

APPEAL NUMBER: NOAA 24-01

IN THE MATTER OF AN APPEAL UNDER PART IV OF ONTARIO REGULATION 187/09
MADE UNDER THE *SAFETY AND CONSUMER STATUTES ADMINISTRATION ACT, 1996*

BETWEEN:

KHALID AHMADI

Appellant

- and -

ELECTRICAL SAFETY AUTHORITY, DIRECTOR OF LICENSING

Respondent

Decision of the Review Panel

Review Panel: Ralph Van Haeren

Hearing Dates: In writing

Appeal Number: NOAA 24-01

For the Appellant

Self-represented

For the Respondent

Tracey Gauley

Independent Legal Counsel

Dan Goudge

I. BACKGROUND

1. This appeal hearing was conducted by the Review Panel (“**Panel**”) in writing, pursuant to rule 19.3 of the Electrical Safety Authority’s (“**ESA**”) *Rules of Procedure for Reviews and Appeals*.
2. The basic facts and chronology in this case are set out in the Respondent’s materials. The Appellant does not contest them.

(a) The Appellant Performs Electrical Work Purporting To Be a Licensed Electrician

3. In early September 2022, Valencia Rodrigues Mayor contacted an individual purporting to be “Sam Yaqubi” through Facebook Marketplace about installing three exterior pot lights and a chandelier (the “**Electrical Work**”) at her residential property located at 185 Tapadero Avenue in Stittsville, Ontario (the “**Property**”). The person purporting to be Mr. Yaqubi had advertised on Facebook Marketplace offering electrical services.
4. After some back and forth, the person purporting to be Mr. Yaqubi and Ms. Mayor agreed that the Electrical Work would be completed on October 1, 2022.
5. The Appellant, Mr. Ahmadi, attended with another individual at the Property on October 1, 2022 to perform the Electrical Work. When asked by Ms. Mayor if he was a licenced electrician, the Appellant stated that he worked for Electrical Excellence Ottawa Inc. and showed Ms. Mayor a screenshot of a Google search of the company’s name, which included an Electrical Contractor Registration Agency License number.
6. The Appellant and the other individual with him proceeded to complete the Electrical Work at the Property, however, during the performance of the work, a ladder slipped, causing damage to the Property’s eavestrough.
7. Later that day, the person purporting to be Mr. Yaqubi wrote to Ms. Mayor, informing her that the total cost of the Electrical Work was \$1,590.00, and that payment should be made via email transfer to the email address Electricalexcellenceottawa@gmail.com. Ms. Mayor responded that the Appellant and the other person who performed the Electrical Work had informed her that she could deduct \$90 from the final amount charged as a result of the damage to the eavestrough, and that if the damage ends up costing more to repair, a claim could be made through the company’s insurance provider. The person purporting to be Mr. Yaqubi agreed and Ms. Mayor proceeded to email transfer \$1,500.00 to the email address she was provided.
8. Upon completing the transfer, Ms. Mayor received a notification from her bank that the \$1,500.00 she had sent had been successfully deposited to the Appellant. The Appellant subsequently admitted that the funds were transferred to him personally, and that he created the email address Electricalexcellenceottawa@gmail.com.
9. Soon thereafter, Ms. Mayor attempted to contact the person purporting to be Mr. Yaqubi several times to discuss the estimates she had received to repair the damage to the eavestrough, but never received a response.

10. Ms. Mayor then contacted Electrical Excellence Ottawa Inc., and was advised by the owner, Liaquat Shaikh, that his company never received a request to perform the Electrical Work at the Property, nor did it authorize the Appellant and the other individual who performed the work to do so. Mr. Shaikh further advised that the Appellant and the other individual who performed the Electrical Work were former employees of his company, but that they did not perform electrical work while employed with him, as they were not licensed electricians. Mr. Shaikh also informed Ms. Mayor that the email address she had been provided did not belong to his company, as the email address it used for email transfers was electricalexcellenceottawa@outlook.com.
11. On November 22, 2022, Matthew Thompson, an Inspector with the ESA, performed an inspection of the Electrical Work completed at the Property. Mr. Thompson discovered defect 2-034, finding that the installation of the exterior pot lights was not completed in accordance with the manufacturer's directions. The defect was subsequently corrected and passed a further inspection, at an additional cost to Ms. Mayor.

