

MANITOBA HUMAN RIGHTS BOARD OF ADJUDICATION

IN THE MATTER OF a complaint made under *The Human Rights Code*, CCSM c. H175

BETWEEN

Chantel Dunlop

Complainant,

MHRC File No.: 13 LP 01

AND

**LMG Properties Ltd. o/a Bay Hill Inn
and Suites**

Respondent,

The complainant, not present

The respondent, not present

For the Commission: Ms. Isha Khan

AND

Manitoba Human Rights Commission

Commission,

Pre-Hearing date: October 29, 2013

Pre-Hearing Memorandum Issued:
November 7, 2013

The adjudicator received correspondence from the Manitoba Human Rights Commission dated September 25, 2013 in which the Manitoba Human Rights Commission requested that dates be set to convene the hearing and that the hearing be moved from Winnipeg to Brandon. Counsel for the Manitoba Human Rights Commission advised that a copy of their correspondence was provided to all relevant parties.

On October 18, 2013, the adjudicator sent correspondence to counsel for the Manitoba Human Rights Commission as well as Mr. Sung for LMG Properties Ltd. o/a Bay Hill Inn and Suites and the complainant, Ms. Dunlop, advising that a telephone conference pre-hearing would need to be arranged to discuss the issues raised by the Manitoba Human Rights Commission. A number of potential dates were provided for that pre-hearing by teleconference to occur. The adjudicator heard from counsel on behalf of the Manitoba Human Rights Commission and on behalf of Ms. Dunlop confirming the date and time. There was no response from Mr. Sung on behalf of LMG Properties Ltd. o/a Bay Hill Inn and Suites.

Ultimately, the pre-hearing teleconference was scheduled to occur October 29, 2013 at 2:00 p.m.

The Complainant, Ms. Dunlop, counsel for the Manitoba Human Rights Commission, Ms. Khan, and the adjudicator began the teleconference at 2:00 p.m. Mr. Sung on behalf LMG Properties Ltd. o/a Bay Hill Inn and Suites did not attend and provided no other response. In accordance with correspondence sent by the adjudicator dated October 18, 2013, counsel for the Manitoba Human Rights Commission was asked whether Meighen Haddad, counsel listed at Corporations Branch (the Companies Office) on behalf of LMG

Properties Ltd., was notified of the date. The adjudicator was advised that no such notice has been provided.

In the result, the adjudicator with the consent of the parties present, adjourned the pre-hearing conference for a half hour to provide counsel of the Manitoba Human Rights Commission time to notify the Respondent through corporate counsel, registered at the Companies Office, of the pre-hearing conference. Counsel for the Manitoba Human Rights Commission was also invited to contact the hotel listed in the complaint directly to inform them of the proceedings. The matter was then adjourned for approximately a half hour.

When the matter reconvened at approximately 2:35 p.m., the Complainant, Ms. Dunlop, and counsel for the Manitoba Human Rights Commission, Ms. Khan, were present. In addition, an individual, named Kirit Modi, participated in the pre-hearing. A brief review of the proceedings to date was described for Mr. Modi.

Mr. Modi advised that he had recently purchased the assets of LMG Properties Ltd. and that his numbered company was now operating Bayhill Inn & Suites. In particular, Mr. Modi advised that he incorporated a company, 6756914 Manitoba Ltd., which purchased the assets of LMG Properties Ltd. and in particular, the Bayhill Inn & Suites hotel. He advised that his counsel, Paul Roy of Brandon, Manitoba, acted on the sale, which he advised closed earlier in October 2013. Mr. Modi advised that he had no knowledge of the complaint until receiving a phone call from counsel for the Manitoba Human Rights Commission earlier that day (on October 29, 2013) in accordance with the direction of the adjudicator. Mr. Modi advised that he would request that his lawyer, Mr. Roy, notify counsel for the Manitoba Human Rights Commission of the identity of counsel acting for the vendor of the hotel in the immediate term upon request.

The adjudicator inquired with counsel for the Manitoba Human Rights Commission as to whether the information provided by Mr. Modi affected the relief being sought, and/or whether the Manitoba Human Rights Commission felt that it wished to speak to the issue of adding any party or potential party and/or any other matter. Counsel for the Manitoba Human Rights Commission stated that at this time the Manitoba Human Rights Commission did not view it as appropriate to add any party to the existing complaint. Counsel did however advise that the Manitoba Human Rights Commission may wish to reconsider the issue in due course.

Ms. Dunlop was invited to make submissions on these issues as well. Ms. Dunlop advised that she did not have any submissions to make on any of the issues when requested for her point of view. Mr. Modi advised that he had no other comments to make as well.

In accordance with the foregoing, service was also directed upon any counsel described as having completed the sale transaction on behalf of LMG Properties Ltd. and/or on Mr. Sung's behalf in the event that the Manitoba Human Rights Commission is advised by Mr. Modi's counsel or any other source that someone other than Meighen Haddad completed the sale transaction referenced above.

