
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL

B E T W E E N:

MARC MONSON
(the “Applicant”)

- and -

DIRECTOR, ONTARIO ELECTRICAL SAFETY CODE
(the “Director”)

DECISION

Review Panel: Roy Hicks, Gary Beer and Robert Nelson

Hearing Date: October 16, 2009

Date of Decision: October 20, 2009

File Number: 70044563

Appeal Number: NOAC 09-003

APPEARANCES

Director, Ontario Electrical Safety Code)	Peter Thorning, Counsel;
Electrical Safety Authority)	Ted Olechna, Director, Ontario
)	Electrical Safety Code Electrical
)	Safety Authority

Marc Monson)	No one appeared
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INTRODUCTION

[1] This case concerns a Decision of the Director dated August 24, 2009 on a review of an Order dated July 31, 2009 to remedy certain defects as stated in a Defect Notice, dated June 25, 2009 (the “Director’s Decision”).

[2] Pursuant to Section 113.9 of the *Electricity Act* and Regulation 187/09, the Applicant decided to appeal the Director’s Decision by filing a Notice of Appeal before the Review Panel. The Notice of Appeal was received by the Director of Appeals on or about August 26, 2009.

CONTACT WITH THE APPLICANT

[3] The Applicant consented verbally and by e-mail on September 18, 2009 to a hearing regarding his appeal of the Director’s Decision to be scheduled for Friday October 16, 2009. As such, the Applicant received a Notice of Hearing by Registered Mail from the Director of Appeals on September 23, 2009 advising him that the hearing would take place on October 16, 2009 at JPR Arbitration Centre (170 Atwell Drive, 3rd Floor, Etobicoke, Ontario, M9W 5Z5).

[4] The Director of Appeals sent a letter dated October 8, 2009 to the Applicant, stating the following:

The purpose of this letter is to follow up with the Notice of Hearing you received by Registered Mail from the Electrical Safety Authority on September 23, 2009.

As per your consent by e-mail and verbally over the telephone on September 18, 2009, a hearing regarding your appeal of the Director’s Decision has been scheduled for **Friday October 16, 2009**.

Please note that the hearing will be held orally before the Review Panel at the following time and place:

Time: 9:00 am

Place: JRP (sic) Arbitration Centre

Address: 170 Attwell Drive, 3rd Floor, Etobicoke

To date, we have not received a completed Notice and Consent form regarding the hearing. The form was included in the Notice of Hearing package you received by registered mail on September 23, 2009. This form was to be returned to the Director of Appeals within five days of receiving the Notice of Hearing.

Since that time we have attempted to contact you via telephone and e-mail throughout the week of October 5-9, 2009.

Also, as per the Notice of Hearing, disclosure documents were due on October 8, 2009. To date, no documents have been received by our office.

Take notice that if a party served with a Notice of Hearing does not attend at the time and place appointed for the hearing (or who attends and then leaves prior to the conclusion of the hearing), such that the party has abandoned the hearing, then the hearing may proceed in that party's absence and without further notice to that person.

If a party has abandoned the hearing, in accordance with Rule 4 of the "Rules of Procedure for Reviews and Appeals of Orders Issued by the Electrical Safety Authority," the Review Panel may dismiss the matter and impose costs.

Another copy of the form is attached. Please return to the Director of Appeals as soon as possible via fax at: (905) 507-4572.

[Emphasis in Original]

[5] The Applicant did not file a completed Notice and Consent form regarding the hearing but, through his verbal discussions and e-mail correspondence with the Director of Appeals, the Applicant clearly consented and agreed to appear at the hearing scheduled for October 16, 2009.

[6] The Applicant did not provide any documentary disclosure. In accordance with the *Rules of Procedure for Reviews and Appeals of Orders Issued by The Electrical Safety Authority* (the "Rules"), the Director provided the Review Panel and the Applicant with two bound books of disclosure: (a) a "Document Brief"; and (b) a "Book of Authorities"

[7] On October 14, 2009, the Director of Appeals received e-mail correspondence from the Applicant in which he stated:

We wish to thank you for all material received for Appeal No. NOAC 09-003

The material received is incorrect, incompletete (sic), false and misleading. It is a criminal offence to provide the courts with fraudulent and misleading information.

1. Gail Debow has no status in these matters, she is not now nor ever been the tenant at 447 Walmer Road Suite 310
2. Your original notice dated June 27th 2009 presupposes "Working without Electrical Inspection" No changes to

electrical have occurred during the ownership by our family nor during any current tenancy

3. I am dismayed at the lack of simple understanding in these matters, The services of Trevor Penfold of Penfold electrical contracting were commenced on July 17th 2009, I have been advised that all work and deficiencies have been corrected.

