

**DECISION NO. 2012-FIA-001(a)**

In the matter of an appeal under section 242(1) of the *Financial Services Act*, R.S.B.C. 1996, c. 141

**BETWEEN:** A DIRECTOR and SSEI INSURANCE AGENCY LTD **APPELLANTS**

**AND:** INSURANCE COUNCIL OF BRITISH COLUMBIA **RESPONDENTS**  
FINANCIAL INSTITUTIONS COMMISSION

**BEFORE:** Maurice R. Mourton, Chair

**DATE:** Conducted by way of written submissions concluding  
on August 13, 2012

**APPEARING:** For the Appellant: Self-represented  
For the Respondent Insurance Council: David T. McKnight, Counsel  
For the Respondent Financial Institutions Commission: Stephanie A.  
Jackson, Counsel

**APPLICATION FOR EXTENSION OF TIME TO FILE AN APPEAL**

[1] This ruling concerns the application by a Director (the Appellant), on behalf of SSEI Insurance Agency Ltd (SSEI), for an extension of time to file an appeal of an Order of the Insurance Council of British Columbia (Council) dated March 31, 2012 that imposed a fine of \$20,000 on SSEI (Order). The Appellant is a Director of SSEI and appeals in that capacity.

[2] The Order also cancelled the general insurance licence of the SSEI nominee and director (Nominee) and fined him \$10,000. The Appellant and the Nominee are brothers. The Appellant is not contesting the terms of the Order against the Nominee individually, only as it affects SSEI.

[3] This ruling deals solely with the issue of whether the tribunal ought to extend the time for the Appellant to file his notice of appeal on behalf of SSEI. I make no findings of fact respecting the merits of the appeal.

**BACKGROUND**

[4] In his submissions the Appellant acknowledges that 2 companies were incorporated in 2008. A holding company by the name of SSEI Insurance Agency Ltd. (SSEI) and an operations company by the name of SSEI Insurance Agency (BC) Ltd. (SSEI (BC)). SSEI has 3 directors: the Nominee, the Appellant, and a third brother. SSEI (BC) has a single director and shareholder; the Nominee.

[5] The Appellant states that the Nominee wrongfully applied for an Insurance Licence under SSEI's name and not SSEI (BC), which was granted. The Appellant submits that this error was not identified by anyone and that SSEI (BC) ran all the operations.

[6] As noted above, the Appellant is a Director of SSEI and not of SSEI (BC).

[7] In his affidavit filed on this application, the Manager of Investigations of the Insurance Council of B.C. confirms that on September 3, 2008 SSEI became licenced with Council and that the directors were identified as the Nominee, the Appellant, and a third brother.

[8] In 2010 Council investigated the conduct of SSEI and its nominee and as a result ordered the suspension of the Nominee's general insurance licence pending an investigation by Council. At the same time by a Decision and Order dated November 16, 2010 against SSEI as the named party, Council ordered that conditions be imposed on SSEI's licence. The order included the following sentence in the preamble: "AND WHEREAS [the Nominee] remains as SSEI's sole officer and director;". The Appellant states in his submission that "After reviewing that statement from [Council] that confirmed that [the Nominee] was the Sole person responsible, I did not believe this matter concerned me any further."

[9] No hearing or appeal was requested by any of the three directors of SSEI. However a copy of the November 16, 2010 Order was mailed to both the residential address and a business address on record for the Appellant. The Manager of Investigations wrote to the Appellant for the purpose of bringing the Order to his attention. In his letter enclosing a copy of the Order the Manager specifically puts the Appellant on notice that "As an Officer and director of SSEI..., these matters can reflect on you."

[10] Council continued its investigation of SSEI and the Nominee throughout 2011. By email on November 9, 2011 Council wrote to the Appellant requesting he provide a mailing address so that Council could provide him with a copy of the latest investigation report. The Appellant responded by email providing an address in Lake Placid N.Y.

[11] On November 16, 2011 the SSEI Investigation Report was sent to the lawyer representing SSEI and copied to the Appellant and his two brothers, as directors of SSEI, at the addresses for service. Proof of service has been provided. The Report makes it clear that the agency under investigation was SSEI and acknowledged the Nominee's submissions to Council staff that the Nominee's licence and the agency's licence ought to be linked specifically to SSEI (BC) and not SSEI.

[12] On December 12, 2011, Council staff presented the SSEI Investigation Report to a Committee of Council. The Committee met with the Nominee and the lawyer for SSEI to discuss the report and subsequently recommended action be taken against SSEI and the Nominee pursuant to section 231 of the *Financial Institutions Act*.

[13] Council sent a letter on January 27, 2012 to the lawyer for SSEI advising Council would be reviewing the Committee's Report respecting SSEI and the Nominee, together with their recommendations, on February 14, 2012. The letter, along with the Committee Report and recommendations, was also copied to the Appellant and his brothers at the address for service. The Committee's Report, in recommending that SSEI be fined \$20,000, specifically addressed the Nominee's submission that the agency had been licensed incorrectly with Council and concluded that SSEI "was the entity licensed with Council for the insurance business in question, and therefore the Agency's other directors and officers during the material time ...have responsibility in this matter."

