
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

BETWEEN:

JOHN MASTRAGOSTINO / GANEH ENERGY SERVICES LTD.
(the "Applicant")

- and -

DIRECTOR, LICENSING AND CERTIFICATION
(the "Director")

Decision

Review Panel: Wasim Hassan, Roy Hicks, Robert Nelson
Hearing Date: January 19, 2010
File Number: 7007220
Appeal Number: NOAL 09-011

APPEARANCES

Director, Licensing, and Certification)	Richard Steinecke, Counsel
)	Lucy Impera, Director, Licensing
)	and Certification
)	Patience Cathcart, Project
)	Coordinator, Licensing and
)	Certification
John Mastragostino /)	John Mastragostino
Ganeh Energy Services Ltd)	
)	

I. BACKGROUND

[1] A hearing in this matter was held on Thursday, January 19, 2010 before the Review Panel comprised of Wasim Hassan, Roy Hicks and Robert Nelson. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections.

[2] At the outset of the hearing, the Director, Licensing and Certification (the "Director") filed a bound Documents Brief containing documents showing the record of the Applicant's dealings with the Director and her staff in connection with this matter. The Applicant filed a separate and unbound collection of documents. As it was apparent to the parties that the Documents Brief contained all of the documents filed by the Applicant in support of his case, the Applicant agreed that, for ease of reference during the hearing, only the Documents Brief would be used as it was organized chronologically and by "Tab" number. Further, the Applicant had no objection to any of the documents in the Documents Brief being admitted into evidence without further proof. As such, it was agreed that the Documents Brief would be admitted into evidence as Exhibit "A". Documents referred to in this decision will be referenced by the Tab number in which they appear in the Documents Brief.

[3] The Director also filed a Brief of Authorities comprising relevant legislation, regulations and Review Panel decisions.

[4] As shown in the Documents Brief, the Applicant has a long history of dealings with the Director and her staff, which essentially relate to the Applicant's attempts to write the master electrician exam, his application for an electrical contractor license and request for a provisional electrical contractor license. As will be elaborated upon below, the only issue before the Review Panel is the Director's refusal to grant an electrical contractor license to the Applicant.

[5] On July 27, 2009, a Notice of Proposal was issued by the Director to the Applicant (**Tab 13**) refusing to grant an electrical contractor license to the Applicant pursuant to section 113.2 of the *Electricity Act, 1998* (the "Act") on the basis that the Applicant failed to meet the requirements of section 8(b) of Ontario Regulation 570/05 ("Reg. 570/05"). Specifically, the Applicant failed to show that he was a master electrician or employed at least one master electrician designated as having the responsibilities set out in section 6 of Reg. 570/05 for the carrying out of electrical work on the Applicant's behalf.

[6] The Applicant filed a Notice of Appeal of the Notice of Proposal on August 7, 2009 (**Tab 14**) appealing the decision in the Notice of Proposal to refuse to grant an electrical contractor license. The Applicant asked that the Director issue a provisional electrical contractor license to the Applicant even though this was not dealt with in the Notice of Proposal. The grounds for appeal advanced by the Applicant included: (a) the Applicant had met six of the seven "considerations" under section 8 of Reg. 570/05; (b) the Applicant could not afford to hire a master electrician; and (c) under section 10(3) of Reg. 570/05 the Director should issue a provisional electrical contractor license because a failure to do so would result in "hardship" on the Applicant's business, including being "pushed into bankruptcy".

[7] On August 26, 2009, the timelines for issuing a decision were extended on consent to permit the Applicant to write the master electrician exam (**Tab 18**), which he successfully passed on November 16, 2009.

[8] On November 26, 2009, the Director issued a decision on the Applicant's appeal (**Tab 23**) stating that the requirements as set out in section 8(b) of Reg. 570/05 were not met as the Applicant had not shown that he was, or had employed and designated, a master electrician (the "Director's Decision"). The Director's Decision did not specifically deal with the Applicant's request for a provisional electrical contractor license as the only issue properly before the Director was the appeal of the Notice of Proposal refusing to grant the Applicant an electrical contractor license.

