

CITY OF EDMONTON – ASSESSMENT REVIEW BOARD

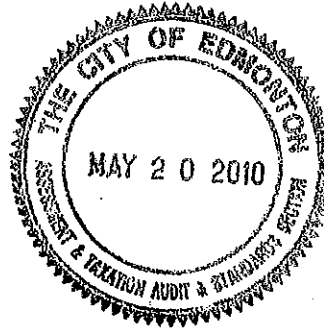
Notice of Preliminary Hearing Decision

Roll number(s): 10163713
Assessment year: 2010
Municipal address:
Board Member: Terri Mann
Date: May 6, 2010

Complainant/ Complainant's agent:
Shirley Makowsky

-and-

Respondent: The City of Edmonton



ISSUES

1. The Respondent argued that the Complainant did not file their complaint within the prescribed deadline. The issue was whether the complaint was filed by the prescribed date, and if not, the consequence thereof.

POSITION OF THE OTHER PARTY

The Complainant did not attend the hearing, and did not produce any evidence to be considered, in her absence.

LEGISLATION

The *Municipal Government Act* contains certain relevant sections:

Section 284 (3) states:... *for the purposes of Parts 10, 11 and 12, any document, including an assessment notice and a tax notice, that is required to be sent to a person is deemed to be sent on the day the document is mailed or otherwise delivered to that person.*

Section 309 (1) (a) and (b) state that *an assessment notice must show the date the assessment notice is sent to the assessed person ... which date must be 60 days after the assessment notice, or amended notice is sent to the assessed person.*

Section 309 (1) (c) states that *an assessment notice must show the date by which a complaint must be made, which date must be 60 days after the assessment notice or amended assessment notice is sent to the assessed person.*

Section 311(1) states that *each municipality must publish in one issue of a newspaper having general circulation in the municipality... a notice that the assessment notices have been sent.*

Section 311 (2) states that *all assessed persons are deemed as a result of the publication referred to in s. 311(1) to have received their assessment notice.*

Section 460 (7) (a) and (b) state that *a complainant must indicate what information shown on an assessment notice or tax notice is incorrect; and explains in what respect that information is incorrect.*

Section 467 (2) states that *an assessment review board must dismiss a complaint that was not made within the proper time or that does not comply with section 460(7).*

The *Interpretation Act* s.23 (1) states that *if an enactment authorizes or requires a document to be sent, unless the contrary is proven, the service shall be presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta.*

DECISION

The Board finds that the complaint was filed within the proper time, and therefore a hearing on the merits of the complaint may proceed.

REASONS

On January 4, 2010, the Annual Realty Assessment Notice was mailed to the owners of the subject property (R-1 P.1) It is noted that the back page of this Notice states "If your complaint ... is received by the designated officer of the Assessment Review Board after the deadline specified on your Assessment Notice, your complaint will not be filed" (R-1 P.2).

It is noted that the deadline specified in the Assessment Notice is March 5, 2010 (R-1 P.3)

On January, 4, 2010, the City of Edmonton published in a local newspaper, Information for Property Owners [the "Information Bulletin"], which advised property owners that if their complaint was not received by the deadline specified on their assessment notice, the complaint would not be filed (R-1 P.7-10).

The Complainant's complaint was received at the Assessment Review board Office on March 9, 2010 (R-1 P.14, 17).

On April 12, 2010, the Respondent corresponded with the Complainant, advising her that the complaint was filed after the deadline date. The Respondent further advised the Complainant that a hearing would be scheduled for May 6, 2010 to determine whether a hearing on the merits of the complaint could ensue (R-1 P.17).

The Complainant was not present at the May 6, 2010 hearing. The Complainant did not submit evidence for the consideration of the Board, in the Complainant's absence.

The consequence of a failure to file a complaint by the prescribed date is enumerated in s. 467(2) of the MGA which states that an assessment review board *must* dismiss a complaint that was not made within the proper time (writer's emphasis). The Act does not give the ARB jurisdiction to extend a filing deadline beyond the proper time. Therefore, the determination of a filing deadline is an important and substantive issue.

As noted above, the City of Edmonton mailed the Annual Realty Assessment Notice to the Complainant on January 4, 2010. Pursuant to s. 309 (1) (a) and s. 309 (1) (b), the Complainant is obliged to file his complaint within 60 days from the date the assessment notice is sent to the Complainant.

The Board further notes that on January 4, 2010, the City of Edmonton published the Information Bulletin, which advertised the deadline for the filing of complaints, being March 5th, 2010. The Respondent is of the position that, pursuant to s.311 (2) of the MGA, the Complainant is deemed as a result of the publication to have *received* her assessment notice on January 4, 2010. If one accepts the date of publication as the date that the Complainant received her assessment notice, then the Complainant would be obliged to have filed her complaint by March 5, 2010.

However, a further consideration for the Board is the application of s.23 (1) of the *Interpretation Act*. This provision creates a rebuttable presumption of service. In particular, by virtue of this provision, service is presumed to be effected 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta, unless contrary evidence is led.

The case law has consistently indicated that service of assessment notices by mail designates "sent" to mean "sent and received" as a right of appeal cannot run without the complainant's knowledge of its existence. When issues of receipt (actual or implied) arise, evidence of the same is difficult to establish, hence resort is made to the *Interpretation Act (R-3, Harbinger Management Ltd. v. Calgary 2002 A.M.G.B.O. No. 79)* The MGB has indicated that publishing a notice in a newspaper is not notice in itself, and since the legislation does not set a date upon which the notices are deemed to have been received, it is not necessarily definitive in determining the timeliness of a complaint. [*Szafrensky and the City of Edmonton MGB Order 009/10*]. It is noted that the case law was determined prior to the enactment of the new legislation, but the reasoning remains valid.

The Board is further apprised that case law has consistently indicated that while the proper calculation of time and the determination of a final date for complaint provide certainty for both taxpayers and the municipality, there must be clear statutory language to adversely affect the rights of taxpayers. In *Canada v. Johns Manville Corp*, [1985] S.C.J. No. 44, the Supreme Court of Canada ruled that any uncertainty must be resolved in favor of the taxpayer.

The Board finds that in consideration of the foregoing, and in calculating the 60 day deadline from receipt date calculated by virtue of the *Interpretation Act*, the Complainant has filed the complaint within the prescribed deadline and a hearing on the merits of the complaint may ensue.

Jessie Mann

Local Assessment Review Board Member

May 17, 2010

Date