(b) The Complaint

12. On November 13, 2022, Mr. Shaikh made a complaint to the ESA, alleging that the Appellant misrepresented himself to Ms. Mayor as being an employee of Electrical Excellence Ottawa Inc., and that he had performed the Electrical Work without a valid licence.
13. On June 5, 2023, the Appellant was interviewed as a part of the ESA's investigation of the complaint, and admitted that he performed the Electrical Work at the Property, that he held himself out as being a licensed electrician working for Electrical Excellence Ottawa Inc., and that he was paid directly for the Electrical Work through the email address he created, Electricalexcellenceottawa@gmail.com.

(c) The Administrative Penalty Order and Resulting Appeal

14. On November 1, 2023, a Notice of Intent to Issue an Administrative Penalty Order was issued by the Respondent, and served on the Appellant on November 13, 2023, via registered mail.
15. The Appellant did not provide a response to the Notice.
16. On February 5, 2024, the Respondent issued an Administrative Penalty Order, finding that the Appellant contravened s. 3 of the *Licensing of Electrical Contractors and Master Electricians* regulation, O.Reg 570/05 (the "**Regulation**"), which requires anyone operating an electrical contracting business to hold an electrical contracting licence, and imposed an administrative penalty of \$4,500.00.
17. On February 25, 2024, the Appellant filed a Notice of Appeal to Review Panel. The grounds for the appeal assert that the Appellant was misled by his former employer, Mr. Shaikh, who made the Appellant perform electrical work without registering him for a licence or informing the Appellant about the ESA. The Notice of Appeal also asserts that the Appellant

lacks the financial capacity to pay the administrative penalty that had been imposed, and that he should instead be given a warning, rather than assessed a penalty.

18. On April 18, 2024, the ESA issued a Notice of Review Panel Hearing in this matter, which provided for a written process whereby the Respondent could file its response to the Notice of Appeal, after which the Appellant would be given a chance to provide responding submissions, followed by any reply from the Respondent.
19. The Respondent delivered its submission and disclosure on May 9, 2024, asserting that the Appellant had admitted to the conduct that contravened s. 3 of the Regulation and had raised no valid defence. However, the Respondent took the position that because of the mitigating circumstances raised by the Appellant, the quantum of the penalty should be reduced to \$1,750.00
20. The Appellant delivered his responding submission on May 30, 2024, stating he did not have the financial capacity to pay the reduced fine the Respondent was now proposing, and that he should instead be given a warning.
21. The Respondent delivered its reply submission on June 7, 2024, submitting that reducing the penalty to \$0 and issuing only a warning to the Appellant would be contrary to the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A. (the “*Act*”) and would essentially permit the Appellant to profit from his own non-compliance.

II. LEGISLATIVE SCHEME

22. With respect to liability, s. 113.2(1) of the *Act*, provides that:

Except as provided in the regulations, no person shall carry out or propose to carry out, or permit or employ another person to carry out, an activity referred to in the regulations as requiring an authorization without first obtaining an authorization in accordance with this Part and the regulations.

23. Section 3 of the *Regulation* then states that:

No person shall operate an electrical contracting business without an electrical contractor licence issued under this Regulation.

24. The *Regulation* further defines, in s. 1, “electrical contracting business” to mean “a business that is engaged in the carrying out of electrical work,” while also defining “electrical work” to be “work within the scope of the Electrical Safety Code that consists of constructing, installing, protecting, maintaining, repairing, extending, altering, connecting or disconnecting any electrical installation or electrical equipment.”
25. With respect to administrative penalty imposed by the Respondent, the key provision is s. 113.18.1 of the *Act*, which states:

113.18.1 (1) A Director may, by order, impose an administrative penalty against a person in accordance with this section and the regulations made

by the Minister if the Director is satisfied that the person has contravened or is contravening,

- (a) a prescribed provision of this Part or the regulations;
- (b) a restriction, limitation or condition imposed by a Director in respect of a prescribed authorization; or
- (c) a prescribed order of the Authority.

...

