

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
114, 10142 101 Avenue
Fort St. John, BC V1J 2B3

Date: March 26, 2001

File No. 1428

Board Order No. 334ARR

BEFORE THE ARBITRATOR:

IN THE MATTER OF THE PETROLEUM
AND NATURAL GAS ACT BEING CHAPTER 361
OF THE REVISED STATUTES OF BRITISH
COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF LESSOR OF
PARCEL A [PLAN 23914] OF THE WEST ½ OF
SECTION TWELVE, TOWNSHIP EIGHTY-FOUR,
RANGE NINETEEN, WEST OF THE SIXTH MERIDIAN,
PEACE RIVER DISTRICT, EXCEPT PLAN PGP39613
(PARCEL A WEST ½ 12-84-19 W6M)
(THE LANDS)

BETWEEN:

JOHN NURNBERGER
341 FOURNEAU WAY
PARKSVILLE, BC
V2P 2J8
(THE APPLICANT)

AND:

OREFYN ENERGY ADVISORS CORP.
C/O RANDY WOLSEY
BOX 6128
FORT ST. JOHN, BC
V1J 4H6
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND



The surface rights owner, John Nurnberger, applied to the Mediation and Arbitration Board on the 2nd of November 2000 for Arbitration to settle compensation pursuant to Section 12 of the Petroleum and Natural Gas Act.

The Applicant had sent the 60 day notice pursuant to Section 11 of the Petroleum and Natural Gas Act, requesting renegotiating of the rental conditions on 16 December 1999.

As the two parties were unable to reach a satisfactory annual payment, an Arbitration Hearing was scheduled for 10:00 am on 6 March 2001.

The members of the Arbitration Panel, Frank Breault, William Wolfe and Ivor Miller inspected the site on 5 March 2001.

An Arbitration Hearing was held at 10:00 am on 6 March 2001 in the Boardroom of Execuplace Business Centre located at 10142 101st Avenue, Fort St. John BC.

Representing the Applicant was John Nurnberger and his counsel J. Darryl Carter of Carter Lock & Horrigan. Tom Wolsey, Randy Wolsey and their counsel John Hope of Hope Callison Lord appeared for the Respondent. Ivor Miller, Frank Breault and William Wolfe sat as a panel of the Board. Gayle Colwell recorded the proceedings.

POSITION OF THE PARTIES

Applicant

J. Darryl Carter presented his position that the location of the subject being just north of the Fort St. John city limits would enhance the value of the subject property. Exhibits "A", "B", "C", "H", "I", represents the Applicant's position that the value of the whole parcel of the land should be considered for rent review and not just the parcel containing the disposal well.

The Applicant's evidence supporting the value of the land when subdivided suggests approximately \$55,000.00 per lot (Exhibit "C"). This represents what some of the lots located immediately to the north sold for.

The Applicant assumes the property could be subdivided into 6 lots, which could be sold for an average price of \$ 50,000.00. Therefore the total value of Parcel A would be \$ 300,000.00. The annual rent is usually considered to be 10% of the value, or \$ 30,000.00 per year.

Mr. Nurnberger then stated that there was a great deal of cost involved before he could make any plans to subdivide, due to the presence of the disposal well. The main costs would be an environmental impact study to determine if any contamination had occurred from the wells currently in use. Mr. Nurnberger had understood this cost alone would be in the area of \$ 20,000.00.

The presence of the disposal well prohibits re-zoning of the balance of Parcel A, and thus development.

The position of the Applicant is that the presence of the disposal well has resulted in substantial "adverse effect" to the Applicant, and they are requesting \$ 30,000.00 annual rent, to be paid in monthly installments of \$

2,500.00.

A copy of the 1979 (original) surface lease was not provided nor entered into evidence at the hearing.

Respondent

The Respondent felt the Applicant's estimated value of the subject property was not realistic, and produced Exhibit "G" which is an appraisal of the approximately 28 acres. The appraised value of the subject property was \$ 48,000.00 to \$ 52,000.00 The Respondent believes the number of lots, which could be subdivided, is only four or five lots. The Respondent entered into evidence a letter dated January 24, 2000 (Exhibit "F") from R. D. Harris (a past shareholder of Orefyn) to Mr. and Mrs. Nurnberger, where the value of the lots was considered to be \$ 80,000.00 to \$ 100,000.00. Ms. Harris also stated Orefyn Energy Advisors Corp. would be interested in negotiating to purchase the approximately 28 acres for a figure between the appraised value and the above quoted figure.

