
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL FOR LICENSING

B E T W E E N:

MATERA PROPERTIES INCORPORATED
(the "Applicant")

- and -

DIRECTOR, LICENSING, AND CERTIFICATION
(the "Director")

DECISION

Review Panel: Roy Hicks, Robert Nelson

Date: September 17, 2007

File Number: 7005643

Appeal Number: NOAL 0739

APPEARANCES

Director, Licensing, and Certification)	Richard Steinecke, Counsel
)	Lucy Impera, Director, Licensing
)	and Certification
)	Wendy Reid, Project Coordinator

Matera Properties Incorporated

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Donato Lafergola, President
Nadia Kobyłka

INTRODUCTION

[1] On June 25, 2007 a Notice of Proposal was issued by the Electrical Safety Authority (the "ESA") refusing to grant an Electrical Contractor's License to Matera Properties Incorporated (the "Applicant") pursuant to Section 113.2 of the *Electricity Act*, 1998, S.O. 1998, c. 15 (the "Act"). The Applicant appealed the decision contained in the Notice of Proposal dated June 25, 2007 to refuse to grant the license. The Director decided on July 13, 2007 that she was willing to issue a Provisional Electrical Contractor License to the Applicant subject to the following conditions:

- (1) that Donato Lafergola, President, Matera Properties Incorporated, write and pass the Master Electrician exam and obtain a Master Electrician License by December 31, 2007 or a new Mater Electrician is designated; and
- (2) a copy of the Certificate of Examination is sent to the Registrar within fifteen (15) days of receiving the Certificate.

[2] The Director further provided that to accept the Provisional Electrical Contract License with conditions, the Applicant must sign and return an Undertaking to the Director prior to August 1, 2007.

[3] The Applicant decided to appeal the Director's decision dated July 13, 2007 by filing on July 18, 2007 a Notice of Appeal before the Review Panel. Three persons were initially appointed to the Review Panel for this Appeal, Roy Hicks, Robert Nelson, and Reg McDonald. However, it was determined that Reg McDonald could no longer participate on the Review Panel. It was further determined that the Review Panel could be constituted of two persons, being Roy Hicks and Robert Nelson. The parties were asked if they had any objections to the Review Panel so constituted and both parties stated for the record that they had no objections. The parties further stated that they had no preliminary objections or other objections to the jurisdiction of the Review Panel to proceed to hear this Appeal.

[4] The issue in this Appeal concerns the exercise of the Director's discretion pursuant to Section 10(3) of Ontario Regulation 570/05 under the Act concerning the licensing of electrical contractors and master electricians (the "Regulation"). Section 3 of the Regulation states that "No person shall operate an electrical contracting business without an electrical contractor license issued under this Regulation." Section 4(2) of the Regulation states that "An electrical contractor shall designate one or more master electricians to assume their responsibilities set out in Section 6 for the carrying out of the electrical work on the contractor's behalf." Section 5 of the Regulations states that "No person shall assume the responsibilities set out in Section 6 for the carrying out of electrical work on behalf of an electrical contractor without a master electrician license issued under this Regulation."

[5] The key provision of the Regulation is Section 10(3). It states as follows:

(3) A person described in Subsection (1) may apply for a provisional electrical contractor license 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."

[6] It is not disputed that the Applicant does not have an electrical contractor license issued under the Regulation and has not designated one or more master electricians to assume the responsibilities for carrying out electrical work on the Applicant's behalf. It is also not in dispute that the Applicant did not apply for a provisional electrical contractor license between July 1, 2006 and November 30, 2006.

[7] The issue in this case concerns the exercise of the Director's discretion under Section 10(3) of the Regulation to give her approval to the Applicant to apply for a provisional electrical contractor license after November 30, 2006. The Director may give such approval if, in her opinion, it would be a hardship not to allow the Applicant to apply. The Director has, by her decision dated July 13, 2007 offered to issue a provisional electrical contractor license to the Applicant subject to the Undertaking. Another way to state the issue is, was this offer by Director to the Applicant inconsistent with the Regulation and specifically Section 10(3) thereof?

[8] Donato Lafergola testified on behalf of the Applicant. Lucy Impera and Wendy Reid each testified on behalf of the Director. It was no dispute in this case as to the issue before the Review Panel and that the Applicant had the burden of proof.