[9] On December 10, 2009, the Applicant filed a Notice of Appeal of the Director's Decision before the Review Panel (**Tab 24**). Like the Applicant's Notice of Appeal to the Director (**Tab 14**), the Applicant's appeal was not limited to the Director's Notice of Proposal refusing to grant an electrical contractor license. The Applicant also claimed that he should have received a master electrician license, or, at the very least, a provisional electrical contractor license. The Applicant's grounds for appeal as stated in the Notice of Appeal, and as clarified at the hearing, are as follows:

- (a) The Applicant passed the master electrician exam and had the requisite 3 years' "experience" under section 11(b) of Reg. 570/05 to be granted the master electrician license.
- (b) As a master electrician, the Applicant met the requirement in section 8(b) of Reg. 570/05 to be issued an electrical contractor license.
- (c) The Applicant could not afford to employ a master electrician.
- (d) The Director should have exercised her discretion under s. 10(3) of Reg. 570/05 to provide the Applicant with a provisional electrical contractor license to avoid a "hardship" to the Applicant. The Applicant alleged that the "hardship" related to business loss and the potential termination of the Applicant's staff unless he could expand his business.
- (e) The "spirit" of the regulations, as opposed to "the letter of the law", supports the Applicant's request for a master electrician license, provisional electrical contractor license or an electrical contractor license.

II. ISSUES

[10] There are three issues raised by the Applicant in this appeal to be dealt with by this Review Panel, as follows.

- (a) The first issue is whether the Applicant has met the conditions in section 8 of Reg. 570/05 to be entitled to an electrical contractor license. In particular, the condition in section 8(b) that the Applicant is a master electrician or employs a

master electrician and designates to him or her responsibilities set out in section 6 for the carrying out of electrical work on the Applicant's behalf.

- (b) The second issue is whether the Applicant has, by virtue of his work experience, satisfied the requirements of section 11(b) of Reg. 570/05 (being the three year experience requirement for obtaining a master electrician license).
- (c) The third issue is whether the Director erred in not exercising her discretion under section 10(3) of Reg. 570/05 to grant the Applicant a provisional electrical contractor license.

[11] The Director's Decision only dealt with the first issue set out under paragraph 10(a) above. As such, the only issue properly before the Review Panel is the review of the Director's Decision denying the Applicant an electrical contractor license.

[12] However, the Review Panel heard evidence and submissions with respect to the other two issues as they were raised by the Applicant throughout his history of dealings with the Director as well as in his Notices of Appeal (**Tab 14 and 24**). As such, the Director was aware of the Applicant's position on these two issues and able to respond accordingly and call evidence supporting the Director's position. The Review Panel has commented on these two issues below as they have been conclusively decided in other cases before the Review Panel.

III. THE LAW - REG 570/05

[13] Section 8 of Reg. 570/05 provides the necessary conditions to be issued an electrical contractor license. It states as follows:

8. A person who applies for an electrical contractor license shall not be issued the license unless the applicant,
 - (a) In the case of an individual, is at least 18 years old;
 - (b) **is a master electrician or, if the applicant is not a master electrician, the applicant employs at least one master electrician whom the applicant has designated as having the responsibilities set out in section 6 for the carrying out of electrical work on the applicant's behalf;**
 - (c) has a place of business in Ontario;
 - (d) has public liability and property damage insurance coverage of at least \$2,000,000;
 - (e) has registered with the Workplace Safety and Insurance Board, if the applicant is required to register under the *Workplace Safety and Insurance Act, 1997*;
 - (f) is not in default of filing a return with the Minister of Finance or of paying any tax, penalty or interest assessed under the *Retail Sales Tax Act* or the

Corporations Tax Act, if applicable, for which payment arrangements have not been made; and

- (g) does not owe the Authority any money for which payment arrangements have not been made.

[Emphasis Added]

[14] Section 11 of Reg. 570/05 provides the necessary conditions to be issued a master electrician license. It states as follows:

11. An individual who applies for master electrician license shall not be issued the license unless the applicant,
 - (a) is at least eighteen years old;
 - (b) **demonstrates at least three years experience;**
 - (i) **as a construction and maintenance electrician, a domestic and rural electrician or an industrial electrician carrying out electric work under a valid certificate of qualification;**
 - (ii) **working for an electrical contractor as a licensed professional engineer with the Professional Engineers of Ontario; or**
 - (iii) **working for an electrical contractor in the capacity of a certified engineering technician or a certified engineering technologist registered with the Ontario Association of Certified Engineering Technicians and Technologists;**
 - (c) has passed the master electric qualifying examination within 12- month period preceding the date of the application; and
 - (d) does not owe the Authority any money for which payment arrangements have not been made.