The Respondent produced a document (Exhibit "E") from Rudiger Enterprises Ltd. describing the "multiple phase remediation program" involving excavation and removal of contaminated soil. The program was undertaken in 1997 and 1998 for Numac Energy Inc., the former owner.

Because all prior negotiations have failed to resolve the value or rental to be paid, the Respondents are willing to increase the yearly rental from \$ 3,414 to \$ 4,500.00.

Section 27 Costs

The Respondent and Applicant agree to discuss costs, and if agreement is not reached, the parties will request the Arbitration panel to decide on the awarding of costs.

DECISION

The Arbitration Panel, having heard all the evidence presented at the hearing, and the arguments made in support have considered the following;

1. The location of the subject property north of the City of Fort St. John boundaries,
2. The limiting factors to be considered when contemplating a subdivision,
3. The remedial cost associated in the event of abandonment,
4. The impact of the disposal well on the Applicants use of the land,
5. The effective date of the rental provisions pursuant to Section 12 (3) of the Petroleum and Natural Gas Act

IT IS HEREBY ORDERED THAT:

1. In the event that the well is abandoned, the Mediation and Arbitration Board orders that an "Environmental Remediation" as accepted by the applicable Government agencies as required by the applicable statutes of British Columbia, "Accepted Contamination Level" be included in the lease.
2. Pursuant Section 12 (2) of the *Petroleum and Natural Gas Act*, the rental provisions of the surface lease signed May 10, 1979, paid by the Respondent to the Applicant are varied from \$ 3,414.00 per annum to \$ 8,100.00 per annum.
3. The Respondent will pay to the Applicant the annual payment of \$ 8,100.00 in monthly payments of \$ 675.00, which are to commence on the anniversary month of the lease; that is in May 2001.
4. Pursuant to Section 12 (3) of the *Petroleum and Natural Gas Act* the varied rental provisions as stated in paragraph 2 of this Order, are effective from 10 May 1999. The payment of the retroactive increase of \$ 9,372.00 to be paid by the Respondent in the form of a certified cheque to the Applicant on or before 4:00 p.m. Mountain Standard Time on 26 April 2001 by. Proof of payment will be provided to the Board Office on or before 4:00 p.m. Mountain Standard Time on April 26, 2001.
5. The Respondent will provide to the Applicant and the Mediation and Arbitration Board on or before April 26, 2001, a copy of all assignments of ownership of the surface lease agreement from the original lessor to the current corporate holder of the surface lease agreement.
6. Nothing in this Order varies expressly or by implication any of the other terms of the existing lease signed May 10, 1979.
7. Nothing in this order is or operates as consent, permit or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 26th day of March 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Ivor Miller, Member

S. Frank Breault, Member

William Wolfe, Member

MEDIATION AND ARBITRATION BOARD
Under the Petroleum and Natural Gas Act
114, 10142 101 Avenue
Fort St. John, BC V1J 2B3

Date: December 13, 2001

File No. 1428

Board Order No. 345 ARR

BEFORE THE ARBITRATOR:

IN THE MATTER OF THE PETROLEUM
AND NATURAL GAS ACT BEING CHAPTER 361
OF THE REVISED STATUTES OF BRITISH
COLUMBIA AND AMENDMENTS THERETO:
(THE ACT)

AND IN THE MATTER OF A PORTION OF LESSOR OF
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OREFYN ENERGY ADVISORS CORP.
C/O RANDY WOLSEY
BOX 6128
FORT ST. JOHN, BC
V1J 4H6
(THE RESPONDENT)

ARBITRATION ORDER

BACKGROUND

An Arbitration Rent Review Hearing was held on 6 March 2001 between John Nurenberger and Orefyn Energy Advisors Corp. At the conclusion of the Hearing, the parties agreed that they would attempt to resolve costs between themselves.

The Mediation and Arbitration Board received on the 12th of October 2001 a request from the Applicant's counsel for a ruling with respect to costs reserved to the Arbitration Panel, pursuant to Section 27 of the *Petroleum and Natural Gas Act*. Included with the submission, was a reply from Mr. John Hope, counsel for Orefyn Energy Advisors Corp.