EVIDENCE

[9] Donato Lafergola testified on behalf of the Applicant that he was not aware of the requirements of the Regulation and in particular the requirement to apply for a provisional electrical contractor license between July 1, 2006 and November 30, 2006. Mr. Lafergola stated that he was not aware of information that was widely distributed to stakeholders in the electrical contractor industry concerning the requirements of the Regulation and even if his employees were aware of this, it was not their responsibility to inform him of this information. He also testified that it would, in his opinion, be a hardship for the Applicant to give the Undertaking requested by the Director in her decision dated July 13, 2007. Donato Lafergola testified that he did not want to write and attempt to pass the Master Electrician exam to obtain a Master Electrician License by December 31, 2007 essentially because he was concerned that he might fail that exam. He also testified that he did not want to hire a Master Electrician to be designated because he was reluctant to have a person in this capacity gain what he perceived would be unacceptable financial control over his business which may put his business at risk. He also testified that the uncertainty over his licensing status would impair the Applicant from accepting new business.

[10] On behalf of the Director, Lucy Impera and Wendy Reid testified about the efforts that were undertaken by the ESA make the public and electrical contractors specifically aware of the requirements of the Regulation. Their evidence essentially was that the requirements of the Regulation were communicated to the stakeholders in the electrical contractor industry by a variety of means including contractor and association meetings over a period from 2001 to 2007; mailings; ESA publications; postings of materials at the offices of wholesalers and distributors

(including at order counters) and distribution to the MPP offices; information sent out to Municipalities; mailings set out to the ESA Bulletin subscribers (it was acknowledged that the Applicant was a subscriber to the ESA Bulletin); telephone hold messages and reminders to callers at the ESA customer service centre; (evidence was submitted that there was several telephone contacts between the Applicant's employees and the ESA customer service centre during the period from July 1 to November 30, 2006) and through inspectors. Accordingly, it was the position of the Director that the Applicant through its managers or employees knew or ought reasonable to have known about the requirements of the Regulation in the timely fashion that would have permitted the Applicant to apply for a provisional electrical contractor license between July 1, 2006 and November 30, 2006.

[11] With respect to the Undertaking, they also testified that there were courses available in the Applicant's geographical region to permit Mr. Lafergola to write the exam for his master electrician license prior to December 31, 2007 and with these courses there were services available to assist him if he had difficulty with the exam as a consequence of English being his second language. It was also their testimony on May 2007, the ECRA Board passed a recommendation endorsing the conditions of the Undertaking and that 160 unlicensed contractors had been offered the same Undertaking and 159 of those unlicensed contractors have agreed to the Undertaking.

[12] No other evidence was submitted by the Applicant to establish any particular hardship or the basis upon which it would be reasonable for the Applicant to refuse to sign the Undertaking proposed by the Director in her decision of July 13, 2007.

DECISION

[13] The Applicant failed to file a completed application pursuant to Section 10(3) of the Regulation by November 30, 2006. Although the Applicant states that he was not aware of this requirement, the Applicant's ignorance of the requirements of the law is not a legitimate basis to excuse it from the application of the law.

[14] The Applicant filed its first application for a provisional electrical contractor's license on May 24, 2007 (the Exhibit 2 Tab 2). The Director decided on June 25, 2007 to refuse to grant a license to the Applicant under Subsection 113.2 of the Act because the Applicant failed to apply between July 1, 2006 and November 30, 2006, the application was incomplete and the Applicant refused to sign the Undertaking that it meet the Master Electrician requirements by December 31, 2007.

[15] The Applicant was permitted to apply for a provisional electrical contractor license after November 30, 2006 and was by the Director's decision dated July 13, 2006 granted the opportunity to obtain a provisional contractor license subject to compliance with the Undertaking.

[16] Taking into account all of the testimony and documentary evidence, it is the decision of the this Review Panel to deny the appeal of the Applicant. It is clear that the Director has properly exercised her discretion under 10(3) of the Regulation. In this regard, we find that the

Director's decision was the correct decision taking into account the evidence, the Act and the Regulation and all other relevant considerations.

[17] The appeal is therefore dismissed.

Dated the 17th day of September, 2007

Roy Hicks

Robert Nelson
