

APPEAL NUMBER: NOA 21-01L

AN APPEAL FROM AN ESA ORDER ISSUED PURSUANT TO SUBSECTION 113(11) OF
THE *ELECTRICITY ACT, 1998*, S.O. 1998, C. 15, SCHED. A.

BETWEEN:

MORADALI A. BANDZAR

Appellant

- and -

DIRECTOR OF LICENSING, ELECTRICAL SAFETY AUTHORITY

Respondent

Decision of the Review Panel

Review Panel: Reena Goyal, Lee Lawrence, Rainer Arocena

Hearing Dates: November 14-15, 2022

Appeal Number: NOA 21-01L

APPEARANCES

For the Appellant

Self-represented
(Andrew Bandzar, assisting)

For the Respondent/Director

Jillian Siskind

Independent Legal Counsel

Justin Safayeni

I. DECISION

1. This is an appeal brought by Moradali Bandzar of the ESA licencing department's refusal to renew Bandzar's Master Electrician Licence.
2. For the reasons set out in this decision, this Panel finds that the ESA was correct to deny Bandzar's renewal application. This appeal is therefore dismissed, without costs.

II. BACKGROUND

A. Overview and preliminary issues

3. This appeal was heard by the Review Panel ("**Panel**") on November 14 to 15, 2022. It proceeded by way of a virtual hearing, on agreement of the parties, pursuant to the Electrical Safety Authority's ("**ESA**") *Rules of Procedure for Reviews and Appeals* ("**Rules**") and the ESA's *Review Panel Remote Proceedings Guidelines*.
4. The Appellant Bandzar was self-represented in these proceedings, although he was assisted throughout by his son, Andrew Bandzar, who is an attorney practicing in a jurisdiction outside of Canada.
5. On the first day of the hearing, the Panel dealt with a preliminary issue concerning whether the Appellant Bandzar would be calling evidence from his wife, Sonia Bandzar and possibly from the ESA Director of Licensing ("**Director**"), Soussanna Karas. Counsel for the Respondent objected to such evidence being called, on the basis that (i) Bandzar was required to disclose a witness list and a brief description of the testimony expected from each witness prior to the hearing by no later than August 31, 2022; and (ii) Bandzar was required to take steps to secure Karas' attendance as a witness (either by way of summons or voluntarily) by no later than July 15, 2022, pursuant to procedural directions made at a pre-hearing conference.
6. It is undisputed that Bandzar did not take any steps to secure Karas' attendance, nor did Bandzar make any disclosure to the Respondent of witness lists or will say statements, at any point before the appeal hearing.
7. The Panel advised Bandzar that it was not prepared to allow Sonia Bandzar to testify without a will say of her testimony being provided to the Respondent in advance and that, in such a scenario, the matter would have to be adjourned in order to allow time for the Respondent to review such will say statement. The Panel also advised Bandzar that it had similar concerns about lack of notice to the Respondent if Karas were to be called. In response to these concerns, Bandzar emphasized that he wished for the hearing to be completed during the allotted time available (on Nov 14-15, 2022) and advised that he wanted to proceed without calling Sonia Bandzar or Soussanna Karas.
8. Bandzar presented his case first. He was the only witness for the Appellant. In the course of being cross-examined, it became apparent that there was confusion over whether Bandzar had, in fact, received and reviewed documentary disclosure sent electronically by the

Respondent and the ESA's Manager of Reviews and Appeals in January 2022. At approximately 11:30 AM on November 14th, the Panel directed that these documents be re-sent to Bandzar (and his son), and adjourned the proceeding to ensure Bandzar had adequate time to review the documents provided. The Panel advised Bandzar that following the completion of cross-examination, he would be provided an opportunity to speak to any issues arising out of or related to the documents if he wished to do so.

9. The hearing resumed with Bandzar's cross-examination and re-examination on the morning of November 15, 2022. Following his testimony, the Panel heard evidence from the Respondent's sole witness, Scott Eason, who was a project specialist in ESA's licensing department up until mid-2022. Both parties provided oral closing submissions and argument. The Panel reserved its decision pending the release of this Decision.

