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**COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD**

*Community Care and Assisted Living Act,*

S.B.C. 2002, c. 75

**APPELLANT:** North Shore Fun & Fitness Ltd., Licensee  
(operating Happy Face Daycare)

**RESPONDENT:** Brian O'Connor, M.D., Medical Health Officer,  
Vancouver Coastal Health Authority

**PANEL:** Helen R. del Val, Chair  
Joan Gignac, Member  
Richard Margetts, Q.C. Member

**ORDER DISMISSING APPEAL**

**HAVING BEEN ADVISED** by the parties that they have reached a settlement of this appeal and requested by them to make an Order under Rule 14(2) of the Board Rules for Appeals under the *Community Care and Assisted Living Act*, S.B.C. 2002, Chapter 75, and section 17(2) of the *Administrative Tribunals Act*, S.B.C. 2003, Chapter 45, that dismisses the appeal and includes the terms of the settlement:

**THE BOARD FINDS** that the Appellant has breached the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation (the "Act" and "Regulation") as set out in the Admissions made by the Appellant in the Settlement Agreement attached as Appendix "A" to this Order;

**THE BOARD HEREBY** makes an Order dismissing this appeal that includes the terms and conditions for the Appellant to operate a child care facility (the "Facility") that will be in compliance with the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation that are attached as Appendix "A" to this Order and have been agreed to by the parties in settlement of the appeal;

**THE TERMS AND CONDITIONS** of the settlement are part of this Order; they may not be brought to the Board for enforcement or otherwise, except to the extent that they are the subject of future licensing action which gives rise to a new appeal to the Board under Section 29 of the Act;

Dated: December 21, 2010

By the Community Care and  
Assisted Living Appeal Board

"Helen R. del Val", Chair  
for the panel

## **APPENDIX "A"**

### **Settlement Agreement**

#### **Preamble**

Whereas:

1. The parties have agreed to this Order short of an Appeal Board hearing. The following terms are formalized by way of Order from the Community Care and Assisted Living Appeal Board;
2. The Appellant and the Respondent ("Licensing") agree to the following admissions, acknowledgments, terms and conditions to permit the Appellant to obtain a license to operate a child care facility (the "Facility") that will be in compliance with the *Community Care and Assisted Living Act* and Child Care Licensing Regulation (the "Act and Regulation"); and
3. The terms of this Order will require the Facility to operate in compliance with the Act and Regulation and maintain minimum standards to ensure the health, safety and dignity of children in care.

#### **Admissions**

The Appellant admits and hereby acknowledges that it has breached the Act and Regulation by:

1. Repeatedly breaching conditions placed on the license pursuant to the Act and Regulation;
2. Placing or neglecting to remove physical hazards in particular, an unsafe outdoor play structure and dog feces in the outdoor play area;
3. Transporting children without appropriate safety restraints;
4. Failing to comply with parental instructions on a child's diet;
5. Providing or possessing incomplete records of children in care;
6. Building alterations to the Facility without approvals; and
7. Performing or conducting inappropriate guidance and discipline techniques by past employees and managers.

**Terms and Conditions for Operating a Child Care Facility**

The Appellant and the Respondent agree as follows:

**Staffing****(i) Manager:**

- a. The Appellant will ensure that its proposed Manager of the Facility is in compliance with the Act and Regulation. Licensing will provide written resources and advice to assist the Appellant in determining suitability of prospective applicants. If a Manager is not found to be suitable or compliant with the legislation, the Appellant will be required to take corrective action;
- b. Any Manager hired will be on a three month probationary period and will have monthly meetings with Licensing. If Licensing is of the view that such Manager is not capable of complying with the Act and Regulation, then the Appellant will discharge the Manager forthwith and seek a new Manager;
- c. If a Manager is discharged, then the Assistant Manager who meets the requirements of the Act and Regulation will temporarily replace the Manager while the Appellant seeks a new Manager;

**(ii) Senior Supervisors:**

The Appellant will not employ senior supervisors without the agreement of Licensing. Newly hired senior supervisors will possess the appropriate qualifications, training and experience for their position and must meet the character and skill requirements outlined in Section 19 of the Regulation;

**(iii) Meetings:**

The Manager will meet with Licensing initially on a monthly basis, and thereafter less frequently to review the operation of the Facility within the Act and Regulation;

**(iv) Employee Plan:**

The Appellant will provide Licensing with an employee plan pursuant to Schedule B(5) of the Regulation. The Appellant will notify Licensing immediately if there is any change in the employee information;

**(v) Staff Documentation:**

The Appellant will obtain and update all staff documentation and have such documentation available for Licensing to review pursuant to Sections 19(1), (2) and 59 of the Regulation;

(vi) **Family Members:**

The Appellant will ensure that MM is not employed as a Manager of the Facility. MM may however, and subject to the Act and Regulation, replace North Shore Fun & Fitness Ltd. as the Licensee;

NM, subject to obtaining a first aid certificate, a criminal record check, the safety requirements in the Regulation and compliance with the *Motor Vehicle Act*, may transport children in care. NM's transportation involvement will be monitored by Licensing and the Appellant will be required to take corrective action if any deficiencies are noted;

**Authority of Manager**

(i) **Delineation of Responsibilities:**

The Appellant will provide Licensing a new delineation of responsibilities form to indicate the new roles and scope of authority and responsibility for each staff member;

(ii) **Written Delegation of Authority:**

The Appellant will provide Licensing with written delegation that provides the Manager full authority to operate the Facility and includes the obligations under Section 11(2)(b)(iii) of the Act and Regulation;

(iii) **Written Assurance of Autonomy and Budgetary Control:**

The Appellant will provide Licensing with a written assurance that the Manager and staff have the autonomy to operate the Facility in compliance with the Act and Regulation and without the interference of the Directors, including the ability to have sufficient budgetary control to operate the Facility in compliance with the Act and Regulation;

The Appellant will provide Licensing with a statement of projected monthly revenue and expenditures as required by Section 10, Schedule B of the Regulation, with such monthly estimates to include both revenues and expenditures;

**MG**

The Appellant will provide Licensing confirmation that MG has been removed as a shareholder, Director and Officer of North Shore Fun & Fitness Ltd. The Appellant will further provide a written statement that MG has no involvement with the operation of the Facility.

### **Rental Agreement**

The Appellant will provide Licensing a copy of the rental or lease agreement for the Facility.

### **Fire Safety Hazards**

The Appellant will provide Licensing written confirmation from the District of North Vancouver ("District") that all outstanding municipal and fire safety requirements in the Facility pursuant to the letter from the District dated April 21, 2010 have been addressed.

### **Compliance with the Act and Regulation**

#### **(i) Compliance:**

The Appellant acknowledges that compliance with the Act and Regulation are the minimum standards required to operate a Facility to promote the health, safety and dignity of children in care;

#### **(ii) Contravention:**

Licensing acknowledges that a contravention of this Order by the Appellant will not result in the immediate cessation of the license; the Appellant acknowledges that multiple contraventions of the Order or the failure to remedy contraventions or the lack of cooperation with Licensing staff or the loss of confidence with the Medical Health Officer may result in the cancellation of the license to operate the Facility;

#### **(iii) Test:**

The Appellant will provide Licensing its newly hired Manager and senior supervisors to undertake a standard orientation focusing on the Act and Regulation to be conducted by Licensing staff.

Date: November 30<sup>th</sup>, 2010

### **CONSENTED TO:**

"John D. Whyte"  
Counsel for the Appellant

"Troy DeSouza"  
Counsel for the Respondent