



## Community Care and Assisted Living Appeal Board

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### DECISION NO. 2014-CCA-002(a)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act*, S.B.C. 2002, c.75

**BETWEEN:** ASMSM Canada Investment Inc., Registrant  
(operating Broadacres Care Facility, an assisted living residence) **APPELLANT**

**AND:** Doug Hughes, Registrar  
Assisted Living Registry **RESPONDENT**

**BEFORE:** Helen Ray del Val  
Chair

**DATES:** Heard by way of written submissions which  
closed on March 31, 2015

**APPEARING:** For the Appellant: Self-represented  
For the Respondent: Jonathan Penner, Counsel

### APPLICATION FOR SUMMARY DISMISSAL

[1] This decision deals with an application by the Respondent asking the Community Care and Assisted Living Appeal Board (the "Board") to summarily dismiss the Appellant's appeal of the Respondent's August 8, 2014 decision to suspend the registration of an assisted living facility named Broadacres Care Facility (the "Facility").

[2] For the reasons below, the application is granted and this appeal is dismissed.

### BACKGROUND

[3] The Appellant corporation owns the Facility which was operated by its Director MK as an assisted living residence registered under section 25 of the *Community Care and Assisted Living Act* ("the "Act")<sup>1</sup>. I will refer to the corporation and its director collectively as the "Appellant" in this decision.

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<sup>1</sup> The full text of all legislation referred to in this decision is attached in Appendix 1

[4] The Respondent suspended the registration of the Facility as of August 8, 2014 under section 27(a) of the *Act* because he had found that the Appellant did not comply with the *Act* in failing to complete the registration requirements and to adequately address a number of health and safety concerns the Respondent had identified.

[5] The Appellant has appealed the Respondent's suspension decision to the Board under section 29(11) of the *Act* asking the Board to lift the suspension.

[6] The Respondent applies to the Board for summary dismissal of the Appellant's appeal.

### **GOVERNING LEGISLATION**

[7] Under section 29(11) of the *Act*, the Appellant must prove that the Respondent's suspension decision was not justified in order to succeed in his appeal.

[8] Under section 31(1) of the *Administrative Tribunals Act of BC*, the Board has discretion to summarily dismiss an appeal for various reasons, including where there is no reasonable prospect that the appeal will succeed.

[9] In an appeal to the Board under section 29(11) of the *Act*, the issue that the Board must decide is whether, based on the evidence before it, the Appellant has proved or discharged the burden of proving that the suspension decision was not justified.

[10] In this application for summary dismissal of the appeal, I must decide whether, assuming that all of the facts and arguments made by the Appellant in this appeal are correct, those facts and arguments would support a finding by the Board that the Respondent's suspension decision was unjustified?<sup>2</sup>

[11] After having provided the Appellant with ample opportunity and time to make submissions in support of his appeal, I have decided to grant the Respondent's application for summary dismissal of this appeal as there is no reasonable prospect that this appeal would succeed even if all the facts and arguments which the Appellant has advanced are correct.

### **DISCUSSION**

[12] The Appellant's submissions do not point to any evidence that the suspension decision was not justified. In fact, I cannot find a clear assertion or suggestion in his submissions that he believes that the Respondent was wrong, unreasonable, procedurally unfair or not justified in deciding to suspend the registration of the Facility. Rather, the submissions are focused on providing to the Board certain documents apparently intended to address the outstanding requirements and deficiencies noted in the Registrar's decision letter of August 8, 2014, which were the basis for the suspension decision.

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<sup>2</sup> See previous Board decision in *GS and CAS v. Assisted Living Registrar*, 2009 BCCALAB 4, June 1, 2009 at paragraph [6].

[13] In his latest response of March 31, 2015 (filed in response to the Respondent's request that the appeal be summarily dismissed), the Appellant asked the Board to keep the Facility's registration "suspended till I recover from my present ailments and are [sic] in a position to go there and remove all the discrepancies and shortcomings pointed out by the registrar. Thereafter, subject to the registrar's satisfaction that we have complied with the necessary rules and regulations, the suspension could be lifted."

[14] From his earliest response to the Registrar's first notice of suspension in July, 2014 to his latest submission to the Board in response to the Respondent's application for summary dismissal, he has not said expressly that the Respondent's suspension decision was not justified. Moreover, from the reasons that he has given for asking that the suspension be lifted I cannot reasonably imply that he is making such an assertion.

