

BOARD ORDER: MGB 037/08

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL from a decision of the 2007 Assessment Review Board (ARB) of the City of Edmonton.

BETWEEN:

Windermere Golf and Country Club, represented by Brownlee LLP - Appellant

- a n d -

City of Edmonton - Respondent

BEFORE:

Members:

L. Patrick, Presiding Officer

J. Noonan, Member

P. Kemp, Case Manager

Upon notice being given to the affected parties, a hearing was held in the City of Edmonton, in the Province of Alberta on February 20, 2008. This hearing proceeded with two panel members, a quorum, as one of the three appointed panel members was unable to attend.

This is an appeal to the Municipal Government Board (MGB) from a decision of the 2007 ARB of the City of Edmonton with respect to a preliminary hearing regarding property assessments entered in the assessment roll of the Respondent municipality as follows.

Roll No.	Address	Assessment
1070879	19110 Ellerslie Road SW	\$6,023,500
1070937	19110 Ellerslie Road SW	\$1,647,500

OVERVIEW

This appeal involves the inadvertent withdrawal of two complaints by an agent. The Appellant argued that the property tax agent who withdrew the complaints was not authorized to act on behalf of the property owner or, alternatively, that the authority of the tax agent was restricted such that he was not authorized to withdraw the complaints. The question before the MGB is whether or not the Appellant had lost the right of complaint to the ARB as a result of the actions of its agent.

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BACKGROUND

The subject property is a golf course. In 2006, Alberta municipalities changed the way they had been assessing golf course improvements. Prior to 2006, certain golf course improvements (fairways, tees, bunkers, irrigation systems, etc.) were not assessed. In order to fulfill the legislative objective of 'market value' assessment, municipalities began assessing these improvements for the 2007 taxation year. The change resulted in higher property assessments for golf courses in general.

The following sequence of events is uncontested:

- January 26, 2007 - Property tax assessment notices for two roll numbers comprising Windermere Golf and Country Club (Windermere) were mailed. The notices specified that assessment complaints must be received by March 5, 2007 and the complaint fee for each roll number.
- March 1, 2007 - Mr. Wade Hudyma, General Manager of Windermere signed and filed property assessment complaint forms and paid the complaint fees for the two roll numbers. In the space provided for reasons why it was felt the assessment was not correct, Mr. Hudyma wrote, "Improper assessment model was used." In the "Authorization" section, he appointed Mr. Barry Sjolie of Brownlee LLP to act on behalf of Windermere. (Hereafter, the Brownlee complaints.)
- March 5, 2007 - Mr. Peter Smith of CVG Canadian Valuation Group (CVG) faxed to the ARB a Letter of Authority signed by Mr. Hudyma appointing CVG as agent, and complaint forms for the two roll numbers signed by Mr. Smith, specifying under "Reasons" that "the assessments appear to be significantly greater than the July 1, 2006 market value as well as inequitable in relation to the 2007 assessments of similar properties." Reduced assessment amounts were requested. (Hereafter, the CVG complaints.)
- April 23, 2007 - The ARB mailed to CVG and Mr. Sjolie notices of a merit hearing scheduled for June 26, 2007. The notices indicated that Issue Statements and Complainant's Disclosure were due June 4, 2007.
- June 1, 2007 - CVG faxed a letter to the ARB withdrawing the complaints.
- June 4, 2007 - Mr. Sjolie of Brownlee LLP filed Issue Statements for the Windermere roll numbers.
- June 19, 2007 - The ARB sent a letter to Brownlee, CVG, Windermere and the City of Edmonton (Law Branch and Taxation department) stating that as a result of the CVG withdrawals, the merit hearing would not proceed and the cases were considered closed. The

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letter presented the option of requesting a Preliminary Hearing in respect of this administrative decision.

