

NOTICE OF DECISION NO. 0098 59/12

Joe Baxter, Stankay Holdings Ltd.
20412 - 118 A Avenue
Edmonton, AB T5S 2S7

The City of Edmonton
Assessment and Taxation Branch
600 Chancery Hall
3 Sir Winston Churchill Square
Edmonton AB T5J 2C3

This is a decision of the Composite Assessment Review Board (Board) from a preliminary hearing held on July 5, 2012 respecting an appeal on the 2012 Annual New Realty Assessment.

Roll Number	Municipal Address	Legal Description	Assessed Value	Assessment Type	Assessment Notice for:
10004998	20412 118A Avenue NW	Plan: 0227885 Block: 1 Lot: 1	\$4,816,000	Annual New	2012

Before:

Robert Mowbrey, Presiding Officer

Board Officer: Jodi Keil

Persons Appearing on behalf of Complainant:

Joe Baxter, Stankay Holdings Ltd.

Persons Appearing on behalf of Respondent:

Pam Woodward, City of Edmonton, Assessor
Tanya Smith, City of Edmonton, Legal Counsel
Sarah Hughes, City of Edmonton, Student-at-law

PRELIMINARY AND PROCEDURAL ISSUES

[1] Upon questioning by the Presiding Officer, the parties present indicated they had no objection to the Board.

[2] In addition, the Board member stated there was no bias on this file.

[3] On a preliminary matter, the Complainant wanted to give the Board a copy of the brochure that the Complainant was relying on, with the appeal. The Respondent objected, citing disclosure guidelines have not been met. The Respondent cited *Matters Relating to Assessment Complaints Regulation*, Alta. Reg. 310/2009 [MRAC].

s.39(2) If a Complainant is to be heard by a one member composite assessment review board, the following rules apply with respect to the disclosure of evidence:

(a) The Complainant must, at least 7 days before the hearing date,

(i) Disclose to the respondent and the one member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and

s.40(2) A one member composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 39.

[4] The Board recessed, deliberated and rendered a decision to the parties. The decision was the brochure would not be allowed as the evidence had not met the disclosure guidelines.

ISSUE

[5] Did the Complainant file the form by the deadline?

POSITION OF THE COMPLAINANT

[6] The Complainant provided oral testimony to the Board, explaining that when making a payment, that the Complainant picked up last year's brochure and relied on the date on the brochure and of course, this year's complaint deadline is two days earlier than 2011.

[7] In summary, the Complainant knows that the complaint was filed late, but stated that the City took the money and should not have taken the money if there was no chance for a successful appeal. The City should be able to change the process.

POSITION OF THE RESPONDENT

[6] The Respondent provided the Board with an information package in defense of its position. (Exhibit R-1, 19 pages). The Respondent advised the Board of the steps taken to advise the Complainant the deadline for Complainant appeals. The Respondent advised the Board that the deadline for complaint appeals was March 12th, 2012 and this was clearly pointed out under the 2012 annual realty assessment notice. (Exhibit R-1, page 1).

[7] In addition, the Respondent stated that reminder print notices were published in the Edmonton Sun, Edmonton Journal, and Edmonton Examiner. In addition, an on line advertisement was published on the City of Edmonton's web page. (Exhibit R- 1, pages 13-17).

[8] The Respondent advised the Board that the complaint form stated "complainants with an incomplete complaint form, complaints submitted after the filing deadline, or complainants without the required filing fee, are invalid." (Exhibit R-1, page 4).

[9] The Respondent provided the Board with a legislation package that defended its position that the complaint appeal was late and therefore the appeal should not proceed to a merit hearing. (Exhibit R-2, 51 pages).

[10] The Respondent referred to the *Municipal Government Act*, R.S.A. 2000, c. M-26 s.309(1)(c) (MGA) which states "*the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person.*" (Exhibit R-2, page 2).

[11] Regarding the publication of notice, the Respondent referred to the MGA, s.311(1) which states "*Each municipality must publish in one issue of a newspaper having general circulation in the municipality, or in any other manner considered appropriate by the municipality, a notice that the assessment notices have been sent.*" Further, s.311(2) states "*All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.*"

[12] The Respondent emphasized that both direct and deemed notice had been sent to the Complainant.