(3) An administrative penalty may be imposed under this section for one or more of the following purposes:

- 1. To ensure compliance with this Part or the regulations.
- 2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of a contravention described in subsection (1).

...

(4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000. [Emphasis added].

26. Further detail on the administrative penalty regime is set out in the *Administrative Penalties* regulations, O. Reg 12/23, which provides as follows:

6. For the purposes of subsection 113.18.1 (4) of the Act, a Director shall determine the amount of an administrative penalty for a contravention prescribed in section 1 of this Regulation in accordance with the following rules:

- 1. The Director shall determine whether, in the Director's opinion, the contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on electrical safety.
- 2. The range for the administrative penalty is set out in Column 2 of the Table to this section opposite the determination set out in Column 1 as described in paragraph 1.
- 3. The amount of the administrative penalty for the contravention is an amount selected by the Director from within the range described in paragraph 2 after considering the following criteria:
 - i. Whether the person who committed the contravention has previously been subject to enforcement actions under Part VIII of the Act or its regulations for contraventions of a similar nature.
 - ii. The extent of the harm, or of the degree of risk of harm, to others as a result of the contravention.

- iii. Whether the contravention was deliberate.
- iv. Whether the contravention was repeated or continuous.
- v. The length of time during which the contravention continued.
- vi. Whether the person who committed the contravention derived any economic benefit from the contravention.

TABLE
RANGE OF ADMINISTRATIVE PENALTIES

Column 1 Severity of adverse effect or potential adverse effect	Column 2 Range
Major	From \$5,001 to \$10,000
Moderate	From \$1,001 to \$5,000
Minor	From \$100 to \$1,000

III. ISSUES TO BE DECIDED

27. The issues to be decided on this appeal are:

- (i) whether the ESA has proven that the Appellant has contravened s. 3 of the *Regulation*, on a balance of probabilities; and
- (ii) if so, whether the \$4,500.00 penalty imposed in the Administrative Penalty Order should be confirmed, reduced to \$1,750 as the Respondent submits, or varied to be a different amount.

28. As was recently explained in *Soheil Sobat v. Director Licensing, Electrical Safety Authority*,¹ in the context of another appeal from an Administrative Penalty Order, this appeal hearing before the Review Panel is, in effect, a *de novo* process. That means that this Panel must assess for itself the correct interpretation and application of the relevant statutory provisions, rather than deferring to the Director's views or analysis, both with respect to liability and with respect to penalty.

¹ *Soheil Sobat v. Director Licensing, Electrical Safety Authority*, NOAA-23-05 at paras. 12-14.

IV. LIABILITY

A. The Appellant's Position

29. The Appellant admits that he conducted the Electrical Work as alleged and that he received payment for it in the amount of \$1,500.00. The Appellant also does not contest that he held himself out as working for Electrical Excellence Ottawa Inc., which he represented to Ms. Mayor was a licenced electrical contractor.
30. The Appellant's only defence on liability is that he was misled by his former employer, Mr. Shaikh, regarding his need to be licenced with the ESA.

B. The Respondent's Position

31. The Respondent submits that the Appellant has admitted to performing the Electrical Work, and that the evidence is clear that he did so without a licence issued under the *Regulation*. As a result, the Appellant contravened s. 3 of the *Regulation*.
32. The Respondent submits that the Appellant's defence that he was misled by his former employer should be rejected, as it is nothing more than an argument that the Appellant was not aware of the need to obtain a licence prior to performing the Electrical Work. Citing the decision in *Sobat*, referenced above, the Respondent submits that ignorance of the requirements of the *Regulation* is not a valid defence.²

C. Decision

33. I accept the ESA's position that the Appellant has contravened s. 3 of the *Regulation*.
34. The regulation clearly states that no person shall operate an electrical contracting business without a proper licence. The Appellant has admitted that he performed the Electrical Work. He did so without a licence issued under the *Regulation*.
35. I also reject the Appellant's submission that he should be found not liable because he was misled by his former employer about the need to obtain a licence.
36. As was found in *Sobat*, ignorance of the applicable regulatory regime is not a valid defence.³ The Appellant has the responsibility to know the applicable laws and to be in full compliance with them.
37. Based on my review of the materials submitted, and for the reasons stated above, I am satisfied the Appellant committed the contravention, as alleged.

