

**Cause No. 07-21A**

**Name: Parkdale Place**

**Administrative Law Judge: William K. Teegarden**

**Date: January 28, 2008**

**Commission Action: Affirmed**

**FINDINGS OF FACT**

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-15, and 675 IAC 12 and 15 apply to this proceeding
3. The Agency is the state entity charged with the regulation of elevators operating in the State of Indiana.
4. At all times relevant to this proceeding, the Elevator was operating in a medical building commonly known as Parkdale Place in Marion County, Indiana.
5. The Agency approved an application for an alteration to the Elevator which involved the replacement of an old controller with a new controller.
6. The Elevator was part of a side-by-side pair both of which were involved in the controller project.
7. The other elevator had passed the acceptance test.
8. The controller does exactly what the name implies and is a very important part of an elevator.
9. Activities dealing with the controller which involve complete replacement rather than repair require an inspection by the Agency prior to being certified for use by the public.
10. On June 18, 2007, a duly authorized Agency inspector conducted such an inspection.
11. During the course of this inspection, the Elevator had a problem with the Fire Department Emergency Test.
12. That is, in the event of a fire emergency, the Elevator is supposed to close and proceed to a specified floor.
13. The doors would not close thus the inspector could not issue a certificate of compliance.
14. The problem was a "104 Board" which is located on top of the Elevator and has nothing to do with the controller which controls normal operations.
15. The work which was done on the Elevator only involved the controller, none of the Fire Emergency Controls or wiring was affected.
16. All of this becomes important because of a fairly recent change to the fees charged for reinspection for listing devices.

17. Before the Agency would certify the elevators, it required payment of a \$1000 fee for a subsequent inspection to complete an initial inspection and a \$750 fee for a follow-up inspection of a new installation. <sup>1</sup>
18. The Petitioner does not dispute the fact that because of the I04 Board failure, the Elevator did not pass the test.
19. The Petitioner does, however, contest the fees assessed and filed a timely petition for review of the fees.
20. At the beginning of the hearing, the Agency stated on the record that the \$1000 fee will be refunded.
21. Thus the only issue remaining is whether the assessment of the \$750 fee was proper.
22. 675 IAC 12-3-14 (e) states “Follow up inspections on a new installation of a regulated lifting device where the initial inspection revealed noncompliance with the rules of the Commission, shall be at a cost of seven hundred fifty dollars (\$750) for each such inspection.”
23. There is no question there was noncompliance with the rules.
24. However, since the faulty operation had nothing to do with the new installation of the controller, the trier of fact has serious doubts as to the assessment of the \$750 reinspection fee.
25. The reason for failing the inspection was not due to any shortcoming of the controller installer; indeed the new installation was not faulty in any way.
26. Conducting an alteration on one specific system of an elevator should not render the installer liable for the enhanced reinspection fee when the reinspection was due to a failure of a system not part of the alteration.
27. The one exception to paragraph 26 above would occur if there was evidence the work done by the installed on one system led to the failure of another.
28. In this particular case, no such connection has been alleged.
29. The \$750 reinspection fee should be refunded.

### **NONFINAL ORDER**

The reinspection fee of Seven Hundred Fifty Dollars (\$750) charged by the Indiana Department of Homeland Security in connection with the inspection of elevator 46593 on June 19, 2007, is hereby ordered refunded.

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<sup>1</sup> The follow up inspection was held and the fees paid on the same day as the initial inspection.

