



Community Care and Assisted Living Appeal Board

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DECISION NO. 2014-CCA-005(d)

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

BETWEEN: ZH-H, Licensee, **APPELLANT**
(operating Playtime Childcare Center's Kwaleen Daycare and After School Program and Playtime Childcare Center's - Westridge Daycare)

AND: Dr. Robert Parker, **RESPONDENT**
Medical Health Officer, Interior Health

BEFORE: Alison H. Narod, Vice Chair

DATE: Conducted by way of written submissions concluding on August 10, 2016

APPEARING: For the Appellant: Not appearing
For the Respondent: Erika Lambert, Counsel

SUMMARY DISMISSAL DECISION

[1] This decision deals with a further application dated July 26, 2016, made 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 decision to cancel her daycare licenses on the grounds that the Appellant has failed to diligently pursue her appeal and failed to comply with an order of the Board.

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

[3] By way of brief background (which has been more fully set out in earlier preliminary decisions of the Board in this matter¹), the Appellant held two licenses to operate two child care facilities: (a) one for Playtime Childcare Center's Kwaleen Daycare and After School Program which provided Group child care-school age

¹ See also Decision No. 2014-CCA-005(a), Preliminary Decision: Stay Application ; Decision No. 2014-CCA-005(b), Preliminary Decision; and Decision No. 2014-CCA-005(c), Preliminary Decision: Applications for Stay of Proceedings and Summary Dismissal.

(capacity 30) and Multi-age child care (capacity 32) and, (b) another for Playtime Childcare Center's Westridge Daycare which provided Multi-Age child care (capacity 8) (the "Facilities"). The Facilities were first licensed in September 2012.

[4] On November 24, 2014, Licensing cancelled the Appellant's licenses to operate the Facilities and ordered her to cease operation as of December 24, 2014 based on alleged ongoing non-compliance with the *Community Care and Assisting Living Act* (the "Act") and the Child Care Regulations; repeated "high risk" assessments assigned to the Facilities since December 2012; and the Appellant's failure to comply with a Health and Safety Plan dated October 28, 2014 which was put in place after criminal charges were laid against the Appellant for abduction of a person under 14 and failing to perform the legal duty to provide necessaries.

[5] The Appellant requested reconsideration of the cancellation decision under section 17 of the Act. By letter dated December 4, 2014, the Medical Health Officer advised the Appellant that he had decided, upon reconsideration, to uphold the November 24, 2014 decision of the licensing officer to cancel the Facility licenses.

[6] On December 11, 2014 the Appellant filed a notice of appeal of that decision to this Appeal Board.

[7] Over the course of the next 18 months the Board heard and considered a number of preliminary applications made by the Appellant, including: requesting a Stay of the cancellation decision; objecting to the Appeal Record filed by the Respondent; raising issues and a request for a preliminary hearing regarding alleged fabricated evidence, suppressed evidence, gross neglect, and spoliation; and, seeking restitution and damages.

[8] The Board made a series of preliminary decisions regarding these matters and issued decisions dated December 22, 2014 and May 13, 2015. After the May 13, 2015 decision was issued the Board wrote to the parties confirming the directions contained in that decision regarding production of documents and filing the parties' Statements of Points, additional documents and witness lists in preparation for an oral hearing of the appeal.

[9] By letter received July 2, 2015 the Appellant requested a preliminary hearing to hear and decide her allegations regarding suppression of evidence and other alleged misconduct by the Respondent and his Counsel, and advising that she was unable to meet the July 8, 2015 timeline in the directions for filing her written submissions on the appeal. The Board advised that it was preferable to hear these issues (or at least those over which the Board has jurisdiction) as part of the oral appeal hearing.

[10] The request for a preliminary hearing was denied but the Board granted the Appellant's request for an extension of time to file her materials, with her final reply to the Respondent's Statement of Points to be due August 19, 2015.

[11] Further correspondence was exchanged in August and September 2015, after which the Board directed that the parties attend a pre-hearing Appeal Management

teleconference in order to determine the issues and prepare for an oral hearing of the appeal. The teleconference was subsequently set for December 22, 2015, and on January 14, 2016 the Board issued a detailed Pre-Hearing Conference Summary Report confirming the Board's directions and setting out a pre-hearing submissions schedule for the parties to make application for witness summonses, file witness "will-say" statements, disclose any additional documents and provide their available dates for a 2-week oral hearing of the appeal.

[12] The Respondent filed the required documents within the time set out, however the Appellant did not meet the deadline for her submissions. Instead, on January 31, 2016 the Appellant wrote to the Board requesting that the appeal before the Board be "stayed" pending the outcome of the criminal matter.

