



FINANCIAL SERVICES TRIBUNAL

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DECISION NO. 2015-RSA-002(c)

In the matter of an appeal pursuant to section 54 of the *Real Estate Services Act* S.B.C. 2004, c. 42 to the Financial Services Tribunal under section 242.2 of the *Financial Institutions Act*, R.S.B.C. 1996, c. 141

BETWEEN: James Sydney Parsons **APPELLANT**

AND: Real Estate Council Of British Columbia **RESPONDENTS**
Superintendent Of Real Estate

BEFORE: Patrick F. Lewis, Vice-Chair

DATE: Conducted by way of written submissions
concluding on July 13, 2015

PRELIMINARY DECISION REGARDING THE APPLICATION TO AMEND THE NOTICE OF APPEAL

[1] By letter dated June 26, 2015, received on June 29, 2015, the Appellant filed an application to amend his Notice of Appeal in this matter. The Real Estate Council of British Columbia ("Council") indicated it would be opposing that application and, in accordance with a ruling I made as to timing, filed its submission in that regard on July 13, 2015. A letter was sent on that same date by the Superintendent of Real Estate adopting the position taken by Council.

[2] Apart from opposing the amendment application, Council took the position that the Appellant was implicitly seeking in his application the admission of new evidence, though without applying to do so. Council filed an application of its own on July 13, 2015, for an Order permitting it to adduce certain evidence responding to what it perceives as the new evidence sought to be introduced by the Appellant, while advising that, if the Appellant's new evidence is not in fact admitted, that application by Council need not be considered.

[3] The application to amend the Notice of Appeal is refused, with reasons to follow at a later time. I refrain for the moment from taking the time to prepare reasons, even though I have fully considered the application and the responses to it, so that counsel are aware as early as possible of the disposition of the application, particularly given that the Appellant's main appeal submission is due to be filed by July 20, 2015, being six days away.

[4] In deliberating on this motion to amend I have found it necessary to consider the scope of the Notice of Appeal as originally filed, then to be juxtaposed alongside the requested amendments. Despite what I have said a moment ago, I will summarize below my views in that regard, as I think it convenient to the imminent argument process to do so.

[5] The Notice of Appeal was filed on April 28, 2015, by the Appellant when unrepresented. It consists of his completion of the required form and an attached three page letter. Much of that content does not reasonably support an appeal, but from the balance certain grounds of appeal seem extractable, even if (understandably) not being in artful legal form. There appear to be two and possibly three such grounds, as follows:

- a) The Committee erred in accepting the evidence adduced on behalf of the complainant over that of the evidence of the Appellant. This is the Appellant's primary point in the Notice of Appeal. He asserts that he was the truth teller as between he and the complainant but also in essence that the Committee erred in accepting her story over his (for example, near the bottom of page 3 he complains of having been found guilty "when her story is so ridiculous").
- b) The Committee erred in finding that the Appellant had dealt inappropriately with the complainant, whether or not he was aware she had a mental health issue. For instance, again at the bottom of the third page, he refers to the complainant's having been working as a high school teacher the day she removed a subject clause, and asserts she must have known what she was signing. Earlier in the document, starting at the bottom of the second page, the Appellant seemed to set out an alternative position that, in any case, a mental health issue does not mean that the person who suffers from it should not be helped – presumably including by someone in the Appellant's position.

[6] It is less clear whether a complaint about the penalty levied against the Appellant is contained within the Notice of Appeal, so I refer to that for the moment as a possible third appeal ground. Penalty is referred to by the

Appellant in the Notice of Appeal form, and in the first full paragraph of the third page of his attached submission he complains about the cancellation of his licence. I will leave it to counsel to take positions as they see fit on the question of whether the issue of fairness of penalty is adequately referenced in the Notice of Appeal. A submission will not be allowed, however, on the allegation that the outcome was unfair because the Appellant was not warned about the seriousness of the penalties he faced or not told that his submissions on sanction were irrelevant. Those specific arguments are within the proposed amendments to the Notice of Appeal, which I have refused to allow.

[7] Beyond the points just expressed, it is open to the Appellant to pursue other appeal arguments, if any, falling within the Notice of Appeal he filed, and it is of course open to the Respondents to take whatever position they see fit in that respect. This of course is because the originally filed Notice of Appeal remains in play.

[8] While I have read all of the material submitted to me, as the application to amend is refused and given that no ruling has been made allowing the Appellant to adduce new evidence on the main appeal, the contingent application by Council to adduce new evidence need not be entertained.

[9] Finally, I note that Council has sought costs. When reasons are provided I will give the Appellant a brief chance to reply to that request, after which I will decide the point.

"Patrick Lewis"

Patrick F. Lewis
Vice-Chair
Financial Services Tribunal

July 14, 2015