- June 19, 2007 - Mr. Sjolie filed a Request for Preliminary Hearing to address the unauthorized, or alternately, erroneous withdrawal of the complaints, stating that it was the intent of CVG to withdraw as agent, but not to withdraw the complaints. The Preliminary Hearing would be requested to reinstate the complaints.
- July 13, 2007 - Preliminary Hearing held.
- July 26, 2007 - ARB decision letter issued, finding there was one valid complaint for each of the subject roll numbers filed by Windermere on March 1, 2000 (sic) with the required fee of \$400 (sic); Windermere granted exclusive authority to CVG March 5, 2007; CVG filed complaint forms that same day but did not include the required fee; on June 1, 2007, CVG withdrew the Windermere complaints. The application for reinstatement of the complaints was denied.
- August 27, 2007 - Brownlee LLP appealed the ARB decision to the Municipal Government Board (MGB), leading to this preliminary jurisdictional hearing.

ISSUES

1. Was there more than one complaint for each of the Windermere properties?
2. Was Mr. Smith (CVG) the property owner's agent?
3. Did Mr. Smith (CVG) have authority to withdraw the complaints?
4. Were the complaints withdrawn?
5. Does the MGB have jurisdiction to reinstate the complaints?

LEGISLATION

Municipal Government Act

460(1) A person wishing to make a complaint about any assessment or tax must do so in accordance with this section.

(2) A complaint must be in writing and must be accompanied with the fee set by the council under section 481(1), if any.

(3) A complaint may be made only by an assessed person or a taxpayer.

(4) A complaint may relate to any assessed property or business.

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(5) A complaint may be about any of the following matters, as shown on an assessment or tax notice:

(c) an assessment;

(7) A complaint must explain why the complainant thinks that information shown on an assessment or tax notice is incorrect.

467(1) An assessment review board may make any of the following decisions:

(a) dismiss a complaint that was not made within the proper time or that does not comply with section 460(7);

470(1) The decision of an assessment review board may be appealed to the Municipal Government Board.

(2) Any of the following may appeal the decision of an assessment review board:

(a) an assessed person;

Assessment Complaints and Appeals Regulation AR 238/2000 (ACAR)

3(1) If a complaint is to be heard by an assessment review board, the complainant must

(a) file the complaint in accordance with the Act,

(b) pay the appropriate complaint fee at the time the complaint is filed, if, in accordance with section 481 of the Act, a fee is required by the council, and

(c) file an issue statement with the clerk of the assessment review board and with the assessor of the municipality at least 21 days before the hearing date of the complaint.

Issue 1 Was there more than one complaint for each of the Windermere properties?

Summary of Appellant's Position

Mr. Wade Hudyma, General Manager of Windermere since January, 2002, was alerted in the autumn of 2006 that the City of Edmonton was changing its method of valuing golf courses for the 2007 property tax assessment. Windermere joined a group of ten other local golf courses to retain a lawyer, Mr. Barry Sjolie of Brownlee LLP, for the purpose of contesting the substantial increases in assessment. After receipt of the Windermere assessment notices, Mr. Hudyma signed and filed complaint forms, naming Mr. Sjolie as agent. (As noted above, the Brownlee complaints.)

Mr. Hudyma was acquainted with Mr. Peter Smith, a property tax agent who golfed at Windermere and who had represented the club in several previous assessment complaints. A few days after the filing of the Brownlee complaints, Mr. Smith expressed concern that perhaps Mr. Hudyma had not filled out the complaint forms properly, particularly the "Reasons" section, and offered to file corrected forms himself. This he did, and he had Mr. Hudyma sign a letter of authority appointing CVG as agent for Windermere, which accompanied the new complaint forms sent to the ARB. (Again, the CVG complaints.) Mr. Smith explained to Mr. Hudyma that

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it was not unusual to have more than one agent, and that the letter of authorization was necessary for the ARB to accept the corrected complaint forms which had been signed by Mr. Smith.

The CVG complaints were sent prior to the deadline, but no fees were included. In contact with the ARB, Mr. Smith had been informed that the fees had already been paid by Windermere, and so were not necessary.

