

**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket TLF09101
Order TLF10-002**

IN THE MATTER of a request for
review of Order TLF10-001 filed on behalf of
Melvin C. Griffin and Sylvia J. Griffin.

BEFORE THE COMMISSION
on Tuesday, the 1st day of June, 2010.

Maurice Rodgerson, Chair
Chester MacNeill, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Susan Jefferson
Commission Administrator

IN THE MATTER of a request for
review of Order TLF10-001 filed on behalf of
Melvin C. Griffin and Sylvia J. Griffin.

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IN THE MATTER of a request for
review of Order TLF10-001 filed on behalf of
Melvin C. Griffin and Sylvia J. Griffin.

Written Submissions filed by

1. **Special Counsel:**
Pamela J. Williams

2. **For the Respondents Melvin C. Griffin and Sylvia J. Griffin:**
**Greg S. Friedman, member of the Bar of the State of Maryland,
United States of America**

IN THE MATTER of a request for review of Order TLF10-001 filed on behalf of Melvin C. Griffin and Sylvia J. Griffin.

Reasons for Order

1. Introduction

[1] This is a decision of a Review Panel of the Island Regulatory and Appeals Commission ("Commission") pertaining to a request for review of Commission Order TLF10-001, filed by Greg S. Friedman (Mr. Friedman), member of the Bar of the State of Maryland, United States of America, on behalf of Melvin C. Griffin and Sylvia J. Griffin (the Griffins).

[2] On March 31, 2010, via email, Mr. Friedman filed a March 24, 2010 letter to the Commission. This letter requests a review of Order TLF10-001 on behalf of the Griffins.

[3] On April 13, 2010, Commission staff sent an email to Mr. Friedman and to Pamela Williams (Special Counsel). In this email, staff forwarded Mr. Friedman's March 31, 2010 email, cited the Commission's test for review or reconsideration set out in earlier decisions of the Commission, and invited both Mr. Friedman and Special Counsel to file written submissions prior to a deadline of April 30, 2010.

[4] On April 30, 2010 a written submission was received from Special Counsel. No additional submissions were received from Mr. Friedman.

2. Discussion

Submissions of Mr. Friedman

[5] Mr. Friedman's March 24, 2010 letter, emailed to the Commission on March 31, 2010, is reproduced below in its entirety.

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Of Counsel

June 2, 2010

The Honorable Maurice Rodgerson, Chairman
The Island Regulatory and Appeals Commission
Prince Edward Island, CANADA

RE: Request for Review
Case LF 07105 – Matter of Melvin C. Griffin and Sylvia J. Griffin

Dear Mr. Rodgerson:

Although I am not a member of the Bar of the courts of Canada, Mr. and Mrs. Melvin C. Griffin, who are long time friends and clients, have requested that I assist them in petitioning for review of Order TLF10-001 which was entered February 18, 2010, in the above matter.

Mr. and Mrs. Griffin freely admit that they lacked sufficient familiarity with the legal requirements for land development on Prince Edward Island, as well as the protocol for matters before the Island Regulatory and Appeals Commission ("IRAC"). I, unfortunately, also lack any experience in these matters; however, I do feel competent to present the facts enumerated below, as they have been related to me by Mr. and Mrs. Griffin.

Justification for Review

My clients are senior citizens who reside for only a portion of each year. Neither of them possess a college education and they were completely unfamiliar with the provisions of the Lands Protection Act. They have endeavored to cooperate with the Commission staff, as well as with Ms. Pamela Williams, Special Counsel to the Commission. They have made themselves available for communications and were understandably taken aback when they learned on November 10, 2009, that Ms. Williams had subpoenaed four (4) witnesses less than 48 hours prior to a scheduled proceeding. As she knew that the Griffins were in Florida and would be unable to appear at the proceeding, her action essentially foreclosed their right to cross examine these witnesses and placed them in a situation where they had no choice but to agree to Ms. Williams terms for a settlement. She acknowledged to Mr. Griffin that this case was premised upon a misunderstanding of the law, and advised that Mr. Griffin to "fall on your sword" and stipulate to the facts as she would present them; however, she committed that she would ascertain that the Commission would assess a fine which the Griffins would be able to afford. I believe that Ms. Williams report to the Commission, which I believe was dated December 11, 2009, demonstrates her sympathy to their position and her desire to resolve the matter.