[13] The Respondent referred to the *Interpretation Act*, R.S.A. 2000, c. I-8, regarding the computation of time. S.22(3) states "*If an enactment contains a reference to a number of days expressed to be clear days or to "at least "or "not less than" number of days between two events, in calculating the number of days, the days on which the events happen shall not be excluded.*" In addition, the Respondent further referred to s. 23(1)(a) of the *Interpretation Act* regarding the presumption of service: "*7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta... (b) Subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada.*"

[14] The Respondent emphasized that therefore, 67 days is allowed for the Complainant to lodge an appeal.

[15] The Respondent advised the Board regarding the address to which a complaint is sent in the MGA. S.461(1) states "*A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on the notice.*"

[16] The Respondent advised the Board that an assessment review board must dismiss a complaint that was not made within the proper time or does not comply with section 460(7) of the MGA.

[17] The Respondent also provided the Board with case law regarding the filing of late complaints. (Exhibit R-3, 32 pages.)

- *Chew-Cana Investment & Trading Corp. v. Edmonton (City)*, MGB Board Order: MGB 073/05, at para. 26, which states,

The MGB does not have jurisdiction to extend the time period for filing complaints. Section 309(1)(c) of the Act is a mandatory provision, which indicates that the complaint must be filed by the date shown on the assessment notice. As well, section 461(1) further indicates that the complaint must be filed

not later than the date shown on the assessment notice. The MGB has no authority in the Act to change the “must” to a “may” and thus extend the time to file.

- *Edmonton (City) v. Milite*, MGB Letter Decision: DL 010/02, at para. 5, which states,

The MGB concluded that the ARB erred in accepting the complaint and, therefore, did not have the jurisdiction to reduce the assessment. While the Respondent believed that an injustice results if the ARB and the MGB do not extend the time for filing of a complaint, where the period established by the assessment notice for the filing of a complaint has been effected in accordance with the Act, the MGB has no jurisdiction to extend such filing deadlines. The Act imposes deadlines for the filing of complaints (and other steps in the process of assessment and appeals there from) to ensure that there is certainty and finality to the process. Although the MGB appreciates and shares the ARB’s sympathy in relation to the circumstances surrounding the late filing, there is no dispute that the notice was received and that the complaint was filed beyond the period established by the Act. Neither the ARB nor the MGB has any authority to extend the deadline. Section 461(1) of the Municipal Government Act states “A complaint must be filed with the designated officer at the address shown on the assessment tax notice, not later than the date shown on that notice.”

- *Air Spray (1967) Ltd. v. Red Deer (County)*, MGB Board Order: 001/06 , at para. 26, which states,

While the MGB has the jurisdiction to extend the time for filing late issue statements, the MGB does not have the jurisdiction to extend the time for filing complaints. Section 309(1)(c) of the Act is a mandatory provision, which indicates that the complaint must be filed by the date shown on the assessment notice. As well, section 461(1) further indicates that the complaint must not be filed not later than the date shown on the assessment notice. The MGB has no authority in the Act to change the “must” to a “may” and thus extend the time to file.

- *Edmonton (City) v. Assessment Review Board of the City of Edmonton*, 2012 ABQB 399 [Wood]. Relevant sections of this decision were pointed out to the Board:

[62] Under AR 310/2009 [MRAC], provision is made for abridgment or expansion of various deadlines. The time limit for filing complaints is not included in any of those provisions (ss. 6, 10, 35, 41).

[65] I find that nothing in the legislative regime militates in favour of discretion on the part of the ARB to grant the extension which it granted in this case.

[70] The ARB urged the Court to apply a test of “substantial compliance” as applied in *Edmonton (City) v Edmonton Composite Assessment Review Board*, 2012 ABQB 154, [2012] AJ No 224 [Colliers] regarding sufficiency of the contents of complaints.

[71] Unlike the circumstances in the line of cases which Colliers follows, however, in the present case there was only one way to comply with the time requirement for filing-it must have been received for that purpose by the prescribed date.

[77] The ARB did not expressly consider the fact that Wood, latterly faced with a tight deadline, might have delivered the complaint by way of courier, personal delivery or electronic filing. He also might have mailed it by way of priority post, Xpresspost or registered mail. All of these means of delivery would have provided him with more control by guaranteeing delivery within a certain time and enabling him to obtain delivery confirmation.

