



Calgary Assessment Review Board

DECISION WITH REASONS

In the matter of the complaint filed with the Composite Assessment Review Board as provided by the *Municipal Government Act*, Chapter M-26, Section 460, Revised Statutes of Alberta 2000 (the MGA).

between:

The Building Bloc Inc. (as represented by Assessment Advisory Group Inc.), Applicant

and

The City of Calgary, Respondent

before:

T. Helgeson, Presiding Officer

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 2013 Assessment Roll as follows:

ROLL NUMBER: 067093005

LOCATION ADDRESS: 722 11th Avenue SW

FILE NUMBER: 73451

This complaint was heard on the 3rd day of May, 2013 at the office of the Assessment Review Board located at Floor Number 3, 1212 – 31 Avenue NE, Calgary, Alberta, Boardroom 11.

Appeared on behalf of the Complainant:

- *Mr. Doug Bowman, Ms. D. Barry, Mr. Dan Bowman*

Appeared on behalf of the Respondent:

- *Ms. M. Cario, Ms. K. Yeung*

Background:

[1] On the 3rd of April 2013, Mr. W.A. Paterson, General Chairman of the Calgary Assessment Review Board ("ARB"), wrote to the Applicant informing them that the ARB could not hear a complaint regarding the property at 722 11th Avenue SW due to the fact that the complaint had not been filed in accordance with s. 5 of Schedule 1 of Alberta Regulation 310/2009, the *Matters Relating to Assessment Complaints Regulation* ("MRAC"). Schedule 1 is the required complaint form specified by MRAC, and s. 5 of Schedule 1 contains issues that the complainant's grounds for complaint must respond to. Due to the small space provided for grounds for complaint in the complaint form, complainants usually include their grounds for complaint on a separate sheet of paper.

[2] At the request of the Applicant, a jurisdictional hearing was scheduled for May 3rd, 2013. The hearing was before a one-member panel of the Composite Assessment Review Board pursuant to s. 454.1(2) of the Municipal Government Act (MGA) and s. 30(2)(d) of MRAC. Hereinafter, the one-member panel of the Composite Assessment Review Board will be referred to as "the Board".

Issue:

[3] Were the grounds for complaint missing when the complaint arrived at the offices of the ARB?

Submissions of the Complainant:

[4] We are asking that the complaint be reinstated. Our copies and originals are correct. We submitted one cheque for two properties, 721 11th Avenue SW and 722 11th Avenue SW, but the complaint with respect to 722 11th Avenue SW ("the subject property") was dismissed, allegedly because the grounds for complaint were missing. There is confusion about what was missing. Our files are scanned, and our records show the documentation for the subject property as filed at the ARB was correct and complete. We filed 148 complaints, and it seems peculiar that only one was lacking grounds of complaint.

[5] Communication with the ARB was not clear. We couldn't get an honest answer as to what was missing. The complaint was delivered by hand. Our records show the filing was correct and complete. The complaint was accepted, but at the time nothing was said about the complaint form being missing. We were never exactly sure what was missing. The ARB should have called the tax agent, not the property owner. There were three or four weeks of confusion.

Submissions of the Respondent

[6] We couldn't enter the complaint for the subject property because we did not have the grounds for complaint. We need the requested assessment value to enter a complaint in the system. We can't use one complaint form for two different files. The complaint was filed on March 4th, the last day for filing. We could not determine whether the grounds for complaint were missing at the time the complaint was filed because we didn't have time. We don't take the staples out until we've checked the complaints. We received what we received, and nothing more. This kind of thing has never happened before.

Board's Decision

[7] There are four issues specified in s. 5 of *MRAC* that a complainant must address. Those four issues also appear in s. 460(7) of the *MGA*, and s. 467(2) provides that: "*An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with s. 460(7).*" A property owner or tax agent that ignores ss. 460(7) and 467(2) does so at their peril, for the penalty is *mandatory*.

[9] Activities at the office of the Applicant on that last day for filing must have been hectic, especially during the last few hours. When a deadline looms and there is a plethora of complaints to be filed, it seems likely to the Board that errors will increase. It is noted that the Respondent's evidence indicated that 38 out of 148 complaints filed by the Applicant have "deficiencies".

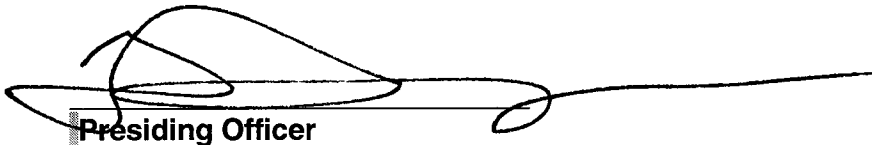
[10] An avalanche of complaints arriving at the ARB must be difficult to deal with as well, especially on the deadline day for filing. The Board notes that if the complaint in this matter had been filed earlier, the Respondent's staff might have been able to contact the Applicant concerning the grounds of complaint, and the matter before this Board resolved then and there.

[11] It must be understood that in filing a complaint, what is scanned at the tax agent's office matters not. It is the material filed at the ARB that matters. Granted, there appears to have been some confusion on the part of the Applicant. Hopefully, this decision will enlighten the Applicant with respect to ss. 460(7) and 467(2), and the dire consequences that follow from ignoring those sections.

[12] With respect to the evidence adduced at this hearing, the Board finds that witnesses for both parties were credible. It appears that each witness verily believed what he or she saw on that final day. The conflicting evidence of the parties therefore left nothing that would tip the balance of probabilities one way or the other, hence the Board was left in doubt. As it happens, the word doubt is defined in the *Canadian Oxford Dictionary*, 2nd ed., as follows: "**1** a feeling of uncertainty; an undecided state of mind (*be in doubt about; have no doubt that*) **2** (often foll. by *of, about*) an inclination to disbelieve (*have one's doubts about*). **3** an uncertain state of affairs. **4** a lack of full proof or clear indication (*benefit of the doubt*) . . ."

[13] It is the first part of the definition of doubt that describes the Board's state of mind in this case. The Board is unable to decide the issue stated in paragraph 3, *supra*. Where there is uncertainty, the benefit of the doubt must go to the taxpayer. The complaint is valid, and may proceed to a hearing on the merits.

DATED AT THE CITY OF CALGARY THIS 7th DAY OF June 2013.



Presiding Officer

APPENDIX "A"

**DOCUMENTS PRESENTED AT THE HEARING
AND CONSIDERED BY THE BOARD:**

NO.	ITEM
1. C1	Complainant Disclosure
2. R1	Respondent Disclosure.

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.*

