

CITATION: Streicher v. The Corporation of the Township of Perth East, 2014 ONSC 1643
DIVISIONAL COURT FILE NO.: DC-12-424-JR
DATE: 20140404

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

F. N. MARROCCO A.C.J.S.C., K. W. WHITAKER and M. G. ELLIES J. J.

B E T W E E N:

MENNO STREICHER and VIOLA
STREICHER

Applicants

)
)
) Terrance Green, Counsel for the Applicant
)
)
)

AND:

THE CORPORATION OF THE TOWNSHIP
OF PERTH EAST

Respondent

)
)
) Steven J. O'Melia, Counsel for the
) Respondent
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HEARD: February 26, 2014

ENDORSEMENT

- [1] The applicants operated a kennel under a licence granted to them by the respondent. Their licence was revoked by the respondent in November of 2012. The applicants claim that they were the victims of discrimination because of their religious beliefs. Therefore, they bring this application for judicial review of the respondent's decision and ask for an order overturning it.

BACKGROUND

- [2] The respondent established a system of regulating and licencing kennels pursuant to the powers granted to it under the *Municipal Act, 2001*, S.O. 2001, c. 25. The council of the respondent appointed By-law Enforcement Officers to administer this system, as set out in the respondent's Kennel By-law.
- [3] The applicants consulted with the respondent about their plan to turn a barn into a dog kennel prior to applying for a licence in 2009. Mrs. Streicher deposes that she and her husband made the respondent aware that there would be no electricity in the barn because of the couple's religious beliefs and were advised that they could operate a kennel without electricity, provided they followed instructions given to them by the respondent. Based on those discussions, the applicants spent about \$45,000 renovating the barn. They applied for and were granted a kennel licence in 2009. They operated the kennel without electricity from that date until their licence was revoked. According to the applicants, throughout that time lighting, ventilation and heat were provided to the kennel naturally; the lighting and ventilation through openings in the walls, the heat from the bodies of the livestock housed below it.
- [4] Annual inspections of the kennel were undertaken each year by the same By-law Enforcement Officer. She noted in her report that the dogs kept there appeared to be healthy and happy, according to Mrs. Streicher. Each year, the kennel licence was renewed following the inspection, including an inspection which was carried out on June 7, 2012. However, as a result of a complaint, on September 14, 2012 the By-law Enforcement Officer attended the kennel unannounced, together with an inspector from the Ontario Society for the Prevention of Cruelty to Animals. Following the inspection, the By-law Enforcement Officer took the applicants' kennel licence away. Further inspections took place on September 21 and October 4, 2012, this time with the Kennel Licencing Officer in attendance. On the latter date, the municipal employees explained to the applicants that they were not empowered to revoke the licence without the approval of council. Therefore, the applicants were served at that time with a notice which indicated that their kennel licence was being reviewed for revocation. The applicants requested and were granted a hearing, which took place on November 20, 2012. They attended that hearing and were provided with an opportunity to address council.
- [5] Following the hearing, council voted to revoke the applicants' licence.

ISSUES

- [6] The applicants have raised two issues for our consideration:
- a) Did the Mayor and Council of the respondent demonstrate bias in revoking their licence?
 - b) If so, should the decision be set aside?

[7] The parties agree that the appropriate standard of review is reasonableness.

ANALYSIS

[8] A decision-maker does not provide procedural fairness to those against whom it demonstrates bias in the decision making process: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 45. The onus of proving such bias, however, rests on the applicants: *R. v. R.D.S.*, [1997] 3 S.C.R. 484 at para. 114. We are not satisfied that the applicants have met that onus in this case.

[9] The applicants were provided with notice of the respondent's intention to revoke their licence. The notice set out with specificity the particular provisions of the bylaw which it was alleged the applicants had breached. The notice alleged that the applicants had failed:

- a) to keep the kennel in a sanitary, well-ventilated condition;
- b) to provide adequate natural or artificial light and sufficient heat; and
- c) to ensure that every dog is provided with necessary veterinary care.

[10] The applicants requested a hearing and were provided with ample notice of the date upon which that hearing was to occur. At the hearing, they were granted an opportunity to appear before council, to oppose the proposal to revoke their licence, and to contest the facts upon which the proposal was based.

[11] There was credible evidence before the council that the applicants had failed to fulfill the requirements of the by-law. The Kennel Licencing Officer's report to council set out the observations he had made of the condition of the kennel when it was inspected by him on September 21 and October 4, 2012. The report noted the unsanitary living conditions, poor ventilation, inadequate lighting and failure to provide necessary veterinary medical care for an injured animal.

[12] The report also fairly noted that, although conditions in the kennel had improved by the time the inspections of September 21 and October 4 were carried out, lighting remained dim and proper ventilation remained a concern.

[13] In the face of this evidence, the fact that the kennel had passed annual inspections previously is not sufficient to demonstrate bias on the part of the Kennel Licencing Officer or the council, in our view.

[14] We note, as well, the evidence of the By-law Enforcement Officer filed in connection with this application that there are a number of other licenced kennels within the area governed by the respondent that are operated by members of the same religious order as that of the applicants which have never had their licences revoked.

CONCLUSION

- [15] The respondent's decision to revoke the applicants' kennel licence was a reasonable one based on the information it had, and was made following a process which was fair to the applicants. The applicants have failed to demonstrate bias on the part of respondent or its employees.
- [16] The application for judicial review is therefore dismissed. As per the agreement of the parties, costs in the amount of \$7,500 all-inclusive, plus HST, shall be paid by the applicants to the respondent.

F.N. Marrocco A.C.J.S.C.

K. W. Whitaker J.

M. G. Ellies J.

Released: 20140404

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