Counsel for Windermere, Mr. Kosak, stressed that Mr. Hudyma had acted solely with the intention of making sure that the complaint forms had been filled out in a manner acceptable to the ARB. Mr Kosak drew attention to the last clause of the Letter of Authority (Ex. 1A p 38) directing the ARB to deal exclusively with CVG as Windermere's agent relating to realty assessments and to accept "any complaints or appeals filed or made on our behalf **by** (emphasis added) CVG Canadian Valuation Group Ltd." In Mr. Kosak's view, if read this way, the letter indicated that CVG's authority was restricted to complaints filed by CVG. Hence, the Brownlee complaints and the authority given to Mr. Sjolie were not impacted by the CVG complaints.

Summary of Respondent's Position

The City of Edmonton recognized that the Appellant, Windermere, fulfilled the legislated requirements of a valid complaint when Mr Hudyma filed a written complaint prior to the deadline and paid the required fee.

Counsel for the Respondent, Ms. Kaplan, argued that a complaint is not a form – it is a right. She cited City of Calgary v. Municipal Government Board, [2007] A.J. No. 87 (Q.B.), the "HBC Decision" which found there could only be one complaint, filed by the "assessed person", in relation to a property assessment roll. (Ex. 4R pp. 33-34. paras. 86 and 87)

Ms. Kaplan argued that the only effect of the CVG complaints was to add some particulars as to why the owner felt the assessments were wrong, and to confirm that CVG was Windermere's new agent. CVG did not need to put this information on new complaint forms. The Letter of Authority contained all of the agency contact information, and complainants are permitted to send in additional documents which are filed along with the complaint forms. The Respondent also noted that this is a property for which the provision of an issue statement is required by the legislation. As such, it was not necessary for Mr. Smith to correct the Reasons section on the complaint forms, since any additional information could have been provided at the time the issue statements were filed.

Finding of fact

There was one complaint for each of the Windermere properties.

Reasons

The Act at section 460 speaks to a person wishing to make a complaint about any assessment. The singular case is used. The complaint may be about “any of the following matters”, listed at s 460(5)(a) through (j), implying that a single complaint may encompass up to ten different particulars shown on an assessment notice.

Evidence from the Appellant’s witnesses showed that the second complaint forms were not intended as separate or competing complaints, but as expansions of the grounds of complaint in order to ensure acceptance by the ARB. They were not meant to retract the authority of Brownlee to represent Windermere in conjunction with ten other golf courses. Notwithstanding intent, the second complaint forms also fail consideration as complaints as they did not meet the legislated requirements of valid complaints.

The MGB concurs with the Respondent: a complaint is a right, not a form. There was one complaint for each Windermere roll number, launched when the complaint was filed in writing and the requisite fee paid.

Issue 2 Was CVG appointed as agent by the property owner?

Summary of Appellant’s Position

Mr. Hudyma gave evidence that it was never his intention to appoint Mr. Smith as agent; he had only signed the Letter of Authority to facilitate the filing of the corrected complaint forms. As a member of the golf course group, it was Windermere’s intention to have Mr. Sjolie pursue the complaints. The copies of correspondence he had seen (such as the notice of merit hearing dated April 23, Ex 1A p. 39) were addressed to Mr. Sjolie, and at best he may have noticed that CVG was cross-copied. He believed that Mr. Sjolie was still his agent and would have been concerned had this correspondence been addressed solely to CVG/Mr. Smith.

Mr. Smith knew that Windermere was part of the golf course group and had no desire to supplant Brownlee as agent. The letter of authority he had Mr. Hudyma sign was CVG’s standard form letter, used some five hundred times per year. It was signed and sent simply to ensure that the ARB would accept the CVG complaints. It was understood by both Messrs. Smith and Hudyma that there would be no cost to Windermere for filing the CVG complaints, nor any obligation to retain the services of CVG in future.

In late May or early June, Mr. Smith left a voice mail message reminding Mr. Hudyma of the June 4 deadline for filing the Issue Statement and inquired whether CVG could be of any further assistance. Mr. Hudyma returned this call June 1st from his car, while he was delivering evidence to Brownlee LLP’s offices. He informed Mr. Smith that Windermere would continue to be represented by Mr. Sjolie; there was no discussion about removing Smith’s name as agent or of withdrawing the complaints.

