



FINANCIAL SERVICES TRIBUNAL

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DECISION NO. 2015-RSA-003(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: Murat Kadioglu **APPELLANT**

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

BEFORE: Wendy A. Baker, QC, Panel Chair

DATE: Conducted by way of written submissions concluding on March 10, 2017

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

DECISION ON COSTS OF APPEAL

[1] On February 1, 2017, I issued my decision in this appeal, and gave the parties the opportunity to address costs in further submissions.

[2] The Real Estate Council seeks to have the Appellant pay costs to the Council in the amount \$3,972.90. The costs claimed are comprised of legal services in the amount of \$1,100 for the preliminary application and \$2,200 for the final submissions, photocopies in the amount of \$150, and the cost of transcripts in the amount of \$522.90.

[3] The Appellant opposes any order for costs. He states that costs are only awarded in exceptional circumstances, of which this appeal is not, that the Council is attempting to punish the Appellant, and that there is no jurisdiction to award costs because the Council used its own salaried staff for the proceeding. He also states that if costs are awarded the award should be subject to scrutiny and taxation by a master of the Supreme Court. The Appellant provided no authority for the propositions advanced.

Power to award costs

[4] Pursuant to s. 47 of the *Administrative Tribunals Act* and s. 242.1(7)(g) of the *Financial Institutions Act*, the FST has the power to issue an order requiring a party to pay all or part of the costs of another party.

[5] The FST has issued Practice Directives and Guidelines which include criteria which the FST may consider in determining whether a participant (party) is liable to pay the costs of another party. These criteria include:

- (a) whether there was conduct that was improper, vexatious, frivolous or abusive;
- (b) whether the participant submitted a position that was manifestly unfounded;
- (c) whether the participant unreasonably delayed or prolonged the proceeding, including any failure to comply with an FST undertaking or order;
- (d) whether the participant assisted the Tribunal in understanding the issues;
- (e) whether the participant unreasonably failed to cooperate with the other parties during the appeal;
- (f) whether the participant failed to attend a hearing or other proceeding, or to send a representative, despite receiving notice;
- (g) the degree of success in the proceeding; and
- (h) any other matter the Tribunal considers relevant.

[6] The Practice Directives and Guidelines further state that the FST will calculate costs using the BC Supreme Court Rules as a general guideline.

[7] Sections 12(2) and 13(2) of the *Administrative Tribunals Act* provide that a tribunal, in this case the FST, is not bound by its practice directives. In *Brewers Distributor Ltd.*, 2010-PBA-001(c), the FST concluded that,

[13] ... While one would normally expect the Guidelines to be applied where applicable, despite their non-binding status, it can equally be said that the assessment of costs, including as to quantum, is traditionally very much a matter for the decision-maker's discretion, and not one to be rigidly carried out.

[8] While not binding upon me, I accept the reasoning in *Brewers Distributor Ltd.* as applicable in the matter before me. I will refer to the criteria in the FST Practice Directives and Guidelines, and to the BC Supreme Court Rules, but ultimately in this decision I am exercising my discretion as to what, if any, costs should be awarded to the Council.

Discussion

[9] In reviewing the FST Practice Directives and Guidelines I conclude that while the FST has the power to award costs, this is not a power which is exercised in every appeal. In other words, costs are not routinely awarded to the successful party.

[10] I do not accept the submission of the Appellant that the FST lacks jurisdiction to award costs to the Council because the Council had its own staff handle the appeal. The legislative authority for costs is clear, as set out above.

[11] I also do not accept the submission of the Appellant that the registrar of the BC Supreme Court has any jurisdiction to tax the costs presented by the Council. The FST itself has the discretion to assess and order costs.

[12] I make the following observations which are relevant to my assessment of whether costs are properly payable:

- (a) in this appeal the Council was completely successful;
- (b) the grounds of appeal advanced by the Appellant were numerous, vague, and changed with each written submission provided, which was not helpful and increased the complexity of the appeal;
- (c) a number of the grounds advanced by the Appellant were completely unfounded, including his allegation that the Council had no authority to prosecute him, his allegation that the Council was not empowered to render a decision of two members, his allegation that he was not advised of the case against him, and his allegations of Charter breaches; and
- (d) the Appellant brought two applications which were ill founded in facts and law: his application to adduce new documents and his application to delay the enforcement of my decision pending the outcome of this decision on costs.

Award

[13] I am satisfied in the present case that the Council is entitled to its costs of this appeal. This appeal was made more complex than it needed to be due to the positions taken by and the conduct of the Appellant. Notwithstanding the complexity created by the Appellant, the Council was completely successful.

[14] I find that the most closely applicable tariff items under the BC Supreme Court Rules are tariff items 7 (defending a proceeding, range of units 1-10), 23 (application by written submissions, range of units 1-5), and 36 (written argument, range of units 1-10). I also agree that the preliminary application ought to be addressed as a separate application for the purpose of a costs assessment. I find that tariff item 23 is most analogous to the preliminary application, and tariff items 7 and 36 are most analogous to the appeal itself.

[15] As this matter was of ordinary difficulty, the most appropriate unit value for the starting point of my costs assessment is \$100/unit.

[16] Taking into account the factors set out above as gleaned from the BC Supreme Court Rules, and factoring in my own assessment of reasonable costs, I find that the Council is entitled to legal fees in the following amounts:

- (a) preliminary application: \$550, and
- (b) final appeal: \$1,650.

[17] I also find that the Council is entitled to its disbursements as follows:

- (a) photocopies: \$150, and
- (b) transcripts: \$522.90.

[18] The Council did not indicate whether taxes were included in the disbursement amounts presented, and did not ask for applicable taxes to be made part of the order sought. As such, I award costs to be paid by the Appellant to the Council in the total amount of \$2,872.90.

“Wendy A. Baker”

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

April 7, 2017