[15] The following is a summary of the reasons disclosed in his submissions and a chronology of events:

[16] On July 8, 2014, the Respondent/Registrar notified the Appellant that the registration of the Facility would be suspended 30 days from July 8, 2014 for failure to:

- (1) ensure that the Facility is operated in a manner that does not jeopardize the health or safety of its residents under section 26(5) of the *Act* and
- (2) complete registration requirements by providing certain documentation and information necessary to register the Facility.

[17] Based on that letter, the suspension would have taken effect on August 7, 2014.

[18] On August 6, 2014, the Appellant wrote to the Respondent to ask for a rescission of the suspension notice advising that (1) the deficiencies identified by the Respondent in the July 8 letter were due mainly to his not having received adequate information from the previous owners from whom he had bought the Facility in December, 2013, and (2) he was making significant efforts to address the non-compliance. This initial response indicates the Appellant agreed with the deficiencies found by the Respondent that formed the basis of the suspension decision.

[19] On August 8, 2014, the Respondent confirmed the suspension because, despite the Appellant's efforts, deficiencies still existed and some key registration requirements remained outstanding.

[20] On September 5, 2014, the Appellant filed a Notice of Appeal with the Board asking that the suspension be lifted immediately. He does not assert that the suspension decision was unjustified. The reasons the Appellant stated for "lifting the suspension" in the Notice of Appeal can be summarized as follows:

- The previous owner failed to make proper disclosure to him at the time of sale;
- The suspension was causing hardship and financial loss to him;
- He had taken some corrective measures after receiving the August 8, 2014 suspension decision; and

- He promised future compliance with section 26(5) of the *Act*.

[21] Finally, the Appellant stated in his Notice of Appeal that he would send the documents required to complete his registration no later than September 30, 2014.

[22] With the Appellant's offer to complete his registration no later than September 30, 2014, the Respondent requested and the Board agreed to hold the appeal in abeyance and not require the Respondent to immediately file the Appeal Record. This gave the Respondent time to try and contact the Appellant and follow up on the delivery of the outstanding registration documents in an effort to settle the matter without proceeding with an appeal.

[23] The Appellant did not deliver the documents necessary to complete his registration by September 30, 2014. Neither did he respond to the Respondent's or the Board's efforts to contact him.

[24] In October, the Respondent asked the Board for an indefinite extension to file its record of appeal, which request I denied. I ordered the Respondent to file the Appeal Record by mid-November and at the same time asked the Appellant to contact the Respondent and the Board. The Appellant did not respond.

[25] On November 25, the Board set a schedule for the parties to file a Statement of Points, Witness List, and any additional documents. The Board directed the Appellant to make his submissions by December 9, 2014. In this letter, the Board also advised the Appellant that "failure to deliver a Statement of Points by the requested date (or request an extension prior to the deadline) may result in the Appeal Board summarily dismissing an appeal without hearing any evidence under section 31(e) of the *Administrative Tribunals Act*, if the applicant fails to diligently pursue the appeal or comply with an order of the Board."

[26] The deadline of December 9, 2014 passed with no submissions from the Appellant. On December 10, 2014, the Respondent made his first application to the Board to summarily dismiss the appeal due to the Appellant's failure to file on time, refusal to respond to communications, failure to pursue resolution, and on the basis that the appeal has no merit. The Appellant responded the next day stating that he had been very ill and asked for an extension to January 31, 2015. I granted the extension and the schedule was revised for his submissions to be due February 2, 2015.

[27] On January 29, 2015 the Appellant advised the Board of specific health and family related circumstances beyond his control and asked for a further extension to February 28, 2015.

[28] Counsel for the Respondent objected to the further extension stating that the Appellant had had ample time to prepare the necessary materials for the appeal, that the Appellant has not asserted that the suspension decision was unjustified and that it was apparent on the face of the appeal that it is without merit. Counsel also noted that, notwithstanding the assertion in the Notice of Appeal letter that certain documents would be provided to the Registrar by September 30<sup>th</sup>, there has been no communication of any kind from the Appellant to the Registrar since the appeal was filed. Under the circumstances, the Respondent asked that the Board

summarily dismiss the appeal if the Appellant failed to file his materials by the extended deadline on February 2<sup>nd</sup>.

[29] On February 2, 2015, Vice-Chair Alison Narod granted an extension to March 2, 2015 and in her decision stated:

"The Appellant is hereby put on notice, however, that the appeal may be dismissed if he does not file his materials by the new date. Additionally, the Appellant would be well advised to address, in his Statement of Points, the Respondent's point that his Notice of Appeal fails to state why the Registrar's decision under appeal was wrong, what are the errors in that decision and what is the evidence (whether in the Appeal Record or in the additional documents to be provided) that are relevant to the alleged errors. With respect to the Respondent's request that the appeal be summarily dismissed, should the Appellant fail to file the required documents by March 2, 2015, the Respondent may proceed with its application to summarily dismiss the appeal."