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Mr. Kosak argued that throughout this history Mr. Hudyma acted consistently in the belief that Windermere's agent was Mr. Sjolie. If the ARB truly thought that CVG was the exclusive agent, why then did the ARB correspond with both Sjolie and Smith, and cross-copy that correspondence? In fact, there were two authorized and recognized agents, and the authorization letter of March 5 implicitly limits CVG to deal only with the CVG complaints, and has no application whatsoever to the earlier Brownlee complaints.

Summary of Respondent's Position

Ms. Kaplan introduced Mr. McClennan, an assessor with the City. Mr. Kosak objected to this new witness, observing that no "will say" statement had been disclosed. Mr. McClennan noted that he was replacing Mr. Thorgeirson, the assessor who had appeared at the ARB, and his evidence would be the same. The MGB decided to hear Mr. McClennan.

Mr. McClennan reviewed the documentary evidence of Ex.2R and explained that on receipt of an agency letter like the CVG Letter of Authority (Ex 2R p.7); the City would deal exclusively with that agent. He explained that correspondence sent to Brownlee after the March 5 appointment of CVG as agent was not unusual, as it was common for an agent to work with a lawyer, particularly on larger complaints/appeals.

Counsel argued that the intent of the parties to an agency agreement or their contractual or other relations are not relevant to this appeal. That CVG was not a paid agent is of no consequence. The law is practical: what is relevant is the information actually communicated to a third party such as the ARB or the City. What is consequential is 'what you have told us you are doing' rather than 'what you intended to do'.

As a result of correspondence sent to both CVG and Brownlee, one could conclude that both had standing in the eyes of the ARB. If the ARB was suffering a misapprehension, the onus was on the property owner to correct the situation. Both CVG and Brownlee received copies of the correspondence directed to the other. Brownlee was aware of CVG's involvement in the matter; if there was some issue regarding CVG's status as agent, Brownlee could have brought the issue to the attention of the ARB and the City. If CVG did not have actual authority to act, Windermere should have informed the City and the ARB that this was the case. The Letter of Authority stipulates that CVG's appointment continues until revoked in writing.

The Respondent cited Northwood Oaks Ltd. v. Winnipeg (City) Board of Revision, [1999] M.J. No. 578, (Man. C.A.):

17. ... It would be an intolerable situation if the court had to verify the authority of the agent before accepting a document for filing or acting upon it.
18. Other parties to the litigation need protection too. They need to know that service on the agent of record is effective and that a document filed by the

agent, such as a notice of discontinuance or abandonment of an appeal, can be relied on.

19. There is simply no place in our legal system for a requirement that a court or party to litigation verify the authority of an agent of record before relying upon the acts of the agent.

Finding of fact

CVG was appointed as the property owner's agent.

Reasons

Despite Mr. Hudyma's intentions, it was clear to the MGB that CVG was appointed as Windermere's exclusive agent in all matters relating to realty assessment when the Letter of Authority was signed on March 5, 2007. Moreover, he was to remain as agent until that letter was revoked in writing. Whether the ARB dealt with or considered CVG as exclusive agent is questionable. Correspondence from the ARB to both parties before and after June 1, 2007 strongly suggests that the ARB considered Brownlee LLP and CVG as co-agents. However, this point is not central even though Mr. Hudyma may have been led to believe that Brownlee remained as Windermere's agent after his (CVG's) appointment. In either case, whether Windermere had one agent or two does not impact the result. What is consequential is the Letter of Authority dated March 5 which was signed by Mr. Hudyma and which appointed CVG as agent.

Issue 3 Did CVG have authority to withdraw the complaints?

Summary of Appellant's Position

CVG had no express or implied authority to withdraw Windermere's complaints. At best, CVG only had authority to withdraw the CVG complaints but not the Brownlee complaints. Evidence from Messrs. Smith and Hudyma demonstrated that CVG had no specific authority to withdraw any Windermere complaints. Both Mr. Smith and Mr. Hudyma understood that at the time.

