
ELECTRICAL SAFETY AUTHORITY REVIEW PANEL

B E T W E E N:

DIRECTOR, ONTARIO ELECTRICAL SAFETY CODE
(the "Respondent")

- and -

MDS GENERAL CONTRACTING, A DIVISION OF 1725650 ONTARIO INC.
(the "Appellant")

DECISION

Review Panel:	Roy Hicks, Frank Zechner
Date:	December 13, 2010
File Number:	7002830
Appeal Number:	NOAC 10-11

APPEARANCES

Director, Ontario Electrical Safety Code)	Peter Thorning, Counsel
)	Ted Olechna, Director, Ontario
)	Electrical Safety Code
)	
MDS General Contracting,)	
A Division of 1725650 Ontario Inc.)	Darin J. Sanders, Proprietor
)	
)	

INTRODUCTION

[1] A hearing in this matter was held on Wednesday, November 17, 2010 before this Review Panel comprised of Roy Hicks and Frank Zechner. There were no objections to the jurisdiction of the Review Panel to hear this matter and there were no other preliminary objections.

[2] On behalf of the Director, Ontario Electrical Safety Code (the “Director”), a Document Brief was filed and entered as Exhibit 1. At Tab 1 of Exhibit 1 is found the Affidavit of the Director, Ted Olchena and the documents found at Tabs A-E of Exhibit 1 are exhibits to that Affidavit. Those documents were admitted without further proof on the consent of the Appellant and, as discussed later in this Decision, the facts described in the Affidavit are not disputed by the Appellant.

[3] The work performed by the Appellant which is the subject matter of this appeal was done at 67 Bridges Drive, Newcastle Village, Ontario, a residential dwelling (the “Premises”). The Appellant filed the following documents in respect of this work which were admitted without objection from the Director:

- (i) Quotation dated April 27, 2009 marked as Exhibit 2
- (ii) Quotation dated May 16, 2009 marked as Exhibit 3
- (iii) Invoice for work performed dated October 5, 2009 marked as Exhibit 4

[4] The Appellant also filed a compact disc on which is recorded nine photographs of the work in question which was admitted without objection from the Director as Exhibit 5. The Appellant also filed a three page hand written document showing floor plans of the Premises where the work was performed which was admitted without objection from the Director and marked as Exhibit 6.

[5] Based on the opening statements of the parties and the admissions made in the course of the hearing, the facts relevant to this appeal are not in dispute in any material way.

[6] On or about March 1, 2010, Ramdeo Soochit, the owner of the Premises called the Electrical Safety Authority (the “Authority”) to report a number of electrical concerns after renovations were completed by the Appellant at the Premises.

[7] An Authority inspector attended at the Premises and noted two defects. The first defect concerns performing electrical work without filing an Application for Inspection and without being licensed by the ECRA/ESA to perform electrical work, contrary to Rule 02-004(1) under the *Ontario Electrical Safety Code* (the “Code”). The second defect concerns concealing wiring or rendering the wiring inaccessible until it has been inspected contrary to Rule 02-004(6) under the Code.

[8] As a result, a Hazardous Investigation Defect Notice dated March 13, 2010 was issued to the Appellant by the Authority, including instructions to the Appellant for correcting the above described two defects. Essentially, the Notice ordered the Appellant to engage a licensed electrical contractor immediately to perform the remedial work and to submit an Application for

Inspection with the appropriate fee to the Authority, to correct the defects by not later than March 26, 2010 and to advise the Authority of the correction of the defects (the “Order”).

[9] On March 26, 2010, the Appellant filed a Request for Review of the Order. Essentially, the position of the Appellant was, that it was believed that the homeowner was obliged to obtain the necessary Application for Inspection and that the Appellant was to supply labour only. In addition, the Appellant was of the view that the owner of the Premises was satisfied with the work done by the Appellant and decided to contact the Authority only after the Appellant took legal action against him on an alleged failure to pay for work performed on a subsequent job.

