

**CALGARY  
ASSESSMENT REVIEW BOARD  
DECISION WITH REASONS**

In the matter of the complaint against the Property 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:**

***T. Hudson, PRESIDING OFFICER***

***H. Ang, MEMBER***

***R. Deschaine, MEMBER***

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

<b>ROLL NUMBER:</b>	<b>200182947</b>
<b>LOCATION ADDRESS:</b>	<b>3221 Sunridge Way NE</b>
<b>HEARING NUMBER:</b>	<b>56317</b>
<b>ASSESSMENT:</b>	<b>\$32,540,000</b>

This complaint was heard on the 15th day of October, 2010 at the office of the Assessment Review Board located at Floor Number 4, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 1.

Appeared on behalf of the Complainant:

- *Mr. A. Izard and Mr. K. Fong* (Altus Group Ltd., Agent)

Appeared on behalf of the Respondent:

- *Mr. P. Sembrat and Mr. Harry Yau* (City of Calgary, Assessor)

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

**The Respondent introduced a motion to dismiss the complaint, because the Complainant did not comply with Alberta Regulation 310/2009, Matters Relating to Assessment Complaints Regulation(MRAC), Division 2, Hearing before Composite Assessment Review Board, Disclosure of evidence, Section 8(1),(2)(a)(i).**

The evidence before the Board indicates that the required Notice Of Hearing was mailed by the City of Calgary Assessment Review Board (ARB), on April 6<sup>th</sup>, 2010. The Notice clearly indicates that the Complainant's evidence disclosure due date was September 2, 2010, in preparation for a scheduled hearing date of October 15, 2010.

The evidence further shows that the Complainant was cognizant of the due date, and in fact attempted to meet the disclosure deadline by emailing the disclosure documents on Thursday September 2, 2010, at 3:32pm, to both the Respondent and the ARB. In support of this action, the Complainant submitted a copy of an email from Mr. Kam Fong of Altus Group Ltd., to both the Respondent and the ARB, which includes an attachment identified as "2010 ARB Evidence Submission 200182947", see Exhibit C-1 Page 249. However, there is no conclusive confirmation from either the Respondent or the ARB, that the disclosure evidence was actually received.

In fact, on September 30<sup>th</sup>, 2010, the Respondent informed the ARB, with a copy to the Complainant agent, that no evidence had been received from the Complainant as per the MRAC disclosure regulation, and advising of their intention to seek confirmation of the assessment, due to the absence of disclosure. See Exhibit C-1 Page 246. The Board has confirmed that the ARB did receive a hand delivered version of the required disclosure evidence from the agent for the Complainant on September 24, 2010. However, the Respondent insists that they did not receive disclosure evidence with respect to this complaint.

**In response to the motion from the Respondent, the Complainant requests that given the circumstances surrounding this matter, and in respect for the administrative principles of natural justice and procedural fairness, the Board should exercise its discretion under MRAC Section 10 and abridge the time period for disclosure of evidence, and adjourn the merit hearing to a later date.**

In support of their request, the Complainant submitted legal argument, previous tribunal decisions, and case law with respect to the issues involved in this procedural dispute. This material is documented in Exhibits C-1 and C-2.

**The Board considered the positions of the parties and takes its direction from MRAC Sections 8, 9 and 10 in deciding the matter.**

Firstly, it is clear, that the Complainant has not demonstrated compliance with Section 8(2) (a) (i) of MRAC., notwithstanding their efforts to do so. This view is substantiated by the fact, that the ARB has confirmed that it did not receive the disclosure documents until they were hand delivered on September 24, 2010; 22 days after the deadline of September 2, 2010. The Respondent does not concede that they ever received the disclosure documents.

**MRAC Section 9(2) states that “A composite assessment review board must not hear any evidence that has not been disclosed in accordance with Section 8”**Section 10(1), (2), and (3) of MRAC allows for the abridgment or expansion of time by order of a composite assessment review board.

**However, Section 10(3) specifically states that “A time specified in Section 8(2) (a),(b) or(c) for disclosing evidence or other documents may be abridged with the written consent of the persons entitled to the evidence or other documents.”**

The Board is advised that the Respondent will not consent to the abridgement or expansion of time in this matter. **Without the consent of the Respondent, the Board is not prepared to order adjournment of the merit hearing and expand the time for disclosure on this complaint.** In the view of the Board, it is the responsibility of the Complainant's agent to ensure that they comply with the MRAC, particularly when it comes to the timely disclosure of evidence in support of their complaint. To file disclosure evidence by email on the final day (ie September 2,2010) available, and then to assume it has been received by the persons entitled to the evidence, the Board believes falls short of meeting this responsibility. Given the potential for error in the system, the Board takes the position, that the Complainant could have, and should have, confirmed timely receipt of the disclosure evidence by both the Respondent and the ARB, through direct contact or some other action. However, this action did not occur until at minimum, 22 days after the disclosure deadline. Given the facts, the Board believes that dismissal of the complaint is the correct decision, in accord with the intent of the MGA and the Regulations governing the Assessment Review process; and including due consideration for the administrative principles of procedural fairness and natural justice.

**Board's Decision:**

The motion of the Respondent to dismiss the complaint is accepted.

DATED AT THE CITY OF CALGARY THIS 22 DAY OF October 2010.



T. Hudson  
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.*