B. Facts

10. The ESA issues Master Electrician Licences, which up until April 2016 needed to be renewed every one or two years. Bandzar first received his Master Electrician Licence from the ESA in 2006.
11. Along with a Master Electrician Licence, the ESA also issues photo identification cards. These cards are renewed every five years. The identification card is invalid if carried on its own. As stated on the back of the card: "This card is only valid if accompanied by the Master Electrician Licence".
12. Bandzar's Master Electrician Licence expired in February 2015 (a record of the Notice of Expiry is reflected in Exhibit 7). In January 2016, Bandzar completed a renewal for his licence and paid his fees in arrears, resulting in his Master Electrician Licence being validated for a one-year period from February 2015 to February 2016. This was the last time Bandzar's Master Electrician Licence had been renewed.
13. In February 2016, Mr. Bandzar was provided with an identification card with an effective date of February 6, 2016 and expiring February 5, 2021 ("**ID Card**") (Exhibit 4). Bandzar testified that he had understood that his Master Electrician Licence also expired on that same date (February 5, 2021). As outlined further below, Bandzar's evidence is that he formed this understanding based on comments made to him by ESA representatives in the course of telephone discussions in early 2016.
14. Bandzar contacted the ESA again in early 2021, expecting to be able to renew his Master Electrician Licence. Over a series of conversations and communications, the ESA advised Bandzar that he would have to either put in an entirely new application for a Master Electrician Licence, or could otherwise try to pursue an "undue hardship application" in order for the matter to be treated as a renewal. More specifically, ESA's licensing department staff advised Bandzar of the ESA's position that there was no discretion for the Director to treat Bandzar's application as a renewal — given that it was more than a year past the expiry date — unless he could satisfy the Director that his situation was one of "undue hardship" within the meaning of section 15(10.1) of Ontario Regulation 570/05 (Licensing of Electrical Contractors and Master Electricians) ("**Regulation**") made under the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A ("**Electricity Act**").

15. While Bandzar and his wife Sonia Bandzar took some steps towards completing an undue hardship application on Bandzar's behalf, the application was ultimately not pursued by Bandzar.
16. On May 11, 2021, the ESA's licencing department issued a Notice of Proposal refusing to renew Bandzar's Master Electrician Licence, pursuant to subsection 113.4 of the *Electricity Act*.
17. As a result, Bandzar would be required to re-apply for his Master Electrician Licence. Among other things, applying for a licence anew requires Bandzar to write and pass the ESA's master electrician qualifying examination.
18. Bandzar subsequently applied to the Statutory Director, Reviews and Appeals ("**Statutory Director**") for a review of the Notice of Proposal.
19. By decision dated October 22, 2021 (Exhibit 3), the Statutory Director dismissed Bandzar's application relying in part on the Regulation, as follows (at para 16):

"Ontario Regulation 570/05 is clear under section 15(10) that a renewal application for the Master Electrician Licence must be made no more than 12 months after the expiry of the licence and that in order to obtain a Master Electrician Licence after 12 months, the individual must make a fresh application for a new Master Electrician Licence. The wording is clear and explicit in the Regulation. The Director does not have the authority or any discretion to disregard it."
20. On November 7, 2021, Bandzar filed a Notice of Appeal to Review Panel (Exhibit 2) in respect of the Statutory Director's decision. The Notice of Appeal stated the following reasons in support of Bandzar's appeal request:
 - a. "The hearing by [the Statutory Director] was written and not virtual (oral) via zoom. Appellant was not able to effectively explain his position."
 - b. "The appellant was told he did not have to pay any fees to maintain his license since he was going to be inactive after 2016. Thus, he was actually misled by ESA which is why he is in the predicament that he is currently in."
 - c. "The reason why [Bandzar] did not follow through with his past practices of renewing after 2016 was because he was instructed to act contrary to that of prior years by ESA. His non-compliance was not intentional. It was a proximate result stemming from misinformation coming from ESA back in 2016."