[10] On March 27, 2010, the Authority delivered a Hazardous Investigation Notice Followup to the Appellant with respect to the same defects.

[11] On April 13, 2010, the Director issued his decision on the Appellant’s Request for Review dated March 26, 2010 and that decision was to confirm the Order as set out in the Hazardous Investigation Defect Notice.

[12] On April 27, 2010, the Appellant filed a Notice of Appeal of the Director’s Decision and this Review Panel was subsequently appointed to hear that Appeal.

ISSUE

[13] The issue in this Appeal is whether the Order as confirmed by the Decision of the Director dated April 13, 2010 is correct and more specifically, whether the Decision is correct in confirming the Order to require the Appellant to (i) correct the defects by engaging a licensed electrical contractor to perform the remedial work; (ii) submit an Application for Inspection to the Authority (with the appropriate fee); and (iii) to correct the defects and advise the Authority following correction of the defects.

EVIDENCE

[14] During hearing, this Review Panel heard testimony from the Director, Ted Olchena, which was essentially consistent with his Affidavit found under Exhibit 1. Mr. Olchena is Director under the Ontario Electrical Safety Code. It is his responsibility to enforce the Code and to ensure that it is consistently applied and enforced by Authority field staff. He has held this position for the past 9 or 10 years.

[15] The Director testified that it was determined by the inspector that the Appellant had performed electrical work at the Premises without filing an Application for Inspection and without being a licensed electrical contractor authorized to perform electrical work, in violation of Ontario Regulation 570/05 and Section 113.2(1) made under part VIII of the *Electrical Act*, 1998. This was also in violation of Rule 02-004(1) under the Code which states:

“A contractor shall file with the inspection department a completed application for inspection of any work on an electrical installation,

- (a) before or within 48 hours after commencement of the work whether or not electrical power or energy has been previously supplied to the land, building or premises on which the work was performed;
- (b) shall pay the fees prescribed by the inspection department; and
- (c) be in compliance with Ontario Regulation 570/05 made under part VIII of the *Electricity Act*, 1998.

[16] Regulation 570/05 under the *Electricity Act*, 1998 provides in Section 3 that:

“No person shall operate an electrical contracting business without an electrical contractor license issued under this Regulation.”

It further provides that in Section 4 that:

“4(1) an electrical contractor shall ensure that all electrical work carried out on the electrical contractor’s behalf is carried out in accordance with all applicable laws, including the Electrical Safety Code and the laws relating to health and safety, employment standards, consumer protection, business tax and business practices.

4(2) an electrical contractor shall designate one or more master electricians to assume their responsibilities set out in Section 6 for the carrying out of electrical work on the contractor’s behalf.”

Section 1(1) of Regulation 570/05 defines electrical installation as follows:

“Electrical installation means the installation of any wiring in or upon any land, building or premises from the point or points where electric power energy can be supplied from any source to the point or points where such power or energy can be used in or on the land, building or premises by any electrical equipment, including the connection of any such wiring with any of that equipment, and any part of the wiring, and the maintenance, alternation, extension and repair of such wiring.”

Section 1(1) of Regulation 570/05 defines electrical work as follows:

“Electrical work means work within the scope of the Electrical Safety Code which consists of constructing, installing, protecting, maintaining, repairing, altering, connecting or disconnecting any electrical installation or electrical equipment.”

[17] The Director testified that any work performed on an electrical installation must be performed by a licensed electrical contractor. He stated that such electrical work would include wiring outlet boxes, installing pot lights, installing heated floors and installation of receptacles. He testified that the work performed at the Premises was work on an electrical installation which must be performed by a licensed electrical contractor.

[18] The Director testified that the second defect concerned a violation of Rule 02-004 (6) which states,

“An electrical installation shall not be sealed and rendered inaccessible until it conforms to this Code and such concealment or rendering inaccessible has been authorized by an Inspector.”

