

HEALTH SERVICES APPEAL AND REVIEW BOARD

IN THE MATTER OF A REQUEST FOR HEARING under section 44(1) of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H. 7, as amended

B E T W E E N:

R.S.

Applicant

and

**DR. JIM CHIRICO, MEDICAL OFFICER OF HEALTH, NORTH BAY PARRY SOUND
DISTRICT HEALTH UNIT**

Respondent

ORDER

Background

1. The Applicant is the subject of an Order issued by the Medical Officer of Health, North Bay Parry Sound District Health Unit dated October 30, 2014 (the Order) to relinquish the animal known as “X” (and also named Y) to the North Bay Humane Society to be euthanized, under section 13 of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, as amended (the *Act*). The Order states that the animal known as “X” (and also named Y) is a health hazard as defined in section 1(1) of the *Act*.
2. On October 31, 2014, the Applicant requested the Health Services Appeal and Review Board (the Board) hold a hearing of the subject matter of the Order. On October 31, 2014, the Applicant also requested a stay of the Order. A hearing was scheduled for December 16 and 17, 2014 and adjourned to March 2015 on consent.

3. On November 4, 2014 the Board issued a Stay Order subject to further submissions being received from the parties. Following several case conferences, the November 4th Order was amended by Order issued December 19, 2014 on terms agreed to by the parties. The terms of the December 19th Stay Order included conditions surrounding the in-house confinement of X.
4. On December 29, 2014 the Respondent filed a Motion to Dismiss the Applicant's appeal on the basis that the terms of the December 19th Stay Order regarding X's confinement had been breached.
5. On December 31, 2014 the Board issued an Interim Order requiring the immediate return of X to the care of the North Bay Humane Society or the Society for the Prevention of Cruelty to Animals (the S.P.C.A.) and that a failure to do so by 12:00 p.m. on January 2, 2015 may result in the dismissal of the Applicant's application. The Interim Order also required the Applicant serve and file a response to the Respondent's Motion to Dismiss by 4:45 p.m. Friday January 2, 2015.
6. On January 2, 2015 the Applicant's new Counsel filed a Motion to extend the date of return of X to noon on January 3, 2015 and to extend the time for filing a response to the Respondent's Motion to Dismiss to January 9, 2015.
7. On January 2, 2015 the Board granted an extension of the December 31st Interim Order. Such Order amended the December 31st Order as follows:
 - The deadline for surrendering the animal is extended to 12:00 p.m. on January 3, 2015. The animal shall be surrendered on or before that time to the care of the North Bay Humane Society. **Failure to surrender the dog by 12:00 noon on Saturday January 3, 2015 will result in the dismissal of the Applicant's request for hearing with the Board.**
 - If the request for hearing proceeds, the Applicant has until **4:45 p.m., Friday January 9, 2015**, or such other time as the Board may direct, to serve and file a response to the Respondent's Notice of Motion, after which time the Board will rule on the motion.

8. By letter dated January 3, 2015, the Applicant's Counsel advised the Board that she no longer acted for the Applicant and that he was unrepresented.
9. By email dated January 6, 2015 the Board was advised by Counsel for the Respondent that X had still not been surrendered to the North Bay Humane Society in accordance with the Board's Order dated January 2, 2015. The correspondence received from the Respondent was forwarded to the Applicant.

The Board hereby Orders as follows:

10. As of January 6, 2015 the information before the Board is that the Applicant has not complied with the Board's January 2nd Order to surrender the animal to the North Bay Humane Society by noon on January 3, 2015. The Applicant has not complied with the Board's Order dated January 2, 2015 and has not provided any explanation for his failure to comply.
11. The Board finds that the Applicant has been afforded due process and procedural fairness before the Board to pursue his request for an appeal. He was provided notice of and the opportunity to participate in all proceedings. The Applicant was also provided copies of the Board's Orders which clearly set out all required obligations and processes. In particular, the Board's Order dated January 2, 2015 clearly stated that the request for a hearing would be dismissed if the Applicant did not surrender X to the North Bay Humane Society by noon on January 3, 2015.
12. Accordingly, in accordance with the terms of paragraph 11 of the Board's Order dated January 2, 2015, the Applicant's request for a hearing before the Board in this matter is hereby dismissed.

13. The Respondent seeks costs. The Board's authority to order costs in a proceeding is limited. In this case, there has been a very limited exchange of evidence and no in-person attendances required of the parties. After considering the factors in Rule 15.8 of the Board's Consolidated Rules of Practice and Procedure, the Board refuses the request for costs.

DATED at Toronto this 9th day of January 2015.

"Janice P. Vauthier"

Janice P. Vauthier, Chair