In her discussions with my clients prior to the November 12, proceeding, Ms. Williams repeatedly stated that IRAC had no interest in assessing a large fine which my clients would have difficulty satisfying. Ms. Williams represented that the fine would be "in line with previous fines levied by IRAC" which she stated had ranged from \$1,000 to \$10,000. Mr. and Mrs. Griffin agreed to her demands, with the understanding that they had the right to rely upon the statements by your Special Counsel, and that she possessed the authority, as the authorized representative of the Commission, to reach an agreement. Ms. Williams indicated that a plea agreement had been reached to bring this matter to closure, in which my clients "would agree to the facts" in consideration for a fine which they could pay right away.

In the interest of verifying Ms. Williams' statements as to the range of prior fines assessed by the commission, Mr. Griffin has reviewed past IRAC lands protection violations. One which appears to be quite similar is the matter of Island Holdings Ltd. (2008) which 1,649 acres, as contrasted to the 186 acres at issue in the Griffin matter. Island Holdings was assessed a \$10,000 fine for a violation involving nine (9) times the amount of land involved in the Griffin case. Ms. Williams' commitment to seek a fine in line with prior IRAC treatment would seem to indicate that the Griffins would be assessed approximately \$1,100.

We also respectfully request that the Commission review its ruling that Mr. and Mrs. Griffin were non-compliant in their responses to the two questions posed by Mr. Dickerson. Mr. and Mrs. Griffin responded to Mr. Dickerson's inquiry as to whether a loan agreement existed between them, Mr. Brimmer and Mr. Smith. Since that time, they have consulted with Messrs. Brimmer and Smith, both of whom confirmed that they also do not have a copy of any sort of loan agreement among these parties. Had Mr. Dickerson believed that the issue of the existence of a loan agreement was a significant one in this investigation, I assume that he would have contacted either Mr. Brimmer or Mr. Smith to make further inquiry into the veracity of the Griffins' statements. He apparently did not feel that this was necessary or material to his investigation.

Mr. Dickerson's second question was whether Mr. or Mrs. Griffin were officers or stock holders in Marlin Properties Inc. They correctly stated that they were not, as they had no familiarity with any such entity. They did have a relationship with Marlin Property Development Inc. ("MPDI"); however, as Mr. Dickerson already had the Federal Register for this company (and had submitted MPDI's corporate data in his initial 160-page report to the Commission), my clients understandably assumed that his subsequent inquiry was about a different corporate entity which happened to have a similar name and that Mr. Dickerson simply was posing a question to determine whether Marlin Properties Inc. might be an entity related to MPDI.

Nature of Relief Sought

When Ms. Williams discussed the prospective penalty with Mr. Griffin, she inquired whether my clients could afford to pay \$20,000. Mr. Griffin stated that he did not have \$20,000 but could pay up to \$8,000. Ms. Williams then suggested \$3,000 as a penalty for the "misunderstanding" and \$5,000 for the violation of Section 4. She indicated that the compliance fine would be forgiven. If the commission will grant this relief, Mr. and Mrs. Griffin would view the \$9,000 for the Lands Protection violation to be a reasonable total penalty and would tender this sum immediately.

Respondents' Financial Condition

Mr. and Mrs. Griffin are not paupers, but nor are they wealthy people. Even if the Commission grants the relief which we have requested, my clients will have to take these funds from an account which they have established to provide for their young grandson's college education. If the Commission does not see fit to grant the relief sought, Mr. and Mrs. Griffin may be forced to seek protection of the Bankruptcy Court. I do not think that this would be in either their best interests, nor in the interests of the Commission.

