

NOVA SCOTIA COURT OF APPEAL

Citation: *Can-Euro Investments Ltd. v. Ollive Properties Ltd.*,
2013 NSCA 80

Date: 20130627
Docket: CA 413747
Registry: Halifax

Between:

Can-Euro Investments Limited

Appellant

v.

Ollive Properties Limited and Halifax Regional
Municipality and The Attorney General of Nova Scotia
And The Nova Scotia Utility and Review Board

Respondents

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: June 12, 2013

Subject: **Utility and Review Board Act, S.N.S. 1992, c. 11.
Questions of Law or Jurisdiction. Principles of
Administrative Law and Procedural Fairness. Standard of
Review. *Functus Officio*. Notice. Chance to be Heard.**

Summary: A hearing before the URB dealing with an appeal of a development agreement was terminated on the fifth day after the appellant's counsel announced her instructions to withdraw the appeal. A week later the Board released its decision and order which expressed findings of fact which were very critical of Can-Euro and its (late) president and which bore no relationship to the appellant's withdrawal of its appeal. Can-Euro (supported by HRM) notified the URB immediately as to its concerns and objections arguing that the Board was *functus officio* as soon as the hearing was terminated, and ought not to have reached or expressed any conclusions concerning Can-Euro's conduct without at least first providing Can-Euro

with notice and giving it an opportunity to be heard. The URB declined Can-Euro's and HRM's requests.

Can-Euro appealed saying the URB's order should be quashed because it lacked jurisdiction to issue it and because the Board's actions violated fundamental principles of administrative law and procedural fairness.

Held:

Appeal allowed. While there was some merit to the appellant's complaint that the Board's decision ought to be set aside because the Board was *functus officio*, the Court preferred to allow the appeal and quash the Board's order on the basis that its actions violated fundamental principles of administrative law and procedural fairness. The most serious failings were the Board's adjudicating the merits before hearing all the evidence; making adverse findings after the appeal had been abandoned and without notice to the parties or giving those affected any chance to be heard; and expressing conclusions which impugned the integrity and good faith of Can-Euro and its president, which found no support in the record and would very likely have been dispelled had all the evidence been heard.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 18 pages.