

Edmonton Composite Assessment Review Board

Citation: 1202796 Alberta Ltd. v The City of Edmonton, 2014 ECARB 01750

Assessment Roll Number: 10014697

Municipal Address: Unit 100 11822 121 Street NW

Assessment Year: 2014

Assessment Type: Annual New

Between:

1202796 Alberta Ltd.

Complainant

and

The City of Edmonton, Assessment and Taxation Branch

Respondent

DECISION OF George Zaharia, Presiding Officer

Procedural Matters

[1] Upon questioning by the Presiding Officer the party indicated it did not object to the Board's composition. In addition, the Board member stated he had no bias with respect to this file.

Preliminary Matters

[2] There were no preliminary matters.

Background

[3] A complaint with regard to the above-noted roll number was received by the Clerk of the Assessment Review Board March 13, 2014. The deadline for filing complaints was March 10, 2014. The Complainant had mailed the complaint form to the City of Edmonton Property Tax March 5, 2014.

Issue

[4] Is the complaint valid?

Legislation

[5] The *Municipal Government Act*, RSA 2000, c M-26 [MGA], reads:

Contents of assessment notice

309(1) An assessment notice or an amended assessment notice must show the following:

(c) 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;

...

Publication of notice

311(1) 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.

(2) All assessed persons are deemed as a result of the publication referred to in subsection (1) to have received their assessment notices.

...

Complaints

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(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.

...

Address to which a complaint is sent

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.

...

Absence from hearing

463 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 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.

...

Decisions of assessment review board

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).

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

Documents to be filed by complainant

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.

(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.

[7] The Complaint Form also reads:

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline or complaints without the required filing fee are invalid.

Position of the Complainant

[8] The Complainant did not appear at the preliminary hearing, nor was any disclosure filed with the Assessment Review Board or the City of Edmonton Assessment and Taxation Branch as directed in the Notice of Hearing mailed to the Complainant dated June 19, 2014. The Board proceeded with the hearing in accordance with s. 463 of the MGA.

Position of the Respondent

[9] The Respondent submitted a 90-page brief arguing that the Complainant had been provided with sufficient information to file the complaint correctly and within the specified deadline.

[10] 2014 Property Assessment Notices had been mailed to all property owners January 2, 2014. At the bottom of the page, the deadline for complaints is clearly identified in bold print as being **10-March-2014**. On the reverse side of the notice, procedures are identified if the property owner does not agree with the assessment. Under "Formal Complaint" the mailing address of the Clerk of the Assessment Review Board is provided and the property owner is advised that "*Your duly completed complaint form and filing fee must be received by the ARB no later than the deadline date indicated on the front of this notice.*"

[11] Notice of the mailing of assessment notices was published in two local newspapers, as required pursuant to MGA s. 311(1).

[12] A copy of the envelope used to mail in the complaint form clearly showed that the Complainant had mailed the complaint form to the "City of Edmonton Property Tax" instead of the "Clerk of the Assessment Review Board" as is indicated on the Assessment Notice and in the advertisements in the two local newspapers.

[13] The Complainant was mailed a “Notice of Hearing” to deal with the issue of a late complaint identifying July 22, 2014 at 9:00 a.m. as the date and time of the preliminary hearing to deal with the issue of the late complaint. Although July 14, 2014 was identified as the date by which the Complainant was to submit a disclosure of documentary evidence to both the “City of Edmonton Assessment and Taxation Branch” and the “ARB”, no disclosure had been submitted.

[14] In argument and summation, the Respondent:

- a) Addressed legislation spelling out complainants’ obligations in filing assessment complaints and the consequences if the procedures are not adhered to;
- b) Provided case law of decisions of previous Boards dealing with filing of complaints and the inability of the Boards to extend deadlines;
- c) Provided a Court of Queen’s Bench of Alberta decision that offered Boards no option of extending deadlines in contravention of MGA s. 467(2).

[15] In conclusion, the Respondent requested the Board dismiss the complaint.

Decision

[16] The assessment complaint was filed late and is therefore dismissed.

Reasons for the Decision

[17] Section 467(2) of the MGA **directs** that the Board dismiss a complaint filed after the deadline. The complaint had been received by the Assessment Review Board on March 13, 2014, three days after the deadline of March 10, 2014 established for 2014 annual assessments. Although the complaint had been mailed to and received by the City of Edmonton Property Tax department March 5, 2014, this was not the proper destination for the complaint, the destination that had been clearly identified on the “Notice of Assessment for 2014” form, as well in the newspaper advertisements published in two local newspapers, as being the “Clerk of the Assessment Review Board”.

[18] It is the position of the Board that it is the responsibility of the Complainant to adhere to the directions provided in filing a complaint as directed by legislation and regulations, and in failing to do so, the consequences are clearly identified – “*An assessment review board must dismiss a complaint that was not made within the proper time....*”

[19] In *Edmonton (City) v Assessment Review Board of the City of Edmonton*, 2012 ABQB 399, Justice Hillier held that the Assessment Review Board does not have discretion to extend the deadline for the filing of complaints. As Justice Hillier states at paragraph 79, “*The ARB is required by the MGA to dismiss out of time complaints.*”


[20] The Board is bound by decisions of the Court of Queen’s Bench, and therefore has no discretion to accept a complaint that has been filed out of time.

[21] The Board notes that under section 311 of the MGA, where the municipality has advertised that assessment notices have been sent out, all assessed persons are as a result of the publication deemed to have received notice of their assessment.

[22] The Board finds that the Respondent has adhered to all obligations identified in legislation in advising the Complainant of the assessed value of his property, and the opportunities of challenging the assessment if it is deemed incorrect.

Heard July 22, 2014.

Dated this 22nd day of July, 2014, at the City of Edmonton, Alberta.


George Zaharia, Presiding Officer

Appearances:

No person

For the Complainant

Pam Woodward

Amy Cheuk

For the Respondent

Exhibits

Exhibit R-1 Respondent's Evidence – 90 pages

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.