In summation, I respectfully request that the Commission honor the verbal accord which Mr. and Mrs. Griffin reached with the IRAC Special Counsel.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Greg S. Friedman
Greg S. Friedman

GSF/rtm

cc: Mr. and Mrs. Griffin

Submissions of Special Counsel

[6] Special Counsel's April 30, 2010 letter, emailed to the Commission on the same date, is reproduced below in its entirety.

COX & PALMER | coxandpalmerlaw.com

New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

April 30, 2010

Review Panel
Island Regulatory and Appeals Commission
5th floor, Suite 501 - National Bank Tower
134 Kent Street
P.O. Box 577
Charlottetown, PE C1A 7L1

Attention: Mr. Maurice Rodgeron, Chairman

Dear Mr. Rodgeron:

RE: Docket TLF09-101 - An Investigation pursuant to s. 15 of the PEI Lands Protection Act ("Act")
Melvin C. Griffin and Sylvia Griffin ("the Respondents")
Our File No.: 10007.8

This is further to the email received from Philip Rafuse, Appeals Administrator, dated April 13, 2010, whereby he advised the undersigned that Solicitor Friedman's correspondence was to be treated as a request for reconsideration of Order TLF10-001, and invited the undersigned to make submissions as required.

Section 12 of the *Island Regulatory and Appeals Commission Act* provides that:

"The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it."

As set out in the afore-referenced email, Mr. Rafuse provided the applied test under section 12 as considered in past decisions:

"As noted in previous decisions, the onus rests upon the Applicant to show that a prima facie case exists which will entitle the Applicant to the review. A prima facie case will be shown only where the function of the review should be exercised to correct an error of the Commission or to meet changed circumstances. Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material. Finally, the power to review is discretionary and will be exercised sparingly."

Pamela J. Williams | Partner

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April 30, 2010

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Pending the receipt of further information from Solicitor Friedman, it would appear that the request for reconsideration results from alleged representations that the undersigned as Special Counsel for the Commission, made to Mr. Griffin surrounding the Agreed Statement of Facts and the penalty submissions. As the record will indicate, at the time the Agreed Statement of Facts was submitted to the Review Panel, Mr. Griffin was not represented formally by legal counsel to the knowledge of the undersigned or the Commission. Mr. Griffin in the past had been represented by various lawyers throughout this ordeal.

For clarification, at no time did the undersigned represent to Mr. Griffin on behalf of the Commission that as Special Counsel would have the authority to enter into a Joint Recommendation on Penalty or bind the Review Panel to any specific penalty. Although Mr. Griffin was unrepresented at the time of agreeing to the Agreed Statement of Facts, he did confirm that Solicitor James MacNutt who was apparently doing work for him in another avenue reviewed the facts on his behalf and had inquired as to why penalty was not addressed. The response provided by the undersigned in writing was that no instructions had been obtained in this regard. Mr. Griffin advised he would proceed in any event.

The undersigned did advise Mr. Griffin that the recommendation of Special Counsel to the Commission in considering its position on penalty would be to review previous penalties rendered and that some consideration be given to the cooperation of the Griffins' to avoid the costs of the hearing and to deal with the outstanding judgment on the Order to Produce. Discussions were had between Mr. Griffin and the undersigned to canvass possible outcomes in hopes of coming to a joint recommendation again on the clear understanding that the undersigned had no authority to make a decision on behalf of the Commission or Hearing Panel. Ultimately the parties were unable to agree on a joint recommendation on penalty and as a result separate submissions were presented.

In discussions with Mr. Griffin, at no time was the undersigned left with the impression that Mr. Griffin did not understand the events which ensued and he advised that he was not going to hire another lawyer in this matter.