[14] On February 14, 2012 Council made an Intended Decision pertaining to the Nominee and SSEI. By letter dated March 5, 2012 Council's Executive Director wrote to the lawyer for SSEI and copied the three SSEI directors to advise that SSEI and the Nominee had a right to request a hearing as detailed in the Intended Decision. The Intended Decision found that "...the Agency should also bear responsibility for the misconduct which arose from a culture of non-compliance. Council did not accept the Nominee's position that the Agency had been licensed incorrectly and that another registered corporation (SSEI (BC)), of which the Nominee was the sole director and officer, was in fact the entity carrying on the insurance business...". Finally, the Appellant was put on notice through the Intended Decision that if SSEI or the Nominee failed to request a hearing by March 31, 2012 the Intended decision would become final and take effect on March 31, 2012.

[15] No hearing request was received by the due date and accordingly the Council's Executive Director wrote on April 2, 2012 to the lawyer for SSEI with copies to the Appellant and his two brothers advising that the time period for a hearing had expired and that Council's decision was now final.

[16] On June 12, 2012 the tribunal received the Appellant's notice of appeal and application for an extension of time to file it.

## **DISCUSSION AND ANALYSIS**

[17] Under section 24(1) of the *Administrative Tribunals Act* a notice of appeal must be filed within 30 days of the decision being appealed. The notice of appeal was filed well outside the 30-day limit. Under subsection (2) the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if the tribunal is satisfied that special circumstances exist. On this preliminary application I must therefore determine whether I am satisfied that special circumstances exist to justify extending the time limit for the Appellant to file his notice of appeal of the Order.

[18] Although there is no definition for “special circumstances” in the legislation, in my view the discretion to extend must be exercised carefully so as not to render the 30-day statutory limitation period for filing an appeal meaningless. The person seeking the extension must be able to demonstrate compelling reasons warranting the extension of time.

[19] The exceptional circumstances to justify the application for an extension of time cited by the Appellant in his application and subsequent submissions included the following:

- The Nominee did not inform the directors of any information which could affect or implicate SSEI;
- The Nominee inadvertently and without authorization applied for an Insurance license in BC under SSEI;
- The Appellant was only made aware that the decision of Council targeted the company of which he was a director and not SSEI (BC) on or about May 15, 2012 when he received a request from a US insurer asking for details on the matter; and
- SSEI and the Appellant will suffer serious prejudice and SSEI will remain unjustly condemned.

[20] The Appellant states in his reply submission that “I am not disputing the fact that Council has met all requirements for providing timely and effective notice of all decisions. Nevertheless, [referring to the November 16, 2010 Order]...I did not believe this matter concerned me any further.” And further, that “[h]ad I understood that the proceedings were directed against [SSEI], the company of which I am a director and that I was a party to the proceedings, I would have intervened in due time to get the situation exposed and clarified.”

[21] While it is unfortunate that the November 16, 2010 Decision and Order included a sentence stating that the Nominee “remains as SSEI’s sole officer and director”, I am not satisfied that the Appellant was unaware that the subsequent decisions of the Council did not concern him or the company of which he was a director. He certainly may not have understood the future implications of the decision on him and SSEI, but even if he did not realize at the time that the decisions were regarding SSEI, it was not because the information to make himself aware was not available to him, or that Council did not make sufficient efforts to make him aware.

[22] The Appellant claims he only understood that Council targeted a company of which he was a director on or about May 15, 2012. However he did receive ample warning of the concerns of Council and their ultimate decisions on November 16, 2010, January 27, 2012, March 5, 2012, and April 2, 2012, as detailed above. Notice of each of these decisions was specifically sent to him and his brothers as directors of SSEI. Each of the reports and letters references SSEI as the agency affected, not SSEI (BC). The Investigation Report and Committee Report specifically addressed and rejected the contention that it should be SSEI (BC) and not SSEI that was subject of the proceedings. Notwithstanding the statement in the November 16, 2010 Decision and Order, if the Appellant chose not to read the

subsequent documents sent to him as a director of SSEI, especially when by email he was requested to confirm his address for service, he did so at his own peril and such a choice, which is at best difficult to understand, does not in my view constitute "special circumstances" to justify an extension of time to file an appeal.

[23] Of particular note is the report dated January 27, 2012 (received January 30, 2012) in which Council concluded the Agency's other Directors and Officers during the material time have responsibility in this matter. Also on March 7, 2012 the Appellant received a letter dated March 5, 2012 from Council which in part states "as [the other directors] were directors and officers of the Agency during the material time, they also bear responsibility for the aforementioned culture of noncompliance." These statements should have alerted the Appellant, as a Director of SSEI, to the fact that he needed to address the issue at that time if he felt there was an error.

[24] While the Appellant claims he did not think the matter concerned him, despite the volume of correspondence from Council, there is no real basis to support this assertion. In addition, he still took almost a month to issue his notice of appeal to the tribunal from the date he stated he did become aware the matter affected him and SSEI, with no explanation of the additional delay in appealing once he became aware.

## **DECISION**

[25] For the reasons provided above, I concur in the submissions of Council that there are no special circumstances that warrant granting the request for an extension of time to file an Appeal and that to do so in the face of the evidence demonstrating the Appellant's disregard for the Council's regulatory process would render the statutory timelines meaningless.

[26] Accordingly the Application for an extension of time is denied. The Appellant's notice of appeal is dismissed under section 31(1)(b) of the *Administrative Tribunals Act* on that grounds that it was not filed within the applicable time limit.

"Maurice Mourton"

Maurice R. Mourton  
Chair  
Financial Services Tribunal

August 31, 2012