

NOTICE OF DECISION NO. 0098 62/12

Arthur G Rutledge, 848479 Alberta Ltd.
10-85 North Ridge drive
St. Albert, AB T8N 3N3

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 (the 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:
2575702	12521 126 Street NW	Plan: 5116AN Block: 8 Lot: 24	\$135,500	Annual New	2012
2575801	12519 126 Street NW	Plan: 5116AN Block: 8 Lot: 25 Plan: 5116AN Block: 8 Lot: 26	\$194,500	Annual New	2012

Before:

Robert Mowbrey, Presiding Officer

Board Officer: Jodi Keil

Persons Appearing on behalf of Complainant:

Arthur G Rutledge, 848479 Alberta Ltd.

Persons Appearing on behalf of Respondent:

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

PRELIMINARY AND PROCEDURAL MATTERS

[1] Upon questioning by the Presiding Officer, the parties present indicated they had no objection to the composition of the Board. In addition, the Board member stated there was no bias with this file.

[2] There was agreement that all evidence, testimony, argument and summation would apply to file #2575801 and would be carried forward to file #2575702, since the evidence was identical. Both files #2575801 and #2575702 are hereinafter referred to collectively as the “complaints”.

ISSUE

[3] Did the Complainant file the complaints by the deadline?

[4] Should the complaints be declared invalid?

POSITION OF THE COMPLAINANT

[5] The Complainant admitted he filed his complaints after the deadline. The Complainant filed these complaints on the basis that the late filing was beyond the Complainant’s control. In defending his position, the Complainant presented the Board with a brief. (Exhibit C-1, 38 pages).

[6] The Complainant advised the Board that the late filing was due to problems with the ARB’s electronic filing system and therefore beyond the Complainant’s control.

[7] The Complainant stated that the complaints were filed in as short as time possible after the deadline.

[8] The Complainant stated that the Respondent was in no way prejudiced by these events.

[9] The Complainant indicated the complaints should be allowed to proceed on merit and not be disallowed due to technicalities.

[10] The Complainant advised the Board that he sent an e-mail to the ARB administration on June 19th, 2012, stating he was unable to file his complaints for a period of time due to problems with the ARB online filing system. The Complainant asked the ARB administration to provide any documentation or evidence of this failure, or alternatively, written confirmation that the system was unable to process complaints.

[11] In addition, the e-mail requested that, if the ARB administration was unable or unwilling to provide the desired information, then “please state so via email, and in writing to the requester below, along with contact information for the ‘Manager of the Assessment Review Board’.”

[12] The Complainant stated that a response was forthcoming from the supervisor of the ARB on June 20th, 2012. The email advised the Complainant that there were online filing problems in

2011. The email went on to say that the ARB was pleased to report that no issues were experienced with its online filing system in 2012.

[13] The Complainant did not agree with the statement that there were no online filing issues in 2012. The Complainant advised the supervisor that the Complainant spent over six hours on the evening of March 12th (the complaint deadline) trying to submit the complaints. The online filing system would “time out” at the payment step. After 20 minutes or so, the web browser would indicate the session had “timed out” and the Complainant would have to login and repeat the filing process again. The Complainant tried on the morning of March 13th and was successful after about two hours.

[14] The Complainant asked the supervisor three questions via email:

1. Does your system keep any record of incomplete transactions?
2. Does your system keep a log of people that login?
3. Does your system keep activity log for the time involved?

[15] The Complainant advised the Board that on June 21st, the supervisor of the ARB advised the Complainant that the ARB does not keep records of unsuccessful attempts at filing online. The supervisor of the ARB further advised that a hearing would be held July 5th 2012 to determine the validity of the Complainant’s complaints.

[16] The Complainant also provided the Board with a number of composite assessment review board decisions (CARB’s), which allowed late complaints to proceed due to online filing system errors. The appropriate CARB Board orders are as follow:

- *Radek Kwasniewski v. City of Edmonton*, CARB Order 0098 01/11, which stated that a preliminary hearing allowed the complaint to proceed to a merit hearing. The CARB of this order was satisfied that the late filing complaint was as of a result of computer errors. The Complainant noted that in this case, letters were received from both the Law Branch and the Manager of the Assessment Review Board.
- *Paul K. Wong v. City of Edmonton*, CARB Order 0098 24/11, in which a preliminary hearing allowed the complaint to proceed to a merit hearing due to significant problems with the online filing of complaints. The Board found that many individuals were prevented from filing electronically on the deadline day.
- *Wellming Group Ltd. v. City of Edmonton*, CARB Order 0098 04/11, which stated that letters were received from the Law Branch and the Manager of the Assessment Review Board admitting to computer errors with the ARB online system for a period of time on March 14th, 2011 (the complaint deadline). The CARB order subsequently approved the complaint and the complaint proceeded to a merit hearing.
- *Summerfield Properties v. City of Edmonton*, CARB Order 0098 05/11, which allowed the late complaint to proceed to a merit hearing, due to the fact that there were computer errors with the ARB online system for a period of time on the complaint deadline. The CARB was satisfied that the failure to file the complaint on time was for reasons beyond the complainant’s control.