I will not be attending the hearing as I am of the opinion that all matters have been resolved. Should the board wish clarification of their blatant fraudulent, misleading and incomplete misinformation kindly do not hesitate to call.

Your kind cooperation in these matters is greatly appreciated. Kindly govern yourselves accordingly

[Emphasis Added]

[8] On October 15, 2009, the Director of Appeals spoke to the Applicant by telephone. The Applicant confirmed that he would not be attending the hearing but that he was not withdrawing his appeal. The Applicant told the Director of Appeals that he wished the Review Panel to consider his October 15, 2009 e-mail in rendering its decision.

THE OCTOBER 16, 2009 HEARING

[9] The Applicant did not attend the hearing at 9:00 am. The Review Panel decided to wait until 9:45 am to see whether the Applicant would arrive before commencing the hearing.

[10] The Review Panel convened the hearing at 9:45 am in the Applicant's absence.

[11] The following documents were filed by the Director and marked as Exhibits:

Exhibit 1 – E-Mail from Marc Monson to the Director of Appeals dated October 15, 2009

Exhibit 2 – The Director's "Document Brief"

Exhibit 3 – The Director's "Book of Authorities"

[12] As the Applicant was not in attendance, the Review Panel did not hear any evidence or submissions from the Applicant.

[13] Counsel for the Director submitted that, under Rule 4.6, the Review Panel should dismiss the Applicant's appeal. The Director noted that the Review Panel had a clear indication from the Applicant from his October 15, 2009 e-mail that he was not going to attend or call any evidence in the matter. Counsel for the Director also noted that this was not a situation where the Applicant was "caught in traffic" or had "fallen ill". Instead, the Applicant had clearly stated his intention that he was not going to attend. As a result, he should be taken to have abandoned his appeal.

DECISION

[14] Where an Applicant abandons his/her appeal or otherwise fails to attend a scheduled hearing, Rule 4 of the Review Panel's Rules states as follows:

Rule 4 General – Proceedings before the Review Panel

4.1 The Review Panel may exercise any of its powers under these Rules on its own initiative or at the request of a party.

4.2 The Review Panel may dismiss a proceeding without a hearing if it finds,

- (a) it is frivolous or vexatious;
- (b) it relates to matters that are outside the jurisdiction of the Review Panel;
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met; or
- (d) the party filing the appeal has abandoned the proceeding.**

4.3 Before dismissing a proceeding under Rule 4.2, the Review Panel shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in Rule 4.2 (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason

4.4 The notice of intention to dismiss a proceeding under Rule 4.3 shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the Review Panel with respect to the dismissal within the time specified in the notice.

4.5 A party who receives a notice under Rule 4.3 may make written submissions to the Review Panel with respect to the notice of intention to dismiss the proceedings.

4.6 The Review Panel may proceed in a party's absence where a party defaults by failing to attend before the Review Panel, or leaves prior to the conclusion of the hearing. The defaulting party will not be entitled to any further notice of the proceedings and the Review Panel may treat the party's hearing as abandoned,

and in accordance with Rule 4.2 (d) dismiss the matter and impose costs as provided by Rule 17.

[Emphasis Added]

[15] It is clear that the Applicant voluntarily chose to not attend the hearing despite receiving adequate notice of the hearing. As a result, the Review Panel did not receive any evidence from the Applicant on the merits of his appeal or which would cause it to amend or rescind the Director's Decision. The Applicant was informed of the potential consequences of not attending the hearing upon receipt of the Director of Appeals' October 8, 2009 correspondence.

[16] In accordance with Rule 4.6, the Review panel has decided to treat the Applicant's appeal as abandoned. The Review Panel will dismiss the Applicant's appeal subject to the following procedure, in accordance with Rule 4:

- (a) The Applicant shall have 2 weeks from the date of this decision to provide written submissions with respect to the Review Panel's intention to dismiss the appeal. Should the Applicant not provide any submissions, the appeal will be dismissed.
- (b) The Director will have 2 weeks from the date the Applicant files his written submissions, if any, to file any written submissions in response.
- (c) The Applicant will have 1 week from the date of any written submissions filed by the Director to file any written submissions in reply to the Director.

[17] All written submissions should be sent to the Director of Appeals.

[18] The Review Panel remains seized of the matter.

Dated: October 20, 2009

"Roy Hicks"

"Gary Beer"

"Robert Nelson"

Roy Hicks

Gary Beer

Robert Nelson