[Emphasis Added]

[15] Section 1 of Ontario Regulation 570/05 defines a certificate of qualification as follows:

“certificate of qualification” means a certificate of qualification issued under the *Trades Qualification and Apprenticeship Act* or the *Apprenticeship and Certification Act, 1998*, as the case may be”

[16] Section 10 of Reg. 570/05 deals with the issuance of provisional electrical contractor licenses to those who operated an electrical contracting business prior to June 2006. It states as follows:

- 10(1) A person may be issued a provisional electrical contractor licence in accordance with this section if, on July 1, 2006,
- (a) the person operates an electrical contracting business in a part of Ontario where a licence to operate an electrical contracting business was not required on June 30, 2006; or
 - (b) the person operates an electrical contracting business in a part of Ontario where a licence to operate the business was required on June 30, 2006 and the person held the required licence on that date, but it was not a condition for the obtaining of that licence that the person either hold a prior master electrician licence, or employ a person with a prior master electrician licence and assign to that person responsibilities similar to those set out in section 6.
- (2) A provisional electrical contractor licence shall not be issued unless the applicant,
- (a) in the case of an individual, is at least 18 years old;
 - (b) has a place of business in Ontario;
 - (c) demonstrates at least five years experience in,
 - (i) operating an electrical contracting business in a part of Ontario where a licence to operate such a business was not required on June 30, 2006, or in operating an electrical contracting business in a part of Ontario where a licence to operate such a business was required on June 30, 2006 and the person held the required licence on that date, but where it was not a condition for obtaining that licence that the person either hold a prior master electrician licence or employ a person with a prior master electrician licence and assign to that person responsibilities similar to those set out in section 6, and
 - (ii) carrying out electrical work;
 - (d) demonstrates that the applicant has been in compliance with the requirements of Rule 2-004 of the Electrical Safety Code for at least five years;
 - (e) has public liability and property damage insurance coverage of at least \$2,000,000;
 - (f) has registered with the Workplace Safety and Insurance Board, if the applicant is required to register under the *Workplace Safety and Insurance Act, 1997*;
 - (g) is not in default of filing a return with the Minister of Finance or of paying any tax, penalty or interest assessed under the *Retail Sales Tax Act* or the *Corporations Tax Act*, if applicable, for which payment arrangements have not been made; and
 - (h) does not owe the Authority any money for which payment arrangements have not been made.

- (3) A person described in subsection (1) may apply for a provisional electrical contractor licence between July 1, 2006 and November 30, 2006 and, with the Director's approval, after November 30, 2006, if, in the Director's opinion, it would be a hardship not to allow the person to apply.

[...]

[Emphasis Added]

IV. EVIDENCE

[17] A summary of the relevant evidence follows.

[18] The Applicant testified on his own behalf. The Applicant described his work experience in the electrical field, including his experience as an electrician while working for Dinardo Electric and Volta Electric. The Applicant described his experience as a franchisee of Direct Energy in the heating, ventilation and air conditioning ("HVAC") field. The Applicant testified that, since 2003, his experience in this regard related to only servicing (not replacing or installing) furnaces, water heaters and air conditioning. The Applicant also testified to his electrical experience from 1969 – 1972 in Italy as well as managerial experience within the field.

[19] The Applicant described his interactions with the Director and her staff and his successful completion of the master electrician exam in November 2009. The Applicant also testified that he had been certified as an engineering technologist by the Ontario Association of Certified Engineering Technicians and Technologists ("OACETT") since May 2009. The Applicant testified that the Director allowed him to write the master electrician exam and that this amounted to a waiver of the other requirements of the regulations.

[20] The Applicant acknowledged during his evidence (and in response to questions from the Director's counsel) that he did not meet "the letter of the law" with respect to conditions for obtaining an electrical contractor license, a master electrician license or a provisional electrical contractor license. For example, the Applicant admitted that he:

- (a) did not have three years' experience in electrical work under a valid certificate of qualification or three years' experience as a certified engineering technologist registered with OACETT as required under section 11(b) of Reg. 570/05;
- (b) did not employ a master electrician as required under section 8(b) of Reg. 870/05; and
- (c) did not have 5 years' experience in operating an electrical contracting business or in carrying out electrical work as required under section 10(2)(c).