The CVG Letter of Authority signed March 5, 2007 (Ex 1A p.38) gives CVG neither express nor implied authority to withdraw any Windermere complaints. Specifically, the letter reads:

Please be advised that we have appointed CVG Canadian Valuation Group Ltd. as our agent in relation to all matters of realty assessment and taxation for the above captioned properties. In this regard, we authorize this company to negotiate with the City of Edmonton Assessment Department on our behalf as well as file assessment complaints, if necessary, to the Assessment Review Board for the 2007 taxation year.

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This letter directs you to deal exclusively with CVG Canadian Valuation Group Ltd., their officers, employees, and agents, to release to them such information and documentation as they may request, to discuss with CVG Canadian Valuation Group Ltd. Any and all matters relating to realty assessments and to accept any complaints or appeals filed or made on our behalf by CVG Canadian Valuation Group Ltd. This company's address is:

This authorization letter is effective until revoked in writing by the undersigned.

Summary of Respondent's Position

As Windermere's agent, CVG had express authority to deal with all matters pertaining to the assessment of the Windermere properties. This includes withdrawing the complaints. Withdrawals occur in the ordinary course of assessment complaints and are routinely filed by agents.

From the Analysis section of Auer v. Lionstone (see below), an explanation of express and implied authority was presented:

Actual authority may be express or implied ...

Express authority is given by express words or instructions. Implied authority is actual authority to perform "all subordinate acts which are necessary or ordinarily incidental to the exercise of ... express authority"...

An agent may act outside his actual authority and still bind the principal if the agent acts within his ostensible or apparent authority. ... The British Columbia Court of Appeal has described ostensible authority as follows:

A finding of apparent authority depends on some representation through words or conduct on the part of the principal that leads a third party to believe that the agent has the authority in question. Apparent authority is a product of the principal's outward conduct with respect to third parties, not of the principal's internal agreements or arrangements with its agent.

Even if it was understood between Mr. Smith and Mr. Hudyma that CVG had no authority to perform any action related to the complaints, CVG nonetheless had ostensible authority to withdraw the complaints. The Respondent submitted (Ex 4R p.43) the Black's Law Dictionary definition of "apparent or ostensible agent":

One whom the principal, either intentionally or by want of ordinary care, induces third persons to believe to be his agent, though he has not, either expressly or by implication, conferred authority on him. A person who, whether or not authorized,

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reasonably appears to a third person, because of manifestations or other, to be authorized to act as agent for such other.

Case law dealing with the concept, exercise and consequences of implied authority was presented:

Canadian Insurance Corporation v. Canadian Commercial Bank, [2000] A.J. No. 765 (Q.B.) (Ex. 4R p.55 paras.42 and 43)

Auer v. Lionstone Holdings Inc., [2005] A.J. No. 177 (Ex. 4R pp.97-98 paras.14 and 15)

Finding of fact

CVG had authority to withdraw the complaints.

Reasons

The MGB examined the Letter of Authority with care and it appears that the first sentence is expansive and all-encompassing, whereas the next two sentences may restrict or limit the authority just granted. It was clear that the Letter of Authority did not mention withdrawal, and the evidence of Messrs. Smith and Hudyma showed that CVG only had authority to file corrected or more elaborate complaint forms. Thus, no express authority to withdraw the complaints existed. The letter does, however, authorize CVG to negotiate on behalf of Windermere with the City of Edmonton and it does state that CVG is “our agent in relation to all matters of realty assessment and taxation for the above captioned properties”. On having read the letter, it would be reasonable to conclude that the authority to withdraw complaints is implied.

In reality, having been told by Mr. Hudyma during the July 1st telephone conversation that his services were not required, Mr. Smith had no actual authority, either express or implied, to withdraw the complaints. However, that was a private conversation between Mr. Hudyma and Mr. Smith, and was not known to the ARB or the City. Neither Mr. Smith nor Mr. Hudyma informed them that the agency relationship existed for the purpose of filing secondary documents only. Neither did they alert the City or the ARB when the agency relationship ended. All the City and the ARB had to go on was the Letter of Authority which was signed by Mr. Hudyma and provided to them by Mr. Smith. The letter was never revoked, either in writing or orally. Given these facts, it would be unreasonable to expect the ARB or the City to understand that Mr. Smith had no authority to act regarding the complaints. On the contrary, the administrative staff of the ARB was justified in concluding that CVG had authority, either express or implied, to withdraw the complaints.