[30] On March 3, 2015, the Board received a submission dated March 2, 2015, from the Appellant. In these submissions, the Appellant again makes no assertion that the suspension decision was wrong or unjustified. He provides a number of new documents and points to the steps that he had taken since then to ensure compliance in the future.

[31] On March 5, 2015, the Respondent renewed his application for summary dismissal on a number of grounds including that there is no reasonable prospect that the appeal can succeed.

[32] On March 6, 2015, the Board offered the Appellant an opportunity to respond by March 31, 2015, to the Respondent's application for summary dismissal of his appeal.

[33] The Board received the Appellant's email response on March 31, 2015, where he advised that:

- For medical reasons he was unable to travel to Grand Forks to reorganize the Facility; and
- The Facility has been locked up and nonoperational since June 30, 2014, and will remain closed until his health improves and he is in a position to fulfill his legal obligations.

[34] The Appellant then requested that the Facility's registration remain suspended until he was in better health and in a position to "remove all the discrepancies and shortcomings pointed out by the registrar."

[35] A review of the chronology of events and the submissions made by the Appellant shows that the Appellant has been given ample opportunities and time to argue that the suspension decision was not justified and to point to the facts and evidence that would lend some support to such an argument. However, with each submission it became clearer to me that the Appellant was not suggesting that the suspension decision was unjustified; in fact he actually agrees with it and is asking

that the suspension remain in place until he is better able to remedy the non-compliances that formed the basis of the Registrar's decision.

[36] Therefore, after giving the Appellant every reasonable chance to discharge his burden under section 29(11) of the *Act* of proving that the decision under appeal was not justified" and giving him every benefit of the doubt that all his arguments and his version of the facts are correct, I am satisfied that this appeal has no reasonable prospect of succeeding should the matter proceed to a hearing.

[37] The application for summary dismissal is therefore granted and the appeal is accordingly dismissed.

[38] I understand that this result may be disappointing to the Appellant as, for reasons he has not communicated, he seems to wish to keep this appeal alive even though he asks the Board to keep the Facility's "license suspended" until he is better able to remedy the non-compliances which the Registrar found.

[39] The Appellant seems to have confused the roles of the Board and the Registrar. In these circumstances an appeal to the Board is not the process to use to address the deficiencies noted by the Registrar which led to the suspension. The Appellant should deal directly with the Registrar to provide the outstanding information and correct the identified deficiencies.

"Helen del Val"

Helen Ray del Val  
Chair

June 9, 2015

**APPENDIX 1- LEGISLATION**

**COMMUNITY CARE AND ASSISTED LIVING ACT  
[SBC 2002] CHAPTER 75**

**Powers of registrar**

- 25** (1) Subject to this Act and the regulations, the registrar may register an assisted living residence if the registrar is satisfied that the housing, hospitality services and prescribed services will be provided to residents in a manner that will not jeopardize their health or safety.
- (2) If the registrar has reason to believe that an unregistered assisted living residence is being operated or that the health or safety of a resident is at risk, the registrar may
- (a) enter and inspect any premises relating to the operation of the assisted living residence,
  - (b) inspect and make a copy of or extract from any book or record at a premises described in paragraph (a), or
  - (c) make a record of anything observed during an inspection under paragraph (a) or (b).
- (3) Section 9 (3) to (7) applies to
- (a) the registrar as though the registrar was the director of licensing,
  - (b) an assisted living residence as though it was a community care facility,
  - (c) a registration as though it was a licence, and
  - (d) an entry under subsection (2) (a) as though it was an entry under section 9 (2) (a).
- (4) For the purposes of section 9 (7), the personal residence of a resident is a private single family dwelling.

**Operating an assisted living residence**

- 26** (1) A person must not operate an assisted living residence that is not registered under section 25 (1).

- (2) A person may apply for registration of an assisted living residence in a form satisfactory to the registrar.
- (3) A registrant must not house in an assisted living residence persons who are unable to make decisions on their own behalf.
- (4) Subsection (3) does not apply to an involuntary patient on leave under section 37 of the *Mental Health Act*.
- (5) A registrant must ensure that the assisted living residence is operated in a manner that does not jeopardize the health or safety of its residents.
- (6) Subsection (3) does not apply to a person if the spouse of the person
  - (a) will be housed in the assisted living residence with the person, and
  - (b) is able to make decisions on behalf of that person.

