

Community Care And Assisted Living Appeal Board

Community Care and Assisted Living Act,
SBC 2002, c.75

APPELLANT: Imagination Boulevard Learning Society

RESPONDENT: Barbara Hoffman, Manager, Licensing,
Surrey/Delta/White Rock, Fraser Health Authority

BOARD MEMBER: Marcia McNeil, Vice-Chair

INTERIM STAY ORDER

[1] On June 7, 2005, the Respondent, Barbara Hoffman, issued a decision to cancel the two licences for child care facilities issued to the Appellant, Imagination Boulevard Learning Society. The Appellant appealed this decision on June 16, 2005, and also applied to the Board for an Order staying the decision pending the appeal.

[2] The Respondent did not oppose the granting of a temporary stay of the cancellation initially, on the basis that the appeal be heard and determined expeditiously.

[3] An Interim Stay Order was granted by Board Chair, Susan Ross, on July 7, 2005, pursuant to section 29(6) of the *Community Care and Assisted Living Act* and sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act*. The Interim Stay was granted on two conditions:

- a. The parties would accommodate the scheduling of an early appeal date; and
- b. The Appellant would comply strictly with all conditions attached to the licences in question and would co-operate fully with all continued monitoring by the Fraser Health Authority.

[4] Following the issuing of the Interim Stay Order, the Board has made efforts to schedule an expedited date for the hearing of the above-noted appeal. In correspondence dated July 20, 2005, from Caroline Belgrave, one of the Directors of the Appellant, she advised the Tribunal that she was unavailable for a hearing on July 27th or 28th and proposed August 23rd, 2005 as the only alternate date for hearing.

[5] In correspondence dated July 21, 2005, from counsel for the Respondent, counsel indicated he was not available due to other commitments on August 23, 2005, and applied to have the Interim Stay Order cancelled on the basis that there was an increased risk to the health and safety of the children at the two facilities operated by the Appellant.

[6] Submissions were received from the Appellant on July 21, 2005, a Response was received from the Respondent on July 22, 2005, and a further Reply was received from the Appellant on July 25, 2005.

[7] After reading the written submissions of the parties, I convened a teleconference to clarify some of the issues in dispute and to attempt to schedule dates for hearing.

[8] At the outset of the teleconference, I advised the parties that I was not intending to hear evidence under oath and that the statements of the individuals participating in the teleconference would not be subject to cross-examination.

[9] During the course of the teleconference, statements were made by both representatives of the Appellant and the Respondent about various facts in issue between the parties. I wish to make it clear that my decision herein is not based on any of the factual issues in dispute between the parties, but rather, is made based on the facts set out in the written materials or discussed in the teleconference which are not materially in dispute. There remain a variety of issues outstanding that I will not decide at this time that still may be the subject of evidence under oath and cross-examination at the hearing on the merits of the appeal.

[10] Section 29(6) of the *Community Care and Assisted Living Act* provides:

“The board may not stay or suspend a decision unless it is satisfied, on summary application, that a stay or suspension would not risk the health or safety of a person in care.”

[11] For the reasons set out below, the Respondent has provided me sufficient information to put into question the health or safety of the remaining children in the care of the licensed facilities operated by the Appellant, and, therefore, I find that the Interim Stay granted on July 7, 2005, must be vacated. The licences of the Appellant will be cancelled, effective at the end of business on Wednesday, July 27, 2005, pending the hearing of the Appellant’s appeal. I make this finding for these reasons:

- a. Despite the condition set out in the Stay Order that the parties accommodate the scheduling of an early appeal date, appeal dates have not yet been determined. Certainly an appeal is not going to be heard before the August 5, 2005 deadline established by the Interim Stay Order. I note that there may be any number of legitimate reasons why the parties and the panel have been unable to confirm quick dates for hearing, and I am not placing responsibility for the delay solely on the Appellant.
- b. It is agreed between the parties that on or about July 11, 2005, an unfortunate accident occurred at one of the Appellant’s facilities in which a child sustained a broken elbow. It is also agreed that the accident occurred while the child was playing on equipment that was inappropriate to his age, and that at the time, he was being supervised by a child care worker who was either not aware of or

ignored instructions from the licensees not to allow a child of his age to play on the equipment in question.

- c. The licensees temporarily suspended the operation of one of the two facilities during summer months and merged the children and the programs of the two facilities into its second facility. The licensees admitted that the staff who were transferred to the new facility were not properly instructed about the use of playground equipment at the new facility, and children were permitted to play on playground equipment that had been determined to be inappropriate for their use. This occurred after the incident described above.
- d. Despite being aware that one of its acting managers had tendered his resignation as early as July 11, 2005, and that he would no longer be working at the facility after July 15, 2005, the licensees took no steps to advise the Respondent that the acting manager was leaving until approximately July 18, 2005. In the course of the teleconference, when asked about the lack of communication, the Appellant's representatives responded that they did not feel that it was important to advise licensing of the departure of the acting manager, as they did not believe the departure placed any risk on the health and safety of the children.
- e. At a site inspection of the facility conducted by licensing inspectors on July 20, 2005, they identified that a temporary fence around the playground area had collapsed. The licensees admitted that the fence had collapsed and that they had brought this to the attention of the facility responsible for the fence, indicating that they were not personally able to fix the fence or were not personally responsible for it. Despite this, they allowed the children to use the playground area.

[12] As noted above, there remain a number of other issues between the parties, which raise additional allegations of concern about the health, and safety of children at the Appellant's site. I make no comment on these additional issues as to do so would involve making findings of fact and credibility in the absence of sworn testimony and cross-examination.

[13] The teleconference did demonstrate clearly that the channels of open communication between the parties have broken down. The information before me would suggest that both parties had a role to play in the breakdown of communication. However, in light of the conditions imposed in the Interim Stay decision, the onus was on the Respondent to ensure strict compliance with all the requirements of their licence. They have not done so.

[14] I am satisfied, based on the reasons outlined above, that the Interim Stay granted by Board Chair, Susan Ross, on July 7, 2005, should be vacated.

July 26, 2005

MARCIA MCNEIL