Upon receiving a copy of the Penalty Recommendation to the Review Panel as submitted by the undersigned on December 18, 2009, Mr. Griffin called me to express his disappointment and advised he felt the suggested penalty was excessive and unfair. Subsequent to that, when the Order was issued by the Review Panel, Mr. Griffin contacted me on March 10, 2010, to question the penalty and express his deep disappointment with same to which he was advised there was nothing the undersigned could do for him in this regard and he should contact the Appeals Administrator.

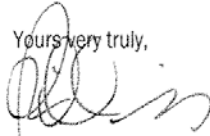
In conclusion, if the request to have the decision reviewed is based on the representations the undersigned made as Special Counsel, it is submitted that Solicitor Friedman's account of events contains many inaccuracies and does not result in a reconsideration being warranted. Further and in any event, there is no new evidence presented by Solicitor Friedman that was not available to Mr. Griffin at the time of the hearing as per the outlined test.

April 30, 2010

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If the Review Panel requires any further information or clarification, please do not hesitate to contact the undersigned.

Yours very truly,



Pamela J. Williams
PJW/kmp

3. Findings

[7] After a careful review of the submissions of Counsel for the parties and the applicable law, it is the decision of the Review Panel to deny the request for review filed by Mr. Friedman on behalf of the Griffins. Accordingly, the Review Panel confirms the decision contained in Order TLF10-001.

[8] In Order TLF10-001, the Review Panel stated the following:

[9] The Review Panel believes the Respondents' contravention of the Act is very serious and requires a penalty that reflects this fact. Special Counsel noted that the Respondents did co-operate by participating in an Agreed Statement of Facts. While the Review Panel agrees that this co-operation does serve to mitigate the penalty, the Review Panel finds that this last minute co-operation on 'the courthouse steps' will only reduce the penalty slightly. The Respondents claim they did not knowingly contravene the Act. However, the Review Panel notes that the Commission made inquiries regarding a possible contravention shortly after the property was sold in December 2003 and several times prior to issuing the Notice of Investigation. The Respondents should have known, or certainly as a result of the inquiries become aware, of the contravention at least five years prior to acknowledging the fact in the Agreed Statement of Facts.

[10] The Respondents claim that they complied with Order LF09-001 because Marlin Property Development Inc. was referred to as Marlin Properties Inc. in the Order. However, such a response to Order LF09-001 suggests to the Review Panel an attempt to avoid full disclosure rather than an effort to co-operate and comply.

[11] *In the Review Panel's view, the Respondents' arguments do not serve to justify the significant reduction in penalty suggested by the Respondents.*

[12] *The Review Panel finds that it does not have the jurisdiction to reduce a judgment ordered by the Supreme Court of Prince Edward Island.*

[13] *Accordingly, the Review Panel imposes the following:*

- *For the violation of section 4 of the **Act**, the Review Panel hereby imposes a penalty of \$9,000, payable to The Island Regulatory and Appeals Commission on or before March 31, 2010.*
- *The Respondents are to make an application for approval in their own names and/or in another appropriate entity as non-residents acquiring an interest to occupy, use or possess parcel number 141168 with said lands being in excess of permitted acreage to be held by a non-resident, said application to be filed not later than March 31, 2010.*
- *With respect to the Supreme Court judgment, the daily accrual of \$200 in relation to the penalty set out in Order LF09-003 shall be stayed, effective the date of judgment at \$28,800.*

[14] *In Order LA97-11, In the Matter of a Request for Review of Commission Order LA97-08 by Keir Clark and Marion Clark (Order LA97-11 Clark), the Commission set out in some detail the test to be met on an application for a review or reconsideration of a Commission decision:*

*The Commission and its predecessor, the Prince Edward Island Public Utilities Commission, have considered in the past the minimum criteria an Applicant must meet before the Commission will exercise its absolute discretion in the matter of reviewing its decisions under s. 12 of the **Island Regulatory and Appeals Commission Act**, and the identical predecessor to s. 12, s. 16 of the **Public Utilities Commission Act**. This test has been interpreted consistently by the Commission in its past decisions.*

As noted in previous decisions, the onus rests upon the Applicant to show that a prima facie case exists which will entitle the Applicant to the review. A prima facie case will be shown only where the function of review should be exercised to correct an error of the Commission or to meet changed circumstances.

Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material.

Finally, the power to review is discretionary and will be exercised sparingly.

[15] The Review Panel finds that the written submissions filed by Mr. Friedman identify neither error nor changed circumstances. Rather, Mr. Friedman's submissions would appear to be an effort to re-argue the Griffin's position or to argue the Griffin's position on appeal.

[16] Order TLF10-001 contained the following notice on the final page of the Order:

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

*Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.*

Sections 13(1) and 13(2) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

[17] As identified in the above cited notice, an appeal on a question of law or jurisdiction may be filed with the Court of Appeal within twenty days after the issuance of an order. Order TLF10-001 was issued on February 18, 2010. The Griffins' opportunity to file an appeal with the Court of Appeal thus expired on March 10, 2010. The Review Panel finds that a request for review is not intended to be a substitute for an appeal.

[18] The Griffins' violation of the ***Lands Protection Act*** resulted in a prolonged period of investigation and review by the Commission. Had there been an immediate recognition by the Griffins of the laws of Prince Edward Island, an admission of the violation, a prompt explanation and an effort to rectify the situation, the penalty would have very likely been significantly tempered.

[19] The Review Panel reiterates that there were numerous opportunities, based on several requests from the Commission over literally a period of years, for the Griffins to explain their actions, recognize a violation, seek to correct the problem and move forward. Instead there was a steadfast refusal on the part of the Griffins to accept responsibility for their actions. Given the very early Commission inquiries, the Griffins could not possibly have been under the illusion they were acting within the laws of the province and the provisions of the ***Lands Protection Act***.

[20] While the Griffins did ultimately cooperate with Special Counsel in the preparation of an agreed statement of facts, it appears this cooperation was motivated by the prospect of other individuals being put under oath to testify before the Review Panel about the transactions that occurred and the Griffin's involvement in the matter.

[21] It appears that the Griffins are particularly concerned with the Supreme Court Judgment of \$28,800.00. However, the Griffins are very much the authors of their own misfortune. There could not be any doubt as to the nature of the demand for documents set out in Order LF09-001. Rather than comply with said Order, the Griffins sought to shield themselves by relying on an error in the name of the company specified in the Order. Had the Griffins fully complied with said Order, the Supreme Court judgment against them in the amount of \$28,800.00 would not exist.

[22] In spite of the failure of the Griffins to comply with Order LF09-001, they had a further opportunity to mitigate their penalties. Had the Griffins provided the information requested in Order LF09-001 by February 11, 2009, the terms of Order LF09-003 would have capped the penalty at \$3,000.00 with respect to the issue of the disclosure of requested information.

[23] Accordingly, as there is no evidence of error or changed circumstances, Mr. Friedman's request for a review of Order TLF10-001 is hereby denied.

4. Disposition

[24] An Order denying the request for review and confirming the decision set out in Order TLF10-001 will be issued.

IN THE MATTER of a request for review of Order TLF10-001 filed on behalf of Melvin C. Griffin and Sylvia J. Griffin.

Order

WHEREAS a request for review of Commission Order TLF10-001, filed by Greg S. Friedman, member of the Bar of the State of Maryland, United States of America, on behalf of Melvin C. Griffin and Sylvia J. Griffin, was received by the Commission on March 31, 2010;

AND WHEREAS a Review Panel of the Island Regulatory and Appeals Commission invited written submissions from Mr. Friedman and from Pamela Williams, Special Counsel, with respect to the request for review;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Prince Edward Island Lands Protection Act*

IT IS ORDERED THAT

1. The request for review of Order TLF10-001 is hereby denied.
2. The decision set out in Order TLF10-001 is hereby confirmed.

DATED at Charlottetown, Prince Edward Island, this 1st day of June, 2010.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(Sgd.) *Chester MacNeill*

Chester MacNeill, Commissioner

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NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)