

PUBLIC HEALTH APPEAL BOARD

IN THE MATTER OF THE *PUBLIC HEALTH ACT*
R.S.A. 2000 c. P-37 AND THE REGULATIONS

AND IN THE MATTER OF THE OWNERS, SOON SUK
HONG and JOUNG RAN IM, OF THE ORDER OF AN
EXECUTIVE OFFICER ISSUED BY ALBERTA HEALTH
SERVICES DATED OCTOBER 17, 2017

AND IN THE MATTER OF AN APPLICATION TO STAY THE
ORDER PENDING THE APPEAL

DECISION OF CHAIR

Hearing date

Stay hearing held December 6, 2017

Appearances

For the Appellants:

Soon Suk Hong, via interpreter

For the Respondent

Linda Svob, Counsel for Alberta Health Services (“AHS”)

Decision of the Chair

[1] The Chair has dismissed the stay application.

Background

[2] On October 17, 2017, AHS Executive Officer, Laurie Anne Pilsworth (“Pilsworth”) completed an inspection of a housing premises located at 39114 Highway 36, Paintearth County, Alberta (the “Premises”).

[3] Following the inspection, Pilsworth issued an order (the “Order”). The Order directed the following:

1. That the Owner immediately undertake and diligently pursue the completion of the following work in and about the above-noted premises, namely:

- a. The water well, pumps and cistern needs to be maintained in a clean, sanitary and good operating condition. The well pit needs a secure and solidly constructed well cover to prevent someone from falling into the well.
 - b. Install a properly working smoke alarm in between the sleeping areas.
 - c. Ensure that all light switches and electrical outlets are equipped with proper covers.
 - d. Ensure that all electrical wires, outlets and devices are properly installed and maintained in a safe and good working condition. Please submit a report from a Master or Journeyman Electrician confirming this.
 - e. Ensure that the premises are free of a mouse infestation.
 - f. Repair that toilet so that it is in proper operating conditions.
2. The work referred to in paragraph 1 shall be completed by:
- a. Items b and f shall be completed by October 23, 2017.
 - b. Items a, c, d and e shall be completed by November 6, 2017.

[4] On October 17, 2017, and again on October 19, 2017, Pilsworth was unsuccessful in contacting the Owner by telephone.

[5] The Order was eventually sent to the Owner via registered mail on October 27, 2017. The tracking information shows that the Owner signed for the registered mail on November 7, 2017.

[6] On November 16, 2017, the Secretariat received the Notice of the Appeal.

[7] The Appellants are seeking a stay of the Order pending the hearing of the Appeal.

[8] The stay application was heard on December 7, 2017 at 1:00 PM by telephone conference.

Issue

[9] Whether a stay of the August Order ought to be granted.

The Law

[10] The Chair of the Board is empowered to grant a stay pursuant to section 6 of the *Public Health Act* (the “Act”), which states as follows:

6. An appeal taken pursuant to section 5 does not operate as a stay of the decision appealed from except so far as the chairs or vice-chair of the Board so directs.

[11] A stay postpones the enforcement of the Order until the appeal is heard and decided by the Board. The test to be applied is set out in the Supreme Court of Canada decision in *RJR McDonald Inc. v. Canada*. The test has three components:

- i. There must be a serious issue to be determined;
- ii. The Appellant must demonstrate irreparable harm if a stay is not granted; and
- iii. There must be an analysis of the balance of convenience, which includes taking into account the public interest.

[12] The first part of the test has a low threshold. It is sufficient that the Chair be satisfied that the appeal is neither frivolous nor vexatious.

[13] Concerning irreparable harm, the question is whether refusing to grant the stay would so adversely affect the Appellant's interest that the harm could not be remedied if the Board eventually overturns the appeal decision. In *RJR McDonald*, the Court noted that the word "irreparable" refers to the nature of the harm suffered, rather than its magnitude. It pointed out that the harm is that which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[14] With respect to the balance of convenience, the Court acknowledged that the factors in assessing the balance of convenience are numerous and will vary in each case. The Court said it would be unwise to attempt to list the various matters that may need to be taken into consideration for that reason.

Submissions of the Appellant

[15] Without going into the totality of the Appellant's submissions, the Appellant has, during his submissions, confirmed unequivocally that he agrees with the Order. In fact, the Appellant's concerns stem from tenancy issues whereby the current tenants are simply refusing to vacate the Premises.

[16] More to the point, the Appellant is asking the Chair to stay the Order because he does not want the Order to be in effect until the tenants leave. He will then complete the work required per the Order once the tenants no longer reside in the Premises. And, he does not intend to appeal the Order.

Submissions of the Respondent

[17] The Respondent submits that the Order is simply a repair order that needs to be completed because the current tenants are living in unsafe conditions. Those conditions are putting children at risk of harm. In particular, the unsafe condition of the water well is particularly troubling.

[18] AHS submits that the Appellant is using the stay application for an improper purpose, as he has no intention of appealing the Order. As such, it is argued that the Chair does not have jurisdiction to consider the stay. That is to say, the Act gives the Chair the authority to stay the Order pending a hearing of the Appeal, and since there is no Appeal pending then granting a stay would be inconsistent with the intent and clear wording of the Act.

[19] In the alternative, the Respondent argues that the *RJR McDonald* test is not made out when applying said test to the facts in the present case. Firstly, there is no serious issue to be

tried, since the Appellant has no intention of appealing the Order and, as such, this application is frivolous and vexatious. On that alone, the stay application should not be granted.

[20] Secondly, with respect to irreparable harm, the Respondent argues that the Appellant is seeking a stay because of a residential tenancies dispute or because he does not want to pay for repairs while the tenants are residing in the Premises. Either way, it is submitted, that risk of harm is limited to economic loss alone, which according to the case law, does not constitute irreparable harm.

[21] With respect to the balance of convenience, AHS has identified violations that are injurious to public health and issued the Order to ensure that the necessary repairs are completed. The balance of convenience, is it submitted, favours the immediate remediation of the risk posed by those violations, especially since there are vulnerable children (ages 2 and 3) who reside in the Premises who can suffer serious injury or even death if the repairs are not completed.

Analysis/Reasons

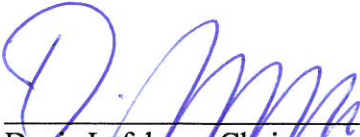
[22] I would agree with the Respondent that the first part of the test is not made out. Since the Appellant agrees with the content of the Order and has no intention of moving the Appeal to a hearing, there is no serious issue to be determined.

[23] In the circumstances, a stay is completely inappropriate without having to consider the other two parts of the test or whether the Chair lacks jurisdiction to grant a stay.

Conclusion

[24] For the above reasons, the Chair of the Public Health Appeal Board has denied the stay of the Order.

[25] The Order shall remain in force.



Denis Lefebvre, Chair
Public Health Appeal Board

Date: January 22, 2018