[17] During argument and summation, the Complainant reiterated that he disagreed with the ARB administration's statement that there was no problem with online filing in 2012. The Complainant knew there was a problem. The Complainant asked: if there was no record kept of any problems, how you can say there were no problems?

[18] With the Complainant having the last word, the Complainant stated that the complaints should be heard based on merit and not declared invalid due to technicalities.

POSITION OF THE RESPONDENT

[19] The Respondent provided the Board with an information package in defense of its position. (Exhibit R-1, 15 pages). The Respondent outlined the steps taken to advise the Complainant the deadline for complaint appeals. The Respondent advised the Board that the deadline for complaint appeals was March 12th, 2012, and was clearly pointed out on the 2012 annual realty assessment notice. (Exhibit R-1, page 1). The complaints were received and date stamped on March 15th, 2012.

[20] In addition, the Respondent stated that reminder print notices were published in the Edmonton Sun, Edmonton Journal, and Edmonton Examiner. In addition, an online advertisement was published on the City of Edmonton's website. (Exhibit R- 1, pages 11-15).

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

[22] The Respondent provided the Board with a legislation package that defended its position that the complaints were late and therefore should not proceed to merit hearings. (Exhibit R-2, 51 pages).

[23] The Respondent referred to the *Municipal Government Act*, R.S.A. 2000, c. M-26 (MGA), s.309(1)(c) 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).

[24] 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.*"

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

[26] 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.*"

[27] 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.

[28] The Respondent also provided the Board with case law regarding the filing of late complaints. (Exhibit R-3 47 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.

[29] During cross examination of the Complainant, he acknowledged that the issue was not the late filing of the complaints, but online computer errors with the ARB electronic filing system.

[30] During argument and summation, the Respondent acknowledged that there were online computer errors with the ARB online filing system in 2011. The Respondent stated that in 2011, the Law Branch and the Manager of the Assessment Review Board sent letters to the appropriate Complainants regarding the online filing system. The Respondent stated that no such letters were sent in 2012, as there were no computer problems with the online filing system with the ARB.

[31] Accordingly, the Respondent asked the Board to dismiss the complaints.

LEGISLATION

Municipal Government Act, RSA 2000, c M-26

s 460(2) A complaint must be in the form prescribed in the regulations and must be accompanied with the fee set by the council under section 481(1), if any.

s 460(7) A complainant must

- (a) indicate what information shown on an assessment notice or tax notice is incorrect,
- (b) explain in what respect that information is incorrect,
- (c) indicate what the correct information is, and
- (d) identify the requested assessed value, if the complaint relates to an assessment.

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, AR 310/2009

s 2(1) If a complaint is to be heard by an assessment review board, the complainant must

- (a) complete and file with the clerk a complaint in the form set out in Schedule 1, and

- (b) pay the appropriate complaint fee set out in Schedule 2 at the time the complaint is filed if, in accordance with section 481 of the Act, a fee is required by the council.

s 2(2) If a complainant does not comply with subsection (1),

- (a) the complaint is invalid, and
- (b) the assessment review board must dismiss the complaint.

DECISION

[32] The decision of the Board is to declare both complaints invalid. The complaints will not proceed to merit hearings.

REASONS FOR THE DECISION

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

[34] Given the representations made by the Complainant and the Respondent, the Board is convinced the complaints were filed after the deadline date.

[35] The Board is persuaded that no online computer errors were in existence around the March 12th, 2012 deadline. The Complainant, as part of the Complainant's evidence, has an email from the Supervisor of the ARB stating no online computer errors were identified as of the deadline date.

[36] Both the Complainant and Respondent acknowledged and identified online computer errors existed during and around the complaint deadline for 2011. However, with the Respondent stating that no online computer problems were identified around the 2012 deadline and no documentary evidence to the contrary from the Complainant, the Board is left with no alternative, but to deny the Complainant's complaint.

[37] The Board has a high degree of empathy with the Complainant's position, but notes the Complainant filed the complaints from outside the country. Without further documentation, or the Respondent acknowledging computer problems/computer errors, the errors complained of could have existed with the Complainant's server/computer etc.

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

[39] 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.

[40] 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 by the deadline, or be invalid. These cases reject any power to exercise discretion to extend the statutory deadline. Several pertinent excerpts are as follows:

[7] Having considered the full submissions and for the reasons that follow, I have decided that the ARB erred in concluding that it had jurisdiction (or exercising implied discretion) to extend the time for filing in the face of the mandatory language of the *MGA*. Accordingly, the appeal of the City must be allowed.

[54](b) The time limit for complaints was recently extended from 30 to 60 days: s.309(1)(c):

[54](c) No single method for delivery of complaints is prescribed:

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

[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.

[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 within which to file his complaint and chose to use the regular mail system several working days prior to the deadline. Even assuming the ARB might extend the 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 as to provide the ARB with discretion not to dismiss the complaint.

[41] 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 18th 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: 847479 Alberta Ltd.