[78] There was no evidence to the effect that Wood was precluded for any reason from delivering the complaint by one or more of these alternatives means so as to ensure compliance with the instructions in the Notice. In the end, he chose a means of delivery which was not only uncertain in terms of timing, but also left him no documentation to support his argument that Canada Post could not possibly have taken 12 days to deliver the complaint.

[79] I find that the ARB's conclusion was unreasonable. The ARB is required by the MGA to dismiss out of time complaints. The ARB concluded that a denial of natural justice would result from applying the statutory deadline to Wood's complaint. Wood had 69 days prior to the deadline. Even assuming the ARB might extend a deadline for reasons of natural justice in very exceptional cases, it unreasonably concluded that the circumstances in this case were beyond Wood's control so to provide the ARB with discretion not to dismiss the complaint.

[80] Regrettably, the ARB decision here does not explain how it reached the conclusion that it was empowered to exercise a discretion in these circumstances. The Court is required supplement the decision in assessing sufficiency of reasons and I recognize the sympathetic concerns which may have led to the ARB's decision. However, I am unable to fashion reasons that can withstand scrutiny so as to place the ARB's interpretation within a range of possible outcomes. There is simply no support in the legislation, case law or facts which would assist or rationalize the conclusion reached by the ARB in conflict with prior decisions on this point.

[18] During cross examination, the Respondent asked the Complainant if the Complainant received the notice of assessment and the Complainant acknowledged the receipt of the assessment and the Respondent noted the deadline was certainly included in the notice of assessment.

[19] During the argument and summation, the Respondent advised the Board that the Complainant was so advised of the deadline. In addition, the ARB, the MGB and the Queen's Bench decisions all support the Respondent's position.

[20] Accordingly, the Respondent asked the Board to dismiss the complaint.

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

s 461(1) A complaint must be filed with the designated officer at the address shown on the assessment or tax notice, not later than the date shown on that notice.

s 467(2) An assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).

Matters Relating to Assessment Complaints Regulation, Alta. Reg. 310/2009

s 39(2) If a complaint is to be heard by a one-member composite assessment review board, the following rules apply with respect to the disclosure of evidence:

- (a) the complainant must, at least 7 days before the hearing date,
 - (i) disclose to the respondent and the one-member composite assessment review board the documentary evidence, a summary of the testimonial evidence, including a signed witness report for each witness, and any written argument that the complainant intends to present at the hearing in sufficient detail to allow the respondent to respond to or rebut the evidence at the hearing, and
 - (ii) provide to the respondent and the one-member composite assessment review board an estimate of the amount of time necessary to present the complainant's evidence;

S 40(2) A one-member composite assessment review board must not hear any evidence that has not been disclosed in accordance with section 39.

DECISION

[21] The decision of the Board is to declare the complaint invalid and the complaint will not proceed to a merit hearing.

REASONS FOR THE DECISION

[22] The Board notes the Complainant, while in attendance, only provided oral testimony. It is unfortunate the Complainant relied on last year's brochure and could not present the brochure into evidence as the evidence did not meet the disclosure guidelines. Having said that, there is ample evidence the Complainant should have been aware of the complaint process deadlines.

[23] The Complainant acknowledges the fact that the Complainant filed the complaint late.

[24] The Board is persuaded by the Respondent's evidence regarding the assessment brief, legislation and case law.

[25] The Board notes that while the MGB's case law, provided by the Respondent, is influential and compelling, the Board is not obliged to necessarily follow the decisions provided by these MGB case laws. Further, the MGB case laws provided to the Board are all dated and were decided and written prior to the rewrite of the MGA.

[26] The Board is persuaded by the *Wood* decision of the Court of Queen's Bench of Alberta. This decision is recent, directly on point and binding upon the Board.

[27] In *Wood*, Justice Hillier cited the legislative sections requiring the CARB to dismiss out of time complaints. In addition, Justice Hillier noted that there are prior decisions of the ARB and the MGB which have held that complaints must be received by the ARB. These cases reject any power to exercise discretion to extend the statutory deadline.

[28] In conclusion, the Board does not have the authority nor jurisdiction to extend the time line for the late filing of the complaint.

Dated this 12th day of July, 2012 at the City of Edmonton, in the Province of Alberta.

Robert Mowbrey, 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.

cc: Stankay Holdings Ltd.