As quoted in Auer v. Lionstone, “apparent authority is the result of the principal’s outward conduct with respect to third parties, not of the principal’s internal agreements or arrangements with its agent.” Apparent authority “depends on some representation through words or conduct

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on the part of the principal that leads a third party to believe that the agent has the authority in question.” The Letter of Authority, which was never revoked, was a representation on the part of Windermere that led the ARB and the City to believe that CVG had the authority in question.

Issue 4 Were the complaints withdrawn?

Summary of Appellant’s Position

Upon learning from Mr. Hudyma on June 1, 2007 that his further services were not required, Mr. Smith did not want to be responsible for filing the Issue Statements due June 4. His evidence was that he had his assistant, Fern King, phone the ARB office. She spoke with Angela Elliot. Ms. Elliot reportedly confirmed two agents on the Windermere file, Brownlee and CVG. Wishing to remove CVG as agent from the record, but not intending to interfere with the status of Brownlee, Mr. Smith faxed his standard notice of withdrawal to the ARB. (Ex. 1A p.40) His intention was to end the involvement of CVG and he had the impression from listening to Fern King’s side of the conversation that his withdrawal would not affect the status of the complaints.

The Appellant maintains that none of the complaints was withdrawn. CVG intended to withdraw as agent for Windermere, but did not intend to withdraw Windermere’s complaints. Alternatively, CVG withdrew the CVG complaints but not the Brownlee complaints. Windermere had not authorized any withdrawal, and in fact, on June 1 Mr. Hudyma was delivering documentation to Brownlee for preparation of the Issue Statements and Disclosure of Evidence.

Mr. Smith’s letter of withdrawal was only prepared after CVG consulted Ms. Elliot at the ARB, who assured CVG that the Brownlee complaints were still in place. It was on this basis that CVG filed the withdrawal letter, intending only to withdraw the CVG complaints, not the Brownlee complaints. The withdrawal letter must be read in the context of the conversation with Ms. Elliot. In doing so, the clear intent is the withdrawal of the CVG complaints only.

The Appellant argued there were significant differences between this case and those presented by the Respondent. Specific distinguishing circumstances in:

Baker v. Canada (Ex. 4R p.101) In that case the agent was a chartered accountant whose wife was covering for him when she mistakenly (but intentionally) withdrew the complaint. As a result of her intent, the complaint was ruled withdrawn. Here, Mr. Smith did not intend to withdraw the original Brownlee complaints. As well, two agents were involved here versus one, and at para. 11 (Ex. 4R p. 104) compare Smith who acted as an unpaid friend.

City of Winnipeg v. B. of Revision (Ex. 4R p.119) In that case the agent intended to withdraw.

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Northwood Oaks (Ex. 4R p.105) In that case the agent was terminated by the owner, but subsequently filed withdrawal. Here, two authorized agents, no intent to withdraw.

Hospitality Inns (Ex 4R p.109) The agent inadvertently filed a withdrawal. The decision turned on whether agent had authority to withdraw. Here there was no authority to withdraw.

Summary of Respondent's Position

Ms. Angela Elliot, a temporary office worker employed by Executrade, gave evidence that she was assigned to work at the ARB from March to July, 2007. She remembered the telephone conversation about Windermere because it took place a few days after the arrival of a stack of documents late in the working day, all with the name Windermere somewhere on the front. These documents all had to be date-stamped before the end of her working day. Ms. Elliot remembers being asked how many agents were showing on the record, and she identified two. There was no discussion about withdrawal or the status of any complaint. She would not have engaged in such a discussion because that was beyond her expertise. Had she received a question regarding withdrawal or status, she would have redirected the call to Jerry Krysa (her supervisor) or another full-time staff person. Under questioning, she believed her caller was male, though perhaps not Peter Smith, and she did not recognize the name Fern King. She had no precise recollection of when the stack of documents arrived, but if that date was June 4, her phone conversation took place probably around June 7, 2007.