[21] Despite this, the Applicant argued that, when the “spirit” of the regulations is considered, his experience and certifications in the trade should be sufficient to qualify for master electrician license, provisional electrical contractor license, or electrical contractor license.

[22] The Applicant testified that he did not know about the transition from municipal licensing to provincial licensing and the obligations under section 10 of Reg. 570/05 to apply for a provisional electrical contractor license between June 30, 2006 – November 30, 2006. He claims that it was only when he learned in 2008 that he could not do certain “branch wiring” for water heaters that he applied for an electrical contractor license and sought to write the master electrician exam. In response to questioning from the Review Panel, the Applicant stated that, given the economic conditions in late 2008, he needed to undertake installation work to expand his business, and, therefore, needed to obtain an electrical contractor license.

[23] Finally, the Applicant testified about the alleged “hardship” that would result if he was not provided with a provisional electrical contractor license. The Applicant claimed that “hardship” would be possible business losses and the possible terminations of staff. The Applicant admitted that, should he not receive a provisional electrical contractor license, his business would not go “bankrupt” and that he would not “close down the business” as claimed in his Notice of Appeal to the Director.

[24] Lucy Impera and Patience Cathcart testified on behalf of the Director.

[25] Patience Cathcart is a project co-ordinator with the Electrical Safety Authority and her duties include assisting in licensing proposals. Ms. Cathcart testified about her communications with the Applicant with respect to his application for a master electrician license and his appeal of the Notice of Proposal. Ms. Cathcart testified that she repeatedly told the Applicant of the specific requirements for obtaining a master electrician license or an electrical contractor license. Ms. Cathcart also testified that she reviewed the Applicant’s Notice of Appeal and documentation with the Director and that it was clear that the Applicant did not meet the requirements of Reg. 570/05 - both with respect to having the requisite 3 years experience (section 11) to become a master electrician and employing a master electrician (section 8) to be issued an electrical contractor license.

[26] Ms. Cathcart stated that the decision was made to allow the Applicant to write the master electrician examination in order to assist him in the licensing process. However, it was made clear to the Applicant that passing the exam did not mean that he would obtain a master electrician license, but that he had to meet the other requirements of section 11 (i.e. the 3 year experience requirement). Ms Cathcart referred to a number of pieces of correspondence at **Tabs 9, 11, 18, 26** of Exhibit “A” in support of this.

[27] Ms. Impera, the Director, testified that she was involved with the development and drafting of Reg. 570/05 and that she has had various positions within the Electrical Safety Authority. Ms. Impera stated that the purpose of the changes to the *Electricity Act, 1998* and implementation of Reg. 570/05 were to ensure that consistent standards for licensing applied across the province.

[28] Ms. Impera discussed the numerous ways that the electrical industry had been made aware of the new licensing regime by the Electrical Safety Authority, including the requirements of Reg. 570/05. This included association and industry meetings, publications, advertising, automated phone messages, written communications and advising members of provincial parliament. Ms. Impera referred to the documents at **Tabs 27 – 34** of Exhibit “A” in support of this.

[29] Ms. Impera stated that she had spoken to Ms. Cathcart about the Applicant’s request to write a master electrician exam and that it was decided to allow the Applicant to write the exam. Ms. Impera stated that she was seeking to assist the Applicant in his attempts to obtain a master electrician license but that it was made clear to him that he still needed to abide by the 3 year experience requirement in section 11(b) of Reg. 570/05.

[30] Ms. Impera explained the reasoning behind the Director’s Decision and that she had no discretion to overrule the requirements in Reg. 570/05, including the requirement in section 8(b) that an applicant for an electrical contractor license be a master electrician or employ a master electrician. As the Applicant was not a master electrician (despite passing the exam) and did not employ a master electrician, the Director could not issue an electrical contractor license. Ms. Impera stated that no exception could be made for the Applicant and that the Director had to follow the mandatory requirements in Reg. 570/05.

