

MGB SOLIDIFIES ITS STAND ON WITHDRAWALS

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The Municipal Government Board has made it clear that a complaint withdrawn is a complaint gone. A number of decisions by the Board in the past few years have reinforced that a party is bound by their withdrawal, whether intentional or accidental. The *Municipal Government Act* and the Alberta Regulations are silent on how a Board should deal with a party seeking to reinstate a complaint or appeal after it has been withdrawn. This led the Board to examine its previous decisions for guidance on how to handle a situation where a party has a change of heart about their change of heart.

This question has come before the Board several times, with various different circumstances surrounding the issue. These decisions have provided clarification as to a basic rule of thumb as well as its application in various situations. The Windermere Golf and Country Club decision (MGB 037/08) is the latest instalment in MGB decisions addressing this issue. This 2008 decision involved the inadvertent withdrawal of two appeals by an agent who was merely attempting to withdraw as agent. Hence, it touches upon issues of mistake, reinstatement and agency, three topics that are central to a discussion of the effect of withdrawals. In that decision, the Board upheld the withdrawal, despite the mistake of the agent, and found that the MGB did not have the jurisdiction to reinstate the appeals.

It is clear from the MGB decisions that a withdrawal will be effective, regardless of whether it was intentional or accidental. In *Hospitality Inns v Calgary* (MGB 109/00), the MGB found that a complaint was withdrawn even though the withdrawal was inadvertent and the ARB was immediately notified of the mistake. There is obviously no requirement for reliance on the withdrawal, as the mistake in this case was pointed out immediately. Rather, the inability to reinstate a complaint after it has been withdrawn has been identified as an issue of jurisdiction. There are no provisions in the Municipal Government Act or its Regulations allowing either the ARB or MGB to reinstate a complaint once it has been withdrawn. Effectively, this means that the Board has no jurisdiction to deal with complaints once they are withdrawn because the complaints are no longer on the record. The Board is left with no application before them and therefore no jurisdiction to proceed (*Hospitality Inns*, MGB 109/00).

The Board decision in *354034 Alberta Limited* (MGB 067/05) reinforces this lack of jurisdiction as the Board found that “it does not matter whether the withdrawal was undertaken in error. The end result is the same- the appeal is withdrawn and there is no longer a complaint for the MGB to hear”. The only option for the complainant is to file a whole new complaint, presuming the deadline for filing hasn’t passed. While the MGB is able to extend the time to file an Issue Statement, it does not have discretion to extend the filing deadline for a complaint. Therefore, if the filing deadline has passed, the complainant is bound by their withdrawal.

Each of these decisions also deals with issues of agency. The principles of agency provide that the actions of an agent will bind the principal. Therefore, even if the agent makes a mistake, as occurred in several of these cases, the principal will be bound by those actions as if they were his own. In addition, even where a principal does not grant his agent the authority to withdraw complaints, third parties are able to rely on the authority of an agent where actions of the principal have lead them to believe that the agent has such authority. This is called "Apparent authority" and is based upon the representations of a principal to third parties rather than the actual agency agreement between principal and agent. The Court has stated that parties must be able to rely on the actions of an agent as being the intentions of the principal without need to confirm the agent's apparent authority (*Windermere MGB 037/08, Northwood Oaks v Winnipeg (City) Board of Revision*). The MGB has relied on these legal principals to uphold withdrawals by agents with apparent authority, even when that agent may not have actual authority to take those steps.

All of these decisions plainly show that the MGB does not treat withdrawals lightly. A party will not be able to rely on arguments of mistake or unauthorized agency in order to avoid a withdrawal that has been submitted. And once a withdrawal has been effected, neither the ARB or the MGB have jurisdiction to reinstate the complaint. The only option is to file a new complaint before the filing deadline. Although the MGB is not required to follow its previous rulings, the body of decisions that have built up around this issue solidifies the approach of the MGB. The moral of the story is that a withdrawn complaint is a withdrawn complaint, regardless of mistake. And, unless there is time remaining before the filing deadline, it will stay that way.

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