The Mediation and Arbitration Board requested (by letter of 29 October 2001) Mr. Carter to prepare a bill of costs. A copy was sent to Mr. John Hope in addition to the Board. Submissions on entitlement to and amount of costs from both parties were also requested.

The Arbitration Panel convened via telephone conference call on 30 November 2001 to discuss the request and the submissions received.

POSITION OF THE PARTIES

Applicant

Counsel for the Applicant initially submitted a bill for the full amount of his account to his client. After the decision of Encal Energy vs. Joseph and Shirley Viens was brought to his attention, a bill of Costs in a form appropriate to the BC Supreme Court Rules on Scale 3 was prepared and provided to the Board and the Respondent. It is summarized as follows;

- Total fees claimed \$ 3,600.00, plus
- Disbursements of \$ 228.98,
- TOTAL COSTS of \$ 3,828.98.

The Mediation and Arbitration Board had previously received a letter from Mr. Carter; Q.C. dated 13 March 2001 advising that disbursements should be reduced by \$ 100.00. The disbursements claimed on the Bill of Costs were, through inadvertence, \$ 100.00 too high.

Mr. Carter also requested costs for Mr. Nurenberger as follows;

- Travel costs of \$ 380.00 plus
- Time of \$ 250.00,
- TOTAL COSTS of \$ 630.00.

The Total costs claimed by Mr. J Darryl Carter are \$ 4,458.98.

Respondent

Mr. John Hope, counsel on behalf of the Respondent, indicated that he took no issue with the amount claimed by the Applicant. However, Mr. Hope was of the view that an award of costs should be made to

the successful party. He noted that, given the position of the parties at the Arbitration, the award of this Panel was significantly closer to the amount offered by the Respondent than the amount sought by the Applicant. He expressed the concern that if parties were awarded costs by this Panel without regard to success at a hearing that it might encourage parties to take unreasonable positions knowing that their legal fees might be covered by Board order. This might reduce incentive to settle matters prior to hearing.

DISCUSSION

The *Petroleum and Natural Gas* Act requires the Mediation and Arbitration Board to compensate persons for interference with their surface rights. Unlike the *Rules of Court*, which were referred to by Mr. Justice Wilson in the *Viens* judgment, proceedings before the Mediation and Arbitration Board are not adversarial. They are administrative in nature. The *Rules of Court* attempt to reduce the number of issues between the parties and to provide incentives, in part by awards of costs, for parties to come to reasonable positions and to settle matters. The Mediation and Arbitration Board does not have these procedures. Additionally, other considerations besides the success or lack of it by a party can influence awards of costs.

Each claim for costs must be considered by the Board based on its facts. Without intending to in any way be exhaustive, factors which the Board may look at to determine the appropriateness of awarding costs to are the nature of the costs incurred, the reasons for incurring them, the contributions of counsel, or indeed, any advisor for whose assistance reimbursement of costs is sought and the need to ensure that there is fairness in the process and equality between the parties in the process of the Board.

DECISION

After having carefully considered the submissions of the parties, the Panel concludes that the amounts claimed for reimbursement of time by Mr. Nurenberger are not properly presented or supported. The amounts claimed for reimbursement of out of pocket expenses are reasonable. Mr. Nurenberger is also entitled to some contribution from the Respondent for his legal expenses.

IT IS HEREBY ORDERED THAT;

1. The Respondent will pay to the Applicant costs in the amount of \$ 800.00 on or before 12 February 2002, or within 60 days of the date of this order.
2. The Respondent will provide to the Mediation and Arbitration Board on or before 12 February 2002, proof that paragraph 1 has been complied with.
3. Nothing in this Order varies expressly or by implication any of the other terms of the existing Board Order 334 ARR dated 26 March 2001.
4. Nothing in this order is or operates as consent, permit or authorization that by enactment a person is required to obtain in addition to this order.

Dated at the City of Fort St. John, British Columbia, this 13th day of December 2001.

MEDIATION AND ARBITRATION BOARD
UNDER THE
PETROLEUM AND NATURAL GAS ACT

Ivor Miller, Member

S. Frank Breault, Member

William Wolfe, Member