[19] The Director testified that the purpose of Rule 02-004(6) is to permit the inspector to assess if an installation has been performed in compliance with the Code before it has been sealed from view.

[20] The Director testified that a search was conducted of the Appellant and it was determined that the Appellant was not a licensed electrical contractor. He testified that the Appellant was performing the work in question, which work was within the scope of the Code, and it was the obligation of the Appellant to ensure that that work was performed by a licensed electrical contractor and that the necessary Application for Inspection was submitted. He also testified that it was also the Appellant's obligation to ensure that the wiring on which the work was performed was not concealed contrary to Rule 02-004(6). He testified that the Appellant failed to comply with these obligations.

[21] The Appellant had no cross examination of Ted Olchena and Mr. Sanders expressly stated that he agreed with Mr. Olchena's evidence.

[22] Mr. Sanders then testified for the Appellant. His testimony was essentially consistent with the statements contained in his letter to the Authority dated March 26, 2010 (Exhibit 1 – Tab B). With reference to the two defects identified in the Hazardous Investigation Defect Notice dated March 13, 2010 (Exhibit 1 – Tab A), he did not dispute that neither he nor the Appellant is a licensed electrical contractor. He testified that he was under a misapprehension that he could do the electrical work without being a licensed electrical contractor provided that the homeowner supplied the equipment and arranged for an electrical inspection. He also acknowledged that the Appellant did not file an Application for Inspection and he further acknowledged that the work in question was electrical work on an electrical installation and was concealed prior to any inspection. In this regard, he explained that he thought that it was the homeowner's responsibility to arrange for the inspection.

[23] Mr. Sanders testified that not dispute the validity of either of the two defect notices. He testified that when the work was performed, it was his understanding that he had a verbal agreement with the owner of the Premises to perform electrical work and to supply only the required labour to complete the requested items with the understanding that the owner of the Premises would take responsibility to supply all required materials and to obtain all applicable permits necessary to complete the work. He further testified that he contracted to perform other work for the owner of the Premises in May and July of 2009 and such work was completed by around the end of September 2009.

[24] Mr. Sanders testified that he did not know how he could comply with the Order issued by the Authority because as he was in a civil dispute with the owner of the Premises over non-payment for other subsequent work performed, he would not be permitted access to the Premises nor would any electrical contractor retained by him be permitted access to the Premises to correct the defects. There was some discussion before the Panel about what the Appellant's obligations might be in the event that the owner of the Premises refused to allow a licensed

electrical contractor hired by the Appellant to enter the Premises to correct the defects. While that issue is not before this Panel, should this occur at a future date, it would be up to the ESA to determine to take such action, if any, as it may deem appropriate to deal with the situation.

DECISION

[25] The evidence supports, and it is not disputed by the Appellant that the work performed at the Premises by the Appellant was electrical work performed without filing an Application for Inspection and such work was not performed by a licensed electrical contractor contrary to Ontario Regulation 570/05 and Section 113.2(1) made under part VIII of the *Electricity Act, 1998* and contrary to Rule 02-004(1n) of the Code. Further, the evidence supports, and it was not disputed by the Appellant that in connection with the performance of this work, the wiring was concealed or rendered inaccessible before it had been inspected, contrary Rule 02-004(6) of the Code.

[26] In light of these findings, this Review Panel has no alternative but to find that the Decision of the Director dated March 26, 2010 was correct.

[27] The concerns of the Appellant with respect to the difficulties which may be encountered in complying with the Order in the event that the owner of the Premises refuses to grant access to the Appellant or to any electrical contractor retained by the Appellant are a matter of speculation about which this Review Panel cannot comment except to state that we would encourage the Appellant to make every reasonable effort to comply with the Order and to correct the defects and to make the Authority aware of any difficulties which may be encountered in doing so.

[28] This Appeal is therefore dismissed.

Dated December 13, 2010

“Roy Hicks”

Roy Hicks

“Frank Zechner”

Frank Zechner