The Respondent invited the MGB to consider the notice of withdrawal. (Ex. 2R p.12) The letter is not ambiguous. There was only ever one complaint on each of the Windermere properties, established when the complaints were filed and the fees paid. This letter withdraws the complaints.

The Respondent's submissions regarding the difference between the intentions of principal and agent and what third parties are led to believe are applicable to this issue as well. It is a long-standing legal rule that a principal is bound by the actions of his agent unless the principal has notified others relying on the agent's authority that the principal has revoked that authority. The ability to withdraw a complaint was within Mr. Smith's implied authority. This case has everything to do with what was done, not was intended.

Even in a situation where there are two agents, the act of one agent binds both and the principal. *Bowstead and Reynolds on Agency* (Ex.4R p.60) states that "where an authority is given to two or more persons severally, or jointly and severally, any one or more of them may execute it without the concurrence of the others."

The Respondent presented case law and previous MGB Board Orders that dealt with the acts of agents and their consequences:

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Baker v. Canada (Ex4R pp.101-104) This case was presented to show that an agent should act with due care.

Northwood Oaks v. Winnipeg (City) Board of Revision (Ex 4R pp105-108) in which the Court found that an assessment complaint was withdrawn although the owner had not authorized the withdrawal nor intended the complaint be withdrawn. The owner had appointed a second agent without revoking the agency of the first agent, who withdrew the complaints, while intending only to withdraw as agent.

Hospitality Inns v. Calgary (MGB 109/00) (Ex 4R pp.109-118) where the MGB found that a complaint was withdrawn when an agent inadvertently withdrew the complaint, even though the agent immediately notified the ARB of the error.

Winnipeg (City) v. Winnipeg (City) Board of Revision (Ex 4R pp119-122) which found that 'withdraw' does not mean 'adjourn' or 'postpone'.

Finding of Fact

The complaints were withdrawn.

Reasons

The conflicting evidence of Mr. Smith and Ms. Elliot was somewhat problematic. Ms. Elliot recollected speaking to a male, some days after receiving a stack of documents with the Windermere name attached. Presumably, this stack of documents would have been the Disclosure of Evidence and Issue Statements of the golf course group, received June 4. However accurate or inaccurate her recollection of time and gender, she was very sure that she had not discussed the withdrawal either of an agent or a complaint, as this was beyond her expertise. Knowledge of a process of withdrawal, either of complaint or of agent, is not something one forgets. One may forget after the fact the strict itinerary of crossing t's before dotting i's except in leap years, but one remembers having had that knowledge at one time. As a temporary worker at the ARB it is reasonable to expect that she would not have had the knowledge she claims not to have had.

What then was said, or thought to have been said, to inspire Mr. Smith to fax a withdrawal of the complaints? It is temptation incarnate to speculate, and also beyond the pale and proper ambit of the MGB's function to do so. What is clear is that the complaints were withdrawn. There is no ambiguity whatever in the withdrawal notice. The MGB found the Northwood Oaks case instructive, notwithstanding substantially different timelines. At para. 18 in Northwood Oaks

Other parties to the litigation need protection too. They need to know that service on the agent of record is effective and that a document filed by the agent, such as a notice of discontinuance or abandonment of an appeal, can be relied on.

Issue 5 Does the MGB have jurisdiction to reinstate the complaints?

Summary of Appellant's Position

The Appellant submitted there is no jurisdiction issue. The Brownlee complaints were not nor could have been withdrawn because CVG had neither express nor implied authority to withdraw them. The original Brownlee complaints still subsist with Brownlee LLP as the authorized representative of Windermere.