III. LEGISLATIVE SCHEME

21. This appeal primarily involves the interpretation and application of the Regulation. The key provision in the Regulation is section 15(10). Together with some surrounding relevant statutory provisions, that section reads as follows:

15. (3) A master electrician licence expires on the date indicated on the licence.

(4) An application for the renewal of an electrical contractor licence or a master electrician licence shall be made no later than 30 days before the expiry date of the licence, shall be in the form established by the Authority and be accompanied by the fee set by and payable to the Authority.

...

(9) If the licence holder applies for a renewal more than 14 days but less than one year after the expiry date, the holder shall submit the information or documents described in subsection (5) or (7), as applicable, pay the renewal fee, calculated from the date of expiry of the expired licence, and the late filing fee established by the Authority.

(10) Subject to subsection (10.1), an application for a renewal of a master electrician licence submitted one year or more after the expiry date of the expired licence shall be treated as a new application and all requirements relating to new applications apply, including the requirement to pass the master electrician qualifying examination within the 12-month period preceding the date of the application.

(10.1) If the licence holder applies for the renewal of a master electrician licence one year or more after the expiry date of the expired licence and a Director has reason to believe that the licence holder did not make the application before that expiry date because of extenuating circumstances that created undue hardship for the licence holder, the Director may accept the application if it contains the information or documents described in subsection (7) and the licence holder pays the fee that would have been payable if the licence holder had made the application in accordance with subsection (4).

(10.2) If a Director grants an application for the renewal of a master electrician licence under subsection (10.1), the Director may impose terms, conditions and limitations on the renewal as the Director sees fit if they relate to eligibility of the applicant for the original licence. [Emphasis added].

22. The authority of this Panel in respect of the Statutory Director's decision is set out in section 10(10) of O. Reg. 187/09 (General) made under the *Safety and Consumer Statutes Administration Act, 1996*, S.O. 1996, c. 19. That provision states: "The Review Panel may, by order, confirm, amend or rescind the decision of the Director or make whatever other decision that the Review Panel deems appropriate."

IV. ISSUES TO BE DECIDED

23. The main issue in this appeal is whether Bandzar's Master Electrician Licence application should be treated as a "renewal" (as Bandzar contends), or as a new application (as the Respondent contends, and as the Statutory Director found). A related issue is the appropriate standard of review to be applied by this Panel when reviewing decisions made by the Statutory Director.

V. EVIDENCE

24. The following is a brief summary of the highlights of the witness testimony in this proceeding. It is not designed to be a comprehensive recitation of the evidence, and instead focuses on the main issues pressed by the parties in their respective arguments.

A. Moradali Bandzar

25. The crux of Bandzar's testimony was that, at some point in early 2016, he had a discussion with an ESA representative regarding his Master Electrician Licence and was advised by that representative that Bandzar had an "inactive licence" or "non-active licence"; that he could "park" that licence; and that he would be sent a photo identification card that he could then rely on.
26. Bandzar further testified that upon receipt of the ID Card in the mail a short time later, he noticed the text on the back of the ID Card stating: "This card is only valid if accompanied by the Master Electrician Licence". Bandzar's evidence was that he then called the ESA again. Bandzar testified that he was told, once again, by an ESA representative that his licence was "OK to go", that it was "parked right here" and that he could "rely on the ID card".
27. Based on these conversations with ESA representatives, Bandzar testified that he believed he had exercised "due diligence" and tried his best in terms of understanding what needed to be done to maintain his Master Electrician Licence.
28. In cross-examination, Bandzar testified that the ESA representative that advised him of this information about "parking" his licence was Scott Eason. Bandzar acknowledged that he did not inquire on his calls with the ESA what was meant by the term "park right here". He also acknowledged that he may have received a Letter of Expiry from the ESA in respect of his Master Electrician Licence on or about February 6, 2015 (advising Bandzar that the licence has expired), and that he did receive such a letter on or about February 6, 2016.
29. Bandzar also testified that he held licences in California, Georgia and Ontario, and that he had an inactive licence in California during 2015-2016. Bandzar also held a separate "journeyman" electrician licence in Ontario, which was under the purview of the Ontario College of Trades in 2016 ("OCOT") (and is now administered by Skilled Trades Ontario).
30. Finally, Bandzar confirmed that he was not interested in pursuing an undue hardship application, despite having received information on how to do so by the ESA.

