

Edmonton Composite Assessment Review Board

Citation: Eduardo Wang He Lee v The City of Edmonton, 2013 ECARB 00973

Assessment Roll Number: 9997333

Municipal Address: 20504 Yellowhead Trail NW

Assessment Year: 2013

Assessment Type: Annual New

Between:

Eduardo Wang He Lee

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

POSTPONEMENT DECISION OF George Zaharia, Presiding Officer

Issue

[1] Should a postponement of the 2013 Annual New Realty Assessment hearing scheduled for August 7, 2013 be granted as requested by the Complainant?

Legislation

[2] The *Matters Relating to Assessment Complaints Regulation*, AR 310/2009, reads:

15(1) Except in exceptional circumstances as determined by an assessment review board, an assessment review board may not grant a postponement or adjournment of a hearing.

(2) A request for a postponement or an adjournment must be in writing and contain reasons for the postponement or adjournment, as the case may be.

(3) Subject to the timelines specified in section 468 of the Act, if an assessment review board grants a postponement or adjournment of a hearing, the assessment review board must schedule the date, time and location for the hearing at the time the postponement or adjournment is granted.

Position of the Complainant

[3] The Complainant requested a postponement in writing of the hearing originally scheduled for August 7, 2013 stating that "I am going to U.S.A. and Korea July 20, 2013".

[4] The Complainant further requested "Please adjust the disclosure deadlines".

Position of the Respondent

[5] The Respondent submitted that the Complainant's request for a postponement is ambiguous but is probably more accurately characterized as a request to change disclosure dates. The Respondent takes no position in relation to a request that the disclosure dates be expanded. The Respondent, however, does not consent to the disclosure dates being shortened.

[6] In the event that the ARB considers the Complainant's request to be a postponement request, the City takes no position on the matter. However, the City makes the following comments for the ARB's consideration in determining whether sufficient circumstances exist:

- a. The Complainant indicated on their Complainant Form that they were not available in May or June, 2013, as they would be out of the country.
- b. The Notice of Hearing, dated April 3, 2013, indicates the hearing date as August 7, 2013 with the Complainant's disclosure due on June 25, 2013 and their rebuttal due on July 30, 2013. The Complainant's June 25 disclosure deadline falls during the time they indicated they would be out of the country.
- c. The Postponement Request form is not clear as to whether the Complainant is leaving the Country on July 20 or returning on July 20, 2013.
- d. The Complainant did not indicate on their Complaint Form that they would be out of the country in July.
- e. The Complainant could file his disclosure before he leaves the country. As the information on the Postponement Request form is not clear whether the Complainant will be in or out of the country when his rebuttal disclosure is due.

[7] The responsible assessor is not available June 21 – 25, 2013, inclusive, or July 19 -26, inclusive.

Decision

[8] The Board does not grant the postponement request.

Reasons For The Decision

[9] Although the Complainant submitted a "Request for Postponement or Adjournment" form, the statement made by the Complainant indicated he was leaving the country on July 20, 2013, providing no indication of his return, and only requesting that the disclosure dates be adjourned.

[10] When submitting the original complaint form, the Complainant indicated that he would be unavailable for a hearing during the months of May and June due to a "pre-arranged out of country business trip". However, the request for postponement is dated May 21, 2013, falling within the two-month period that the Complainant stated that he would be out of country. There was no indication of further travels in July.

[11] As the Respondent has correctly pointed out, the disclosure deadline of June 25, 2013 falls near the end of period when the Complainant was to be out of country. However, from

when he would have received notice of the hearing dated April 3, 2013, the Complainant would have had the better part of three weeks during which the disclosure could have been prepared.

[12] The Board is sensitive to the Complainant's right to have his complaint heard, but it is not mandatory for either party to be present at the hearing, and legislation/regulations contemplates that could be the case.

The Municipal Government Act in s. 463 states the following:

If any person who is given notice of the hearing does not attend, the assessment review board must proceed to deal with the complaint if

(a) All persons required to be notified were given proper notice of the hearing, and

(b) No request for a postponement or an adjournment was received by the board or, if a request was received, no postponement or adjournment was granted by the board.

The Matters Relating to Assessment Complainants Regulation in s. 16(1) states the following:

Parties to a hearing before an assessment review board may attend the hearing in person or may, instead of attending in person, file a written presentation with the clerk of the assessment review board.

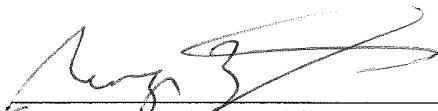
[13] The Complainant can also authorize a representative to attend the hearing on his behalf.

[14] In requesting that the disclosure deadline be adjusted, not that the hearing be rescheduled, and given the travels of the Complainant, it is unclear as to when the Complainant would be available for a hearing. The Assessment Review Board's administrative staff unsuccessfully attempted to contact the Complainant by telephone and email on May 30 to clarify the Complainant's travel plans and availability.

[15] The Board is persuaded that the Complainant's original travel plans were taken into consideration when setting the original hearing date and that no "exceptional circumstances" exist as contemplated in MRAC s. 15(1) shown above as to warrant a postponement.

Heard commencing June 3, 2013.

Dated this 3rd day of June, 2013, at the City of Edmonton, Alberta.


George Zaharia, Presiding Officer

This decision may be appealed to the Court of Queen's Bench on a question of law or jurisdiction, pursuant to Section 470(1) of the Municipal Government Act, RSA 2000, c M-26.