The Appellant distinguishes this case from the Respondent's presentation of 354034 Alberta v. Calgary (Ex 4R p.109) by noting that there, the complaint was withdrawn by the owner. Withdrawal was the intended consequence of the owner's action. Here, both agents were validly appointed and it was implicit that Mr. Smith had authority to deal with the CVG complaints only. Moreover, it was Mr. Smith's intention to withdraw himself as agent, not to withdraw the complaints.

Summary of Respondent's Position

Neither the ARB nor the MGB have jurisdiction to extend the deadline for filing complaints, and there are no provisions in the Act or its accompanying regulations which grant the boards jurisdiction to reinstate a withdrawn complaint.

In 354034 Alberta Ltd. (Board Order MGB 067/05) (Ex 4R pp.125-131) the MGB considered its previous decision in MGB 109/00 (Hospitality Inns) and the reasoning of the Manitoba Court of Appeal in Winnipeg (City) Assessor v. Winnipeg (City) Board of Revision in finding it lacked jurisdiction to reinstate the appeals:

- 23 ... Board Order 109/00 clearly held that the MGB does not have the jurisdiction to re-open an appeal that has been withdrawn. Once an appeal has been withdrawn there is no complaint for the MGB to hear.
- 24 ... the court determined that when there is no application to hear, the MGB (sic) has no jurisdiction

Finding of fact

The MGB does not have the jurisdiction to reinstate the complaints.

Reasons

Having accepted the argument of the Respondent throughout, that the MGB must not look at what was the intention of Windermere or CVG but rather what Mr. Hudyma and Mr. Smith did, the MGB rejects the idea that the original (Brownlee) complaints survived unscathed.

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The issue of whether there is jurisdiction to reinstate a complaint is well-ploughed ground. There is no provision in the Act to permit a complaint or appeal once withdrawn to be resurrected. The only recourse for a complainant is to file a new complaint, presuming the deadline for filing has not already passed. The ARB, and by extension the MGB, may expand the time allowed to file an Issue Statement, but do not have that discretion when dealing with a complaint filing deadline.

Consequently, the MGB finds that neither it nor an ARB has the jurisdiction to reinstate and hear a complaint that has been withdrawn.

CONCLUSION

When Mr. Hudyma signed the Letter of Authorization and Mr. Smith delivered it to the ARB, CVG's authority to act on Windermere's behalf was established as far as the ARB was concerned. That authority was neither revoked nor denied by either Mr. Hudyma or Mr. Smith prior to Mr. Smith's withdrawal of the complaints. The ARB was in no position to know what was in the minds of Messrs. Hudyma and Smith, given that their express communications contradicted what they later described as their true intentions. The caselaw presented by the Respondent demonstrates that a principal is bound by the actions of its agent and that a third party is entitled to rely on the actions of a person whom the principal has led them to believe has authority to act on the principal's behalf. Having been led to believe that CVG had the authority to act on Windermere's behalf, the ARB was entitled to rely on Mr. Smith's withdrawal of the complaints. Where third parties are concerned, the true intentions of the principal and the agent are irrelevant insofar as those intentions are contradicted by their actions.

In consideration of the above, and having regard to the provisions of the Act, the MGB makes the following decision for the reasons set out above.

DECISION

The appeal is denied.

It is so ordered. No costs to either party.

Dated at the City of Edmonton, in the Province of Alberta, this 2nd day of April 2008.

MUNICIPAL GOVERNMENT BOARD

(SGD.) J. Noonan, Member

APPENDIX "A"

APPEARANCES

NAME	CAPACITY
A. Kosak	Counsel for the Appellant
W. Hudyma	Witness for the Appellant
P. Smith	Witness for the Appellant
A. Kaplan	Counsel for the Respondent
D. McClennan	Assessor, City of Edmonton
A. Elliot	Witness for the Respondent

APPENDIX "B"

DOCUMENTS RECEIVED AT THE HEARING AND CONSIDERED BY THE MGB:

NO.	ITEM
Exhibit 1A	Submission to the MGB, Windermere Golf and Country Club
Exhibit 2R	Respondent's Evidence
Exhibit 3R	Respondent's Brief
Exhibit 4R	Respondent's Law and Legislation