B. Scott Eason

31. Eason was a project specialist in the ESA's licensing department from 2015 until mid-2022. In 2016, when Bandzar claims to have had discussions with Eason, Eason was managing the ESA's licensing administration team, and his responsibilities would include dealing with licensing situations that were escalated to his attention.
32. Eason testified that he had no recollection of ever speaking to Bandzar in 2016, that he likely would have made notes or records had such conversations occurred, and that he did not locate any such notes or records in his review of the ESA's file for Bandzar. Eason's evidence was that there is no ESA process to "park" a Master Electrician Licence (and there never has been); the licence needs to be renewed, and if it is not renewed then it is invalid.
33. Eason explained that by the time Bandzar received the ID Card in early 2016, that would have been Bandzar's third photo ID card. Eason gave evidence that Bandzar's Master Electrician Licence expired 2013, but was renewed. Bandzar's Master Electrician Licence expired again in February 2015, and was renewed in February 2016 when Bandzar paid arrears to validate the licence for the February 2015-February 2016 period.
34. Based on notes of ESA's communications with Bandzar (Exhibit 6), Eason testified that Bandzar received a Notice of Renewal form by email on or about January 7, 2016, and that the ESA would have advised Bandzar that his renewal was on hold because his "journeyman" electrician licence from OCOT had expired. (The journeyman licence is a base requirement for the Master Electrician's Licence.)
35. Eason further testified that, as per the February 5, 2016 Letter of Expiry sent to Bandzar by mail, the Master Electrician Licence expired at that point in time. Eason testified that while the actual Letter of Expiry is no longer available due to changes in the ESA's record-keeping system, Exhibit 9 is a reliable recreation of the Letter of Expiry that Bandzar would have received based on the text of other sample documents generated in or around that time period.
36. Eason stated that when Bandzar reached out again to the ESA in 2021, the ESA advised him that under the Regulation his situation had to be treated as an application for a new Master Electrician Licence, rather than a renewal. Eason's evidence was that Bandzar did not ultimately pursue a completed hardship application.

VI. ANALYSIS

A. The Appellant's Position

37. The Appellant acknowledges the constraints imposed by the statutory scheme, but argues that there must be some alternative relief available in the circumstances given Bandzar's position that he relied, in good faith, on representations made by the ESA about how his Master Electrician Licence could be treated. Bandzar emphasizes that the proximate cause of his entire predicament is the advice and information he was given during the course of his communications with the ESA. Bandzar's request to the Panel is that "some other type of remedy be offered" rather than requiring him to suffer as a result of the information he claims he received from the ESA.

B. The Respondent's Position

38. The Respondent contends that neither the Director, nor this Panel, have discretion to treat Bandzar's application as a renewal under the Regulation, given that the clear and mandatory language in section 15(10) of the Regulation, and that the application was made more than 12 months after the expiry of his Master Electrician Licence. The sole avenue for discretion is in circumstances of an undue hardship application under section 15(10.1) of the Regulation, which was not pursued in this case.
39. The Respondent adds there is good reason to doubt Bandzar's claim that he was advised by Scott Eason he could "park his licence", as there is no ESA policy that would allow for such an outcome, there is no record of such a discussion, and the legislation does not allow for such an approach.

C. Standard of Review

40. Independent legal counsel submitted that the Panel should adopt a correctness standard of review, relying on previous decisions of Review Panels, including in NOAL-15-01 (*Edison Electric Inc. v Director, Contractor Licensing and Powerline*). Applying a correctness standard means that this Panel must assess whether the Director's interpretation and application of the relevant statutory provisions was correct, rather than deferring to the Director's views or analysis. Counsel for the Respondent agreed with this submission. Bandzar did not address the standard of review in his submissions, despite being afforded an opportunity to comment on the advice given by independent legal counsel.
41. The Panel agrees that the appropriate standard of review is correctness.