[31] Finally, Ms. Impera stated that the Director could not provide a provisional electrical contractor license to the Applicant as he did not operate an electrical contracting business or engage in electrical work for 5 years as required in section 10(2) of Reg. 570/05. In any event, Ms. Impera stated that the Applicant’s request for a provisional electrical contractor’s license would be over two years after the June 30, 2006 – November 30, 2006 deadline to apply for such license.

V. DECISION

[32] Having fully considered all of the evidence, including the documents filed and the testimony and submissions of the parties, it is clear that the Applicant does not meet the requirements in section 8(b) of Reg. 570/05 as he is not a master electrician and does not employ a master electrician to carry out electrical work on his behalf. The Applicant acknowledged that he did not meet “the letter of the law”, but argued that the Review Panel should consider the “spirit” of the licensing regulations. Like the Director, the Review Panel has no discretion to overrule the clear requirements of Reg. 570/05 or to consider the “spirit” of Reg. 570/05 when the clear requirements of s. 8(b) of Reg. 570/05 are not met. Therefore, the appeal must be dismissed.

[33] As noted above, because evidence and submissions were heard on the other two issues (namely, the Applicant’s claim for a master electrician license or a provisional electrical contractor license), the Review Panel will address these issues below.

[34] With respect to the Applicant’s request for a master electrician license, despite his past experience in the electrical and HVAC fields, the Applicant cannot demonstrate at least three years experience under a valid certificate of qualification or three years experience working as a

certified engineering technologist registered with OACETT as required under section 11(b) of Reg. 570/05 to obtain a master electrician license. The Applicant admitted that he did not meet these requirements "under the letter of the law". As has been noted in previous Review Panel decisions (See *Paul McGee cob McGee Electrical Repair Services* and *Director, Licensing and Certification* at para 22), there is no basis to permit the Review Panel to override the requirements in section 11(b) of Reg. 570/05 as a condition for obtaining a master electrician license. The Director has no discretion to waive or otherwise relieve an Applicant from these requirements. In any event, the Director gave no representation to the Applicant that he only had to pass the master electrician exam to receive a master electrician license. It is clear from **Tabs 4, 9, 11, 21 and 26** of Exhibit "A" that the Applicant was aware, or should have been aware, that he needed to meet the three year experience requirement. Therefore, the Review Panel finds that the Applicant is not entitled to a master electrician license until such time as he meets all of the requirements of section 11 of Reg. 570/05.

[35] With respect to the Applicant's request for a provisional electrical contractor license, the Applicant argued that he did not know about the requirements in section 10(3) to file an application between June 30, 2006 and November 30, 2006 and that the Director should have exercised her discretion to grant a provisional electrical contractor license on account of the "hardship" that would be experienced by the Applicant.

[36] As has been previously held in other decisions of the Review Panel, the Applicant's lack of knowledge of the requirements of Reg. 570/05 does not excuse the Applicant from its application (*Matera Properties Incorporated* and *Director, Licensing and Certification* at para 13). The Applicant's alleged "hardship" is speculation at best as it amounted to an inability to expand the range of services offered by the business and, consequentially, possible business loss and the termination of staff. The Applicant did not provide any concrete or quantifiable evidence in this regard and admitted that he would not "shut down his business." The Director has full discretion under section 10(3) of Reg. 570/05 to allow an individual to apply for a provisional electrical contractor license after November 30, 2006 if it would be a "hardship" not to allow the person to apply. Based on the evidence provided, the Review Panel is satisfied that no such "hardship" exists. As such, the Director is under no obligation to exercise her discretion to allow the Applicant to apply for a provisional electrical contractor license.

[37] The Applicant's arguments that the "spirit" of the regulations should be considered to allow him to obtain a master electrician license, electrical contractor license or provisional license cannot be accepted. The clear and mandatory language of Reg. 570/05 must be enforced and there is no basis to relieve the Applicant from compliance with such provision based on the "spirit" of these provisions or otherwise.

[38] Taking into account all the evidence and the submissions of the parties, it is the decision of this Review Panel to dismiss the Applicant's appeal. In this regard, we find that the Director's Decision was the correct decision taking into account all relevant considerations.

Dated February 1, 2010

"Wasim Hassan"

Wasim Hassan

"Roy Hicks"

Roy Hicks

"Robert Nelson"

Robert Nelson