² *Soheil Sobat v. Director Licensing, Electrical Safety Authority*, NOAA-23-05 at para. 26.

³ *Soheil Sobat v. Director Licensing, Electrical Safety Authority*, NOAA-23-05 at para. 26.

V. PENALTY

A. The Appellant's Position

38. The Appellant sole argument is that he lacks the financial resources to pay either the \$4,500.00 administrative penalty that has been assessed, or the Respondent's proposed penalty of \$1,750.00. Instead, the Appellant submits that he should be given a warning only.

B. The Respondent's Position

39. While the Respondent maintains that the \$4,500.00 penalty imposed in the Administrative Penalty Order is reasonable, in light of the Appellant's personal circumstances, the Respondent takes the position that the Review Panel should exercise its discretion and reduce the quantum of the penalty to \$1,750.00. The Respondent argues that a penalty of \$1,750.00 strikes the appropriate balance between the aggravating and mitigating factors present in this case, while also achieving the objectives of compliance and prevention, as set out in s. 113.18.1(3) of the *Act*.

40. Specifically, the Respondent submits that the following aggravating factors are relevant to the determination on penalty:

- a. The potential for major harm, as the Appellant is not a licenced under the *Regulation* to safely perform electrical work, and, in fact, was deficient in his performance of the Electrical Work at issue here, as was later discovered by the ESA inspector, Mr. Thompson.
- b. The Appellant's apparent deliberate intention to contravene s. 3 of the *Regulation*, by misrepresenting himself as an employee of Electrical Excellence Ottawa Inc., which he informed Ms. Mayor was a licenced electrical contractor. The Appellant also furthered this deception by creating an email address for payment that closely resembled the legitimate email address used by Electrical Excellence Ottawa Inc.
- c. The fact that the Appellant has admitted to being paid \$1,500.00 for performing the Electrical Work, thereby benefitting from his contravention.

41. With respect to mitigating factors, the Respondent submits that the following should be considered:

- a. The Appellant's willingness to participate in the investigation, as well as his willingness to admit that he performed the Electrical Work.
 - b. The Appellant's personal circumstances that would make payment of the \$4,500.00 penalty imposed in the Administrative Penalty Order unduly onerous.
42. The Respondent submits, however, that the penalty should not be reduced to \$0, as the Appellant submits, because doing so would undermine the objectives of ensuring compliance and deterring contraventions, and thus would be contrary s. 113.18.1(3) of the *Act*. Specifically, the Respondent submits that providing the Appellant with only a warning

would suggest that the regulatory regime has no teeth, as it would effectively condone the Appellant's profiting off of his own contravention.

C. Decision

43. The Panel agrees with the Respondent's position that there was a potential for major harm. The Appellant was not licenced to perform electrical work, and in fact was not in compliance with the Electrical Safety Code, as was discovered by the ESA inspector Mr. Thompson.
44. The Panel does not agree with the Appellant's position that he should be given a warning only and that the penalty should be reduced to \$0.
45. The \$4,500 penalty imposed in the Administrative Penalty Order is substantial and significant. The fact that the Appellant knowingly and willfully misrepresented himself, and intentionally falsified the email address for the remittance of payment, is troubling. The amount of a fine must be such that it would not be viewed as a mere slap on the wrist. It should also serve as a clear warning and deterrent to others who might be minded to engage in similar activity.
46. The Panel reluctantly agrees with the Respondent's position that, given the willingness of the Appellant to participate in the investigation, along with his personal circumstances, a reduction in the penalty from the original amount of \$4,500 would still strike a balance between the aggravating and mitigating factors presented in this case.

VI. ORDER

47. The Panel finds the Appellant liable for contravening s. 3 of the Regulation and amends the amount of the Administrative Penalty Order in this matter to \$2,000.
48. The Panel will also allow the Appellant and Respondent to consider a payment schedule suitable to both parties. If the parties cannot agree on a payment schedule, then they may each submit written proposals for a payment schedule to me, by way of email to Ms. Campbell of the ESA Reviews and Appeals office, by no later than July 31, 2024.

Dated this 24th day of July, 2024.



Ralph Van Haeren