especially if the filing is within a day of the required filing date,
- the Complainant has complied within the basic intent of section 8,
- Section 8 should not be interpreted in isolation it is to be interpreted in the broader context of the appeal process,
- the Board should be mindful that this is the first year of a new complaint system wherein all parties have to adapt to new processes,
- If the CARB find that the complaints are technically late then the rules of natural justice should prevail and the Board should not disallow the Complainant's evidence but rather exercise its authority as provided for in section's 10 and 15 of MRAC.

Board Decision and Reasons

The CARB determined that it does have jurisdiction under the Municipal Government Act and MRAC to decide on the matter raised by the Respondent. Specifically, the: "Respondent's request that because of the non compliance with MRAC that a postponement not be granted."

A decision to not grant a postponement on the basis of non compliance with MRAC is a matter with serious consequences for the Complainant and has been the subject of a number of cases reviewed by the Board and the Alberta Court of Queen's Bench.

In respect of Roll Numbers 114155005 and 114155013 the evidence shows and the Complainant acknowledges that the evidence was filed at 00:16 a.m. and 00:18 a.m. on June 9, 2010. The Complainant provided an explanation that the size of the file and limitations imposed by the email system was the reason the evidence was not delivered in compliance with section 8(2)(a).

The Board examined whether the magnitude of the lateness, be it minutes, hours or days, is a consideration in a decision on postponement. MRAC's Disclosure of Evidence section 8(2) provides the rules which apply to the timing for the disclosure of evidence to the Complainant and the Respondent; specifically the number of days before a hearing that the evidence must be provided. MRAC is silent on the magnitude of lateness. However, the deadlines prescribed in MRAC Section 8(2) must be met by the parties.

It is the CARB's position that magnitude of lateness is not the primary consideration in deciding on granting of a postponement. A decision on postponement is based on an examination of all of the evidence and the gravity of the error.

The Respondent argued that the repetitive non compliance by the agent needs to be considered when deciding on the granting of postponement. The CARB examined the agent's history of non compliance and has the following comments on the matter of non compliance:

- The Respondent's evidence supported that non compliance with MRAC section 8(2) is not a single occurrence but one of a number of late filings by the same agent.
- MRAC's Disclosure of Evidence section 8(2) provides the rules which apply with respect to the timing for the disclosure of evidence to the Complainant and the Respondent; specifically the number of days before a hearing that the evidence must be provided.
- The City of Calgary's administrative procedure requires an Assessment Review Board's ("ARB") Notice of Hearing ("Notice") be forwarded to the Complainant. On this Notice is the formal notice of the date of the hearing and the Complainant disclosure due date.
- MRAC and the Respondent's Notice provide the parties ample notice and time for the preparation and filing of the evidenced.
- In respect of a repetitive behavior the CARB examined MGB Board Order 105/09 which contained the following statement: *"The denial of the right to appeal is a very serious penalty, and in absence of mischievous or repetitive behavior the right to appeal should not be denied on a mere technical basis."* This Board Order speaks to the seriousness of a repetitive behaviour by referencing that in its absence the right to an appeal should not be denied on a mere technical basis. Then the presence of mischievous or repetitive

behaviour is serious matter and such behaviour can be viewed as an abuse of the complaint process.

Non compliance with the MRAC is a serious matter at any time but is a major concern when the non compliance is a repetitive behavior. Repeated non compliance is bordering on deliberate mischief and disrespect of the Legislation, the Board, the Complainant, the Respondent and the procedures under which the complainant system operates.

The Complainant referred the CARB to MGB Board Orders and the decisions of the courts to support their contention that the Board should not disallow their evidences based on a technicality of a late filing and should exercise its discretion to ensure that the procedural fairness and the tenants of natural justice are served. Further the Board also accepted the reasoning that the penalty must not be disproportional to the fault.

In reaching their decision the Board paid particular attention to the decision of the Alberta Queen's Bench in the matter of the City of Calgary v Gaspar Szentor Holdings. It is recognized that this decision was made under the old Alberta Complaints and Appeals Regulation; however the overall purpose of the legislation remains. The primary purpose of regulations like MRAC is not administrative efficiencies but rather to provide access to the tribunal and procedures that accord natural justice. This means that weight should be given to the purpose of the legislation which is to provide access to the tribunal and procedures that accord with natural justice

Based on the evidence, the body of case law, the principles of administrative law and natural justice the CARB has decided to grant a postponement in respect of Roll Number 175216902.

Board's Decision:

Based on the evidence, the body of case law, the principles of administrative law and natural justice it was decided to:

1. allow the Complainant's evidence to be heard in a merit hearing of the matter, even though it was not filed in compliance with the time frames contained in MRAC section 8(2);
2. to expand the time specified in section 8(2)(a), (b) or (c) for the disclosure of evidence as provided for in section 10(2) of MRAC and
3. to grant a postponement based on the provisions of MRAC section 15 in order to facilitate the expansion of time.

DATED AT THE CITY OF CALGARY THIS 14th DAY OF SEPTEMBER 2010.



Earl K Williams
Presiding Officer

An appeal may be made to the Court of Queen's Bench on a question of law or jurisdiction with respect to a decision of an assessment review board.

Any of the following may appeal the decision of an assessment review board:

- (a) the complainant;*
- (b) an assessed person, other than the complainant, who is affected by the decision;*
- (c) the municipality, if the decision being appealed relates to property that is within the boundaries of that municipality;*
- (d) the assessor for a municipality referred to in clause (c).*

An application for leave to appeal must be filed with the Court of Queen's Bench within 30 days after the persons notified of the hearing receive the decision, and notice of the application for leave to appeal must be given to

- (a) the assessment review board, and*
- (b) any other persons as the judge directs.*