**Suspension or cancellation of registration**

- 27** The registrar may suspend or cancel a registration, attach conditions to a registration or vary the conditions of a registration if, in the opinion of the registrar, the registrant
- (a) no longer complies with this Act or the regulations,
  - (b) has contravened a relevant enactment of British Columbia or of Canada, or
  - (c) has contravened a condition of the registration.

**Reconsideration**

- 28** (1) In this section:
- "action"**, in relation to a registration, means
- (a) a refusal of a registration under section 25, or
  - (b) a suspension or cancellation, an imposition of conditions or a variation of conditions under section 27;
- "written response"** means a written response referred to in subsection (2) (b).



(2) Thirty days before taking an action the registrar must give the registrant or applicant for registration

(a) written reasons for the action, and

(b) written notice that the registrant or applicant for registration may give a written response to the registrar setting out reasons why the registrar should act under subsection (3) (a) or (b) respecting the action.

(3) If the registrar considers that this would be appropriate to give proper effect to section 25 or 27 in the circumstances, the registrar may, on receipt of a written response,

(a) delay or suspend the implementation of an action until the registrar makes a decision under paragraph (b), or

(b) confirm, rescind, vary or substitute for the action.

(4) The registrar must not act under subsection (3) (a) unless the registrar is satisfied that

(a) further time is needed to consider the written response,

(b) the written response sets out facts or arguments that, if confirmed, would establish reasonable grounds for the registrar to act under subsection (3) (b), and

(c) it is reasonable to conclude that

(i) if the delay or suspension is granted, the health or safety of no resident will be placed at risk, and

(ii) the registrant or applicant for registration will suffer a significant loss during the proposed delay or suspension, if the delay or suspension is not granted.

(5) The registrar must give written reasons to the registrant or applicant for registration on acting or declining to act under subsection (3).

(6) A registrant or applicant for registration may not give the registrar a further written response concerning an action on or after receipt of written reasons under subsection (5) concerning the action.

**Appeals to the board**

**29** (1) The Community Care and Assisted Living Appeal Board is continued consisting of individuals appointed after a merit based process as follows:

(a) a member appointed and designated by the Lieutenant Governor in Council as the chair;

(b) other members appointed by the Lieutenant Governor in Council after consultation with the chair.

(1.1) The Lieutenant Governor in Council may designate one of the members as vice chair after consultation with the chair.

(1.2) Sections 1 to 20, 22, 24 to 42, 44, 46.2, 47 (1) (c) and (2), 48 to 55, 57, 58, 60 and 61 of the *Administrative Tribunals Act* apply to the board.

(2) A licensee, an applicant for a licence, a holder of a certificate under section 8, an applicant for a certificate under section 8, a registrant or an applicant for registration may appeal to the board in the prescribed manner within 30 days of receiving notification that

(a) the minister has appointed an administrator under section 23,

(b) a medical health officer has acted or declined to act under section 17

(3) (b),

(c) the registrar has acted or declined to act under section 28 (3) (b), or

(d) a person has refused to issue a certificate, suspended or cancelled a certificate or attached terms or conditions to a certificate under section 8.

(3) Within 30 days after a decision is made under section 16 to grant an exemption from this Act and the regulations, the decision may be appealed to the board under this section by

(a) a person in care or the agent or personal representative of a person in care, or

(b) a spouse, relative or friend of a person in care.

(4) A fee paid by an applicant to initiate an appeal under subsection (2) or (3) must be remitted to the applicant if the board grants the appeal.

(5) The person whose action described in subsection (2) is being appealed is a party to the appeal proceedings.

(6) 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.

(7) to (10) [Repealed 2004-45-79.]

(11) The board must receive evidence and argument as if a proceeding before the board were a decision of first instance but the applicant bears the burden of proving that the decision under appeal was not justified.

(12) The board may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person whose decision is under appeal.

**ADMINISTRATIVE TRIBUNALS ACT  
[SBC 2004] CHAPTER 45**

**Summary dismissal**

**31** (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

- (a) the application is not within the jurisdiction of the tribunal;
- (b) the application was not filed within the applicable time limit;
- (c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the application was made in bad faith or filed for an improper purpose or motive;
- (e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect the application will succeed;
- (g) the substance of the application has been appropriately dealt with in another proceeding.

(2) Before dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard.

(3) If the tribunal dismisses all or part of an application under subsection (1), the tribunal must inform the parties and any interveners of its decision in writing and give reasons for that decision.