In light of the submission of counsel for the Manitoba Human Rights Commission that they were not seeking to add Mr. Modi or his company, 6756914 Manitoba Ltd., as a party at this time, Mr. Modi was advised that it was not necessary for him to participate in the teleconference any longer. Mr. Modi was advised that counsel for the Manitoba Human Rights Commission would contemplate over the next two weeks whether or not it would wish to add a party to the existing complaint. Mr. Modi was advised that it was likely that a hearing date would be set later in the pre-hearing teleconference, but that he would be advised within approximately two weeks as to whether the Manitoba Human Rights Commission counsel was seeking to add him or his company as a party. The adjudicator made clear that in that event, a hearing would be convened to address that issue. Mr. Modi then ended his participation in the pre-hearing teleconference.

The Manitoba Human Rights Commission proceeded to advise the adjudicator that in fact a medical report had been received on October 25, 2013. In the circumstances, it was the position of the Manitoba Human Rights Commission that they were not seeking to change the location of the adjudication which had previously been set for Winnipeg. Counsel for the Manitoba Human Rights Commission advised that they wished to set a date in December. Ms. Dunlop was canvassed as to her position but did not wish to make a submission on these issues.

Counsel for the Manitoba Human Rights Commission was canvassed as to if and when they intend to serve all interested parties with the medical report that they received. Counsel advised that they would do so as soon as possible. The adjudicator directed that any and all medical reports be served on all interested parties no later than November 15, 2013.

Counsel for the Manitoba Human Rights Commission was also directed to provide a list of documents and potential witnesses no later than two weeks before the hearing. The other parties are directed to do likewise by exchanging witness lists no later than two weeks prior to the hearing. The adjudicator directed that it was not intended that every witness needed to be called, but that a list of potential witnesses should be provided. The adjudicator also directed that personal service be made upon Mr. Sung and that counsel listed at the Companies Office, Meighen Haddad, be served by fax or courier marked to attention Charles Meighen.

The Manitoba Human Rights Commission advised that during the course of the pre-hearing, she had received an email from Mr. Meighen at Meighen Haddad which she read aloud. The email seemed to suggest that counsel at Meighen Haddad was not aware of the pre-hearing teleconference on October 29, 2013 and was not instructed to act in respect to the complaint. The email suggested as well that (consistent with Mr. Modi's submission), Mr. Sung at LMG Properties Ltd. had participated in some form of sale. It is understood that counsel at Meighen Haddad had previously received notification of the complaint.

Counsel for the Manitoba Human Rights Commission advised that given the status of the matter, she was unclear as to whether the Manitoba Human Rights Commission might seek costs notwithstanding an earlier indication that they would not seek costs. Given the

totality of the Human Rights Code and its purposes, and insofar as the hearing has not yet commenced, and given the continued absence of the Respondent or anyone on their behalf despite proper notice having been provided, the adjudicator determined that it was open for Ms. Dunlop and/or the Manitoba Human Rights Commission to seek costs, but that they would be required to provide proper notice as to whether they would be doing so. In the circumstances, counsel for the Manitoba Human Rights Commission and Ms. Dunlop were directed to inform all interested parties if they might be seeking costs, no later than two weeks in advance of the hearing.

A two day hearing was set for the determination of this complaint on December 16 and 17, 2013. Counsel for the Manitoba Human Rights Commission was asked to complete the necessary notices and provide them to the adjudicator in accordance with the usual practice. The matter was then adjourned.

Yours sincerely,

Lawrence Pinsky

LIZP/cd

To: Chantel Dunlop, via ordinary mail & email

Zyutack Sung (LMG Properties Ltd.), via ordinary mail,
c/o Meighen Haddad, Corporate Attorney for Service, & as listed in the
Addendum hereto

Manitoba Human Rights Commission, via ordinary mail & email
Attention: Isha Khan

ADDENDUM

Following the pre-hearing conference and in particular last week, Mr. Sung left a voicemail for the adjudicator including a contact number being, (204) 223-5697. Mr. Sung was contacted by the adjudicator's assistant to obtain Mr. Sung's address which Mr. Sung provided as follows:

Mr. Xyatak Sung
304-245 Wellington Crescent
Winnipeg, MB R3M 0A1

Contact should be made by counsel for the Manitoba Human Rights Commission with Mr. Sung to inquire if any of the parties wish to schedule another pre-hearing teleconference or if any other progress can be made. Further, the adjudicator directs that any Notices be forwarded and served upon Mr. Sung at the address listed herein in addition to the other manners of service already directed.

The adjudicator directs all parties to provide notice as soon as possible and in any event at least 21 days prior to the hearing in the event that any other pre-hearing issues arise.