



FINANCIAL SERVICES TRIBUNAL

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DECISION NO. 2015-RSA-003(a)

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: Murat Kadioglu **APPELLANT**

AND: Real Estate Council of British Columbia **RESPONDENTS**
and Superintendent of Real Estate

BEFORE: Wendy A. Baker, QC, Panel Chair

DATE: Conducted by way of written submissions
concluding on January 29, 2016

APPEARING: For the Appellant: Self-represented
For the Respondent: Jessica S. Gossen
For the Superintendent: Sandra A. Wilkinson

DECISION ON PRELIMINARY APPLICATION

APPEAL

[1] On December 4, 2015, the Financial Services Tribunal received a notice of appeal from Mr. Murat Kadioglu, appealing a decision of the Discipline Committee of the Real Estate Council of British Columbia made on November 10, 2015. In his notice of appeal the Appellant set out lengthy grounds for the appeal which included that the Committee:

1. failed to observe principles of natural justice, procedural fairness or other procedure required by law to be observed,
2. based its decision on erroneous findings of fact, made in a perverse or capricious manner or without regard to the material before it, or material available to it from reliable extraneous sources,
3. failed to have regard to the totality of evidence properly before it, rejecting significant evidence before it, and refusing to admit crucial material evidence without justifiable grounds, and
4. misapprehended, ignored or did not properly consider the applicant's testimony and testimony of witnesses at the hearing.

THE PRELIMINARY APPLICATION

[2] On January 11, 2016, the Appellant wrote to the Financial Services Tribunal seeking to have additional documents added to the appeal record, and to have the appeal bifurcated. On January 12, 2016, I wrote to the parties setting out a schedule for delivery of written submissions in relation to each issue.

[3] I have addressed separately the two issues raised by the Appellant on his application.

1. Addition of Documents to the Record

[4] Section 242.2(6) of the *Financial Institutions Act* sets out the content of the record on an appeal. The record consists of:

- (a) the record of oral evidence, if any, before the original decision maker,
- (b) copies or originals of documentary evidence before the original decision maker,
- (c) other things received as evidence by the original decision maker, and
- (d) the decision and written reasons for it, if any, given by the original decision maker.

[5] In his letter dated January 11, 2016, the Appellant relied on s. 242.2(6) of the Act in submitting that the record was not complete, and he sought to have the following documents added to the record:

- (a) his applications dated July 15, 2014, August 21, 2014, and April 8, 2015,
- (b) the affidavits filed with his applications,
- (c) all correspondence between the Real Estate Council of British Columbia ("RECBC") and Jean Whittow, QC, including correspondence not previously disclosed to him,
- (d) all correspondence between the RECBC and the Disciplinary Committee related to the resignation of Committee Chairman Joe Pearson, including correspondence not previously disclosed to him, and
- (e) all affidavits relevant to the disciplinary hearing proceeding sworn after April 8, 2015.

[6] On January 25, 2016, the RECBC provided me with submissions in response. The RECBC submitted that all applications and affidavits identified by the Appellant were in fact included in the record already. The RECBC also submitted that the

correspondence sought by the Appellant is not properly part of the record as defined in the *Financial Institutions Act*.

[7] No response to the submissions of the RECBC on the issue of the completeness of the record was received from the Appellant.

[8] The Superintendent of Real Estate took no position on the application.

[9] There are two issues raised in this application:

(a) Have any relevant documents which were before the decision maker been excluded from the record?

(b) Are documents which were not before the decision maker properly part of the record on appeal?

[10] I have reviewed the record and have located the applications of the Appellant, as indicated by the RECBC. I have located a number of affidavits. In his letter dated January 11, 2016, the Appellant did not specify which affidavits he was seeking to have included, and he provided no response to the submission of the RECBC which stated that all affidavits were included in the record already. Based on the material before me, I cannot conclude that the record is deficient in relation to the Appellant's request to have the applications and affidavits included in the record.

[11] Pursuant to s. 242.2(6) of the *Financial Institutions Act*, the record on this appeal only includes the documents which were before the decision maker. The correspondence sought by the Appellant is not material which was before the Committee and, as such, is not properly part of the record before me on this appeal. I decline to order that the correspondence sought by the Appellant be produced and added to the record on this appeal.

[12] Section 242.2(8) of the *Financial Institutions Act* does permit an application to be made to adduce additional evidence. However, the application before me and the findings I make in this decision relate solely to the issue of the completeness of the record on appeal, in accordance with s. 242.2(6) of the Act.