[13] The Respondent objected to the request to hold the appeal in abeyance and on February 1, 2016 made an application to the Board asking that the Board summarily dismiss the appeal on the grounds that the Appellant had failed to diligently pursue the appeal, had failed to comply with several orders of the Board and there is no reasonable prospect the appeal will succeed. The parties were invited to comment on the applications and several submissions and replies were filed by both parties.

[14] On June 24, 2016, the Board issued a lengthy decision dealing with the Appellant's request for a stay of proceedings and the Respondent's application for summary dismissal of the appeal (the Decision).

[15] In the Decision the Board found, among other things, that the Appellant's reasons for postponing the appeal were not compelling, that there had already been a significant delay in setting the matter for hearing and that the "additional and indeterminate delay entailed in awaiting the outcome of the criminal proceedings and potential appeals would be unreasonable in the circumstances." Accordingly the request for a stay of proceedings was denied.

[16] In also denying the Respondent's application for summary dismissal, the Board noted that while there was no dispute that the Appellant had not met the requirements set out by the Board for proceeding with the matter, those requirements were described as "directions, not orders, that were designed to manage and expedite the hearing", and as such, were "not an "order" that can form the basis of an application for summary dismissal."

[17] The Board went on to note that it was "concerned that summarily dismissing an appeal on the basis of non-compliance with a direction or order might be seen as unfair to an unrepresented party who may not have been aware that this draconian remedy might be the result of her non-compliance." Accordingly, in the decision the Board restated the directions specifically as "orders", with new timelines and pointed out "to the Appellant in no uncertain terms that failure to comply with these orders may result in a dismissal of the appeal."

[18] The Decision was served on the Appellant with a cover letter asking her to make note of the Board's Orders and the associated deadlines for completion which

were set out at the end of the decision. The first deadline in the Order (for the Appellant's witness statements) was July 25, 2016, with further submissions due from the Appellant on August 9 and August 15, 2016.

[19] On July 18, 2016, the Board wrote to the Appellant reminding her of the schedule for submissions set out in the Board's Order of June 24, 2016. The Appellant did not respond.

[20] In fact, the Board has not received any response, submissions, or further communications from the Appellant, including the required submissions of July 25, August 9 and August 15, 2016, since she made submissions regarding her application for a stay of the proceedings in February.

[21] On July 25, 2016, the Respondent renewed its application for an order summarily dismissing the appeal on the ground that the Appellant has failed to diligently pursue the appeal and has failed to comply with the Board's Order of June 24, 2016. The Respondent noted in its application that the Appellant has been aware of the requirements of the Board's order of June 24, 2016 for over six months as these requirements were first set out in the pre-hearing teleconference attended by the Appellant on December 22, 2015 and set out as directions in the January 14, 2016 Pre-Hearing Conference Summary Report.

[22] In addition, the Respondent notes that the Appellant has failed to fulfill any of these requirements, has not acknowledged or provided any reasonable explanation for her failure to comply with the Order, or indicated any willingness to comply in the future. Further, Counsel for the Respondent advises that Crown Counsel responsible for the criminal proceedings against the Appellant advised her that there are one or more warrants out for the Appellant's arrest because she failed to attend scheduled court appearances.

[23] On July 26, 2016 the Board again wrote to the Appellant (sent by both email and courier to her addresses of record) notifying her of the Respondent's application for summary dismissal and stating:

Accordingly, you have until **Wednesday August 10, 2016** to comply with the Board's order of June 24, 2016 and/or to make written submissions as to why your appeal should not be dismissed. **PLEASE TAKE NOTICE THAT IF YOU FAIL TO RESPOND YOUR APPEAL MAY BE DISMISSED WITHOUT FURTHER NODTICE OR OPPORTUNITY TO BE HEARD.**

[24] The Appellant has still not responded.

[25] Therefore, in the circumstances described above, I am satisfied that the Appellant has failed to diligently pursue this appeal, particularly since making her application for the appeal to be suspended, which was denied. I am further satisfied that the Appellant has been provided with more than adequate opportunities to respond to the Board's Orders and to make submissions to the Board as to why the appeal should not be dismissed. Additionally, given the other circumstances in the Appellant's life at the moment regarding the criminal charges

against her, I am satisfied that there is little likelihood that the Appellant would diligently pursue the appeal in future.

[26] Accordingly, as the Appellant has both failed to comply with the Board's Orders and failed to diligently pursue her appeal, despite being given generous opportunities to do so, I hereby dismiss the appeal under section 31(1)(e) of the *Administrative Tribunals Act* and Rule 15(1)(e) of the Board's Rules for Appeals.

"Alison Narod"

Alison H. Narod, Vice Chair
Community Care and Assisted Living Appeal Board

August 18, 2016