D. Discussion of the Merits

42. As the evidence has shown, Bandzar has a history of allowing his professional licences and certifications expire. Exhibit 7 shows that Mr. Bandzar had received multiple Notices of Renewal in January 2016. Bandzar contacted the ESA on Jan 7, 2016, to pay arrears for a licence expired for the previous 11 months and was unable to do so due to an expired trade certification from OCOT.
43. Bandzar again contacted the ESA on January 11th, 2016, to take his account out of arrears and into good standing for the January 2015- January 2016 period. The evidence, including Bandzar's, testimony demonstrates that he then let his OCOT trade licence expire again the following year in January 2017.
44. Bandzar testified that he holds multiple certifications and licences in multiple jurisdictions, and by his own admission, "parks" them when he is not residing in that jurisdiction. While Panel finds that Bandzar was indeed genuinely confused about advice given on recertification or renewals for his multiple licences and certifications, it is incumbent on the licence holder to understand the rules and requirements of separate licences and certifications in each trade, profession, and jurisdiction.

45. The Panel also acknowledges that there may have existed a language barrier which contributed to Bandzar's misunderstanding in February 2016. However, it is clear from the support Bandzar has received from his son Andrew Bandzar throughout this proceeding, that assistance in interpreting and clarifying legal documents and contracts is readily available to him.
46. Furthermore, Bandzar's previous ten-year history with the ESA as a Master Electrician demonstrates that he understood the processes and submission requirements up to January 2016, that would have been necessary to renew his Master Electrician Licence for the year beginning in February 2016.
47. In any event, the Panel agrees with the Director's decision that subsection 15(10) of the Regulation precludes the ESA from granting a renewal of Bandzar's application in the circumstances. The Panel finds that the Director correctly identified and applied the applicable provisions of the Regulation.

VII. ORDER

48. The Panel confirms the Statutory Director's decision in this matter.
49. However, the Panel also finds that the ESA could have taken further steps to ensure that Bandzar understood in February 2016 that his licence would expire if not renewed within the following 12-month period.
50. As such, the Panel takes this opportunity to make the following recommendations to the ESA on a go forward basis, for the ESA's consideration:
 - a. maintain an automated call record of all phone calls made by Master Electricians regarding their accounts including ESA representative ID number (not just when a representative of the ESA makes notes in the Master Electrician's file);
 - b. maintain an electronic copy of all communications sent to the Master Electrician;
 - c. do not issue a photo ID card to a Master Electrician unless they are in good standing at the time of the issue date represented on the ID card;
 - d. implement a Standard Operating Procedure to have the Master Electrician surrender the photo ID card when the Master Electrician has exceeded the 12-month expiry period;
 - e. issue a written notification to a Master Electrician at each of the six-month and nine-month periods after a Master Electrician Licence has expired; and
 - f. as part of regular correspondence sent to licensees prior to date of expiry of their Master Electrician Licence, consider including the following licensing requirements in order to clarify and remind licensees of their obligations:

- i. As a licence holder, I will diligently ensure that my licence is current and valid, to the extent I intend to rely on it;
- ii. As a licence holder, I am aware of the consequences of allowing my licence to expire, including presumptively having to re-apply for a new licence if it is expired for more than a year, and will act promptly to renew my licence, to the extent I intend to rely on it;
- iii. As a licence holder, I will act diligently to ensure I am aware of all current and updated policies established by the ESA and any other authorities relating to my trade.

51. Although the ESA was successful in this appeal, the Panel finds that ESA staff could have taken further and better measures to ensure that Bandzar clearly understood that his Master Electrician Licence would expire if not renewed in the subsequent 12-month period. As such, the Panel orders that no costs are payable by either party.

Dated this 25th day of November, 2022

A handwritten signature in black ink, appearing to read 'Reena Goyal', is written over a horizontal line. The signature is stylized and cursive.

Reena Goyal, Presiding Member
Lee Lawrence
Rainer Arocena