2. Bifurcation of Proceedings

[13] The Appellant applied to have the appeal bifurcated into a two stage appeal. The Appellant submits that I should declare the original hearing to be a mistrial because the Committee Chair resigned partway through the hearing, leaving only two members to complete the hearing and render a decision. The Appellant submits that if he is successful on this discrete issue, there will be no need to proceed with the remainder of the issues raised on appeal. If he is not successful, then the appeal will proceed on the remaining issues.

[14] This application raises the following issues:

(a) Does the Financial Services Tribunal have the jurisdiction to order a bifurcated hearing?

(b) Is the issue which the Appellant seeks to have determined first severable from the other issues under appeal?

(c) Will any injustice result from a bifurcated hearing?

Background

[15] A disciplinary hearing was held in relation to the Appellant on August 21 and 22, 2014. The Disciplinary Committee was made up of three persons. Final argument was delivered by December 31, 2014.

[16] On February 19, 2015, the Chair of the Committee contacted administrative support staff and the RECBC prosecutor inquiring about matters which were not before the Committee.

[17] On February 23, 2015, the Chair resigned. A decision was ultimately rendered by the remaining two members of the Committee.

[18] The above facts are not in dispute.

[19] Various steps were taken by the Appellant and the RECBC following the resignation of the Chair. The facts in relation to these other matters are characterized differently by both the Appellant and the RECBC, and for the purposes of this application I do not have to make a determination as to which version of the facts is to be preferred.

Jurisdiction of the Financial Services Tribunal

[20] The Appellant relies on s. 242.1(7) of the *Financial Institutions Act*, which incorporates Part 4, s. 11(1) of the *Administrative Tribunals Act*. This section provides that a tribunal has the power to control its own processes, and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it. The Appellant submits that this broad power is sufficient to allow me to make an order that certain issues be determined in advance.

[21] The RECBC on the other hand submits that to allow an issue to be determined in isolation would be to allow a reversal of the Committee's decision without considering all the evidence, and that this would be contrary to the jurisdiction of the Financial Services Tribunal under s. 242.2(11) of the *Financial Institutions Act*. The RECBC says the Financial Services Tribunal has no jurisdiction to deal with a procedural decision of the Committee except to consider it as a matter in the hearing of the appeal as a whole.

[22] The Superintendent of Real Estate supports the position of the RECBC.

[23] Section 242.2(11) of the *Act* permits a member of the Financial Services Tribunal to confirm, reverse or vary a decision under appeal, or to send the matter back for reconsideration, with or without directions, to the person or body whose decision is under appeal.

[24] If an issue is discrete and severable and its determination would permit the confirmation or reversal of the decision under appeal, I am satisfied that I have the jurisdiction pursuant to Part 4, s. 11(1) of the *Administrative Tribunals Act* to order that the appeal proceed in two stages, with such issue to be determined in advance of the other issues raised in the appeal.

Is the issue severable from the other issues under appeal?

[25] In order to exercise my jurisdiction in favour of the Appellant on this application, I have to be satisfied that the issue is discrete and severable, and that determining it in advance would result in a saving of time. If no efficiency is gained from hearing the issue in advance, the order will not be made.

[26] I have reviewed the Appellant's notice of appeal, his notice of application and his reply to the response of the RECBC. It is clear to me that in his proposed first phase of the appeal, the Appellant seeks to raise not simply the fact that the Committee was reduced to two members, but also the circumstances under which the Chair resigned, allegations of bias in relation to the remaining two members, allegations of improper conduct by the prosecutor and RECBC, amongst other issues.

[27] I am concerned that the issues the Appellant seeks to raise in the first phase are not discrete and in fact substantially overlap with the issues which would remain to be determined should I not find in favour of the Appellant on the first phase. I cannot assume that I would find in favour of the Appellant on the first phase, and must consider the potential impact on the remainder of the issues should I find against him on the first phase. Having reviewed the submissions of the Appellant, I am of the view that the evidence relating to the first issue will substantially overlap with the remaining issues to be considered. I am also of the view that the issues as articulated by the Appellant for the first phase are not discrete and severable from the remaining issues.

Will any injustice result from a bifurcated hearing?

[28] Because the evidence and issues on the proposed first phase are substantially linked to the remaining issues raised by the Appellant, I find that there will be prejudice if the appeal was bifurcated. The complexity of the appeal would be increased, and the first phase may result in findings which will have a prejudicial impact on findings and issues still to be made. I decline to exercise my jurisdiction to order a bifurcated hearing.

DECISION

[29] In making this decision, I have considered all of the information and submissions before me, whether or not they are specifically referred to in these reasons.

[30] For the reasons stated above, the Appellant's preliminary application is dismissed.

[31] The Board will be in contact with the parties regarding resumption of the submissions schedule for hearing the appeal.

"Wendy A. Baker"

Wendy A. Baker, QC, Panel Chair
Financial Services Tribunal

February 18, 2016