

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

APPELLANT: MM, General Manager

(operating Happy Face Day Care)

RESPONDENT: Medical Health Officer, Vancouver Coastal Health
Services, North Shore

PANEL: Helen del Val, Chair

STAY DECISION

[1] This is an application by the Appellant to stay, pending the disposition of his appeal, the decision of the Respondent which confirmed the cancellation of the licences to operate Happy Face Day Care (the "Day Care") as of May 24, 2010.

[2] The Board has concluded that it cannot stay the Respondent's decision because it is not satisfied that a stay would not risk the health or safety of the children in care. The Board is not so satisfied because the evidence presented in this application does not enable it to determine, on summary application, whether the health or safety of the children will be at risk. Unless the Board is satisfied that a stay would not risk the health or safety of the children in care, it has no discretion under section 29(6) of the *Community Care and Assisted Living Act* (the "Act") to grant a stay.¹ A fuller explanation of the reasons for the Board's conclusion is provided below.

¹ s. 29(6) of the Act reads: "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."

[3] The following are the facts which the Board found to be relevant in this application:

- a. The Appellant had operated the Day Care in North Vancouver with a licensed capacity for 62 children under three separate licences granted pursuant to the Act and its regulations.
- b. On March 10, 2010, the licences to operate the Day Care were suspended due to health and life safety concerns, including fire and life safety issues identified by the District of North Vancouver.
- c. The Day Care has remained closed since then.
- d. On April 23, 2010, the Respondent informed the Appellant that the licences would be cancelled effective May 24, 2010 because the Appellant demonstrates "an inability to understand or comply with the duties of the Licensee" under Act and its regulations.
- e. In summary, the Respondent's two main areas of concern are: (a) whether the physical facilities of the Day Care can be kept safe enough for the children under its care, and (b) whether the members of the Day Care's management and staff are suitable candidates to operate the Day Care and to keep the children safe.
- f. The Appellant made at least three submissions to the Respondent asking for a reconsideration of the cancellation decision and the Respondent's representatives met with the Appellant to give feedback on the submissions.
- g. The Appellant made changes to the Day Care's physical facilities and to its management but those did not allay the Respondent's chief concerns and the Respondent declined to alter his decision to cancel the Day Care's licences as of May 24, 2010.

[4] The question that the Board must ultimately decide is whether to stay the Respondent's decision to cancel the licences as of May 24, 2010 so as to enable the Appellant to re-open the Day Care. The Board has decided not to grant the stay because the criteria which must be met in order to do so have not been met. Those criteria are set out in section 29(6) of the Act. That section prohibits the Board from staying or suspending the Respondent's decision unless the Board can make a determination, based on the evidence submitted, that doing so would not risk the health or safety of a person in care. Furthermore, not only must the Board be able to make such a determination, it must be able to do so "on summary application." The significance of the requirement that the determination be made "on summary application" is twofold. First, an application for a stay should not be turned into a full review of the merits of the appeal. Second, if the determination cannot be made without the need for conducting what would be more or less a full review of the merits of the appeal, then it would not be appropriate to grant a stay because the evidence is not sufficiently clear to warrant a stay.

[5] In this application, the Board is unable to determine whether a stay would or would not risk the health or safety of the children who will be in the Day Care because of apparent conflicts in the evidence submitted by the parties.

[6] Based on the facts of this case, there appears to be little dispute that the Appellant has made much effort and taken many measures in an attempt to improve both the physical facilities and the management of the Day Care. The question, however, is whether these measures are effective and adequate in protecting the health and safety of the children who would be in care. The Respondent says they are not and the Appellant says they should be. In some instances, the Appellant categorically denies some of the Respondent's allegations. Both parties made meaningful submissions and presented a substantial amount of evidence to support their respective positions.

[7] The apparent conflicts in the evidence and the parties' respective positions may not be irreconcilable. However, they are not reconcilable without examining the credibility of witnesses and delving into issues central to the merits of the appeal. In other words, the determination that the Board is required to make under section 29(6) of the Act is not one that can be made on summary application in this case.

[8] Therefore, the Board has no discretion to grant a stay as it has not been satisfied, on summary application, that a stay would not risk the health or safety of the children who would be in care.

[9] The Board notes that the Day Care has already been closed for over two months. In cases where the Board does have discretion to grant a stay (where the criteria under section 29(6) have been met), one of the reasons for exercising that discretion is to minimize the disruption that would be caused by the closure of a care facility. In this case, the Day Care is a large facility with a licensed capacity of 62 children and its closure caused significant disruption to families in the community. The closure and resulting disruption have already occurred more than two months ago. Re-opening the Day Care pending the outcome of the appeal would introduce more uncertainty and further disruption. Under these circumstances, the better approach would be to maintain the status quo but expedite the hearing of the appeal.

[10] For the reasons set out above, the Board will not grant a stay of the Respondent's decision to cancel the licences to operate Happy Face Day Care effective May 24, 2010 pending the disposition of the appeal. The Board will

contact the parties regarding the scheduling of a hearing and pre-hearing procedures.

[11] The Board thanks the parties for their considerable effort and time in preparing their submissions.

Dated this 21st day of May, 2010

"Helen del Val"

Helen del Val, Chair