



Financial Services Tribunal

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DECISION NO. 2016-RSA-002(a)

In the Matter of an appeal under the *Real Estate Services Act*, S.B.C. 2004, c. 42

BETWEEN: Yu-Hsiang (Lester) Lin **APPELLANT**

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

BEFORE: A Panel of the Financial Services Tribunal
Patrick F. Lewis, Vice-Chair

DATE: Conducted by way of written submissions
concluding on October 17, 2016

APPEARING: For the Appellant: Wes McMillan, Counsel
For the Real Estate Council: Jessica S. Gossen, Counsel
For the Superintendent: Joni Worton, Counsel

PRELIMINARY DECISION ON EXTENSION OF TIME TO FILE AN APPEAL AND TO ADDUCE NEW EVIDENCE

[1] Yu-Hsiang (Lester) Lin applies to the Financial Services Tribunal for an order extending the time for the filing of an appeal from a decision of the Real Estate Council of British Columbia ("Council") and for an order permitting him to file certain new evidence within the appeal.

Background

[2] Mr. Lin was a licensee under the *Real Estate Services Act*, SBC 2004, c. 42 ("*RESA*"). On August 17, 2015 a Consent Order Review Committee within Council made an Order that, among other things, Mr. Lin be suspended for one year. On December 17, 2015, a Discipline Committee within Council made an Order cancelling Mr. Lin's licence, on the stated basis that he had provided real estate services during his suspension. I will refer below to that cancellation Order as "the Order". The Order further provided that Mr. Lin may, pursuant to section 43(5) of *RESA*, apply to vary or rescind the Order on written notice to Council.

[3] Mr. Lin later filed with this tribunal an intended notice of appeal of the Order, dated September 15, 2016, which was copied to Council. For convenience

I will refer below to this document as the "Notice of Appeal". The Notice of Appeal requested (a) an extension of time for its filing and (b) leave to adduce new evidence in the appeal, in the form of two transcripts of cross-examinations and a certain Affidavit. It was also indicated within the Notice of Appeal that a request may later be made to introduce other new evidence, being a transcript of an audio recording that was said to then be in the midst of transcription and translation into English.

[4] Mr. Lin advised in the Notice of Appeal that Council agreed both to the extension of time and the adducing of the new evidence.

[5] In a letter of September 20, 2016, I asked that Council and the Superintendent of Real Estate ("the Superintendent"), both necessary respondents to the intended appeal, advise of their position on the twofold application by Mr. Lin, and in the event the matter was contentious set out a schedule for the delivery of submissions.

[6] Council advised by letter of September 27, 2016 that it did not oppose Mr. Lin's request for an extension of time to file an appeal. It did not then refer to the request for an Order permitting the filing of new evidence.

[7] By a letter of September 27, 2016, the Superintendent advised that it opposed both the application for an extension of time and the application to adduce new evidence. Accordingly, written submissions, as earlier directed, became necessary. Those submissions have since been exchanged.

The Parties' Submissions

[8] Mr. Lin had not included in the Notice of Appeal any argument as to why an extension of time should be granted or the adducing of new evidence should be permitted, presumably because it was then thought that these matters would go by consent. On October 3, 2016, counsel for Mr. Lin provided a full submission regarding the desired extension of time, together with various documents in support. It was explained in that submission that, rather than immediately pursuing an appeal to this tribunal, Mr. Lin had initially challenged the Order by an application to Council, which right the Order on its face appeared to contemplate. Mr. Lin then detailed the events since then and demonstrated that he consistently and diligently attempted to pursue that process before Council, before it was latterly agreed with Council that an appeal from its Order to this tribunal would instead be taken. In the course of that submission, Mr. Lin levelled some criticism at Council's handling of his intended application before it, which application was in the frame for several months.

[9] In its reply submission of October 11, 2016, Council consented to Mr. Lin's application for an extension of time and indicated that, if that extension were granted, it would not object to the introduction of new evidence on appeal as sought by Mr. Lin. It took exception, however, to Mr. Lin's laying at Council's door the fault for the slowness of the process following the Order.

[10] By its reply of October 11, 2016 the Superintendent advised that, with Mr. Lin's reasons for the extension of time then in hand, it no longer opposed that request, on condition that Mr. Lin first withdraw his application before Council challenging the Order. Until that was done, the Superintendent submitted, this tribunal would not have jurisdiction to extend the time for filing the appeal.

[11] In a brief rebuttal of October 17, 2016, Mr. Lin took issue with that submission respecting jurisdiction, but said in any event that "... the proceeding before the Council has been stayed by consent and so parallel proceedings are not being pursued".

Decision on the Request for an Extension of Time

[12] This tribunal is empowered by section 24(2) of the *Administrative Tribunals Act*, SBC 2004, c. 45, made applicable to it by section 242.1(7)(d) of the *Financial Institutions Act*, RSBC 1996, c. 141, to extend the time for filing an appeal where special circumstances exist (I note that this principle is also picked up in paragraph 3.2 of the Financial Services Tribunal "Practice Directives and Guidelines"). I have carefully considered the submission made by Mr. Lin, which I find to establish unique, and indeed special, circumstances justifying the extension of time which is sought, despite the approximately eight months that passed between the Order and the Notice of Appeal. I do not find it necessary to attribute fault in connection with that passage of time, and decline to do so. It is to my mind sufficient, particularly as the issue is not contentious, that Mr. Lin has shown continuing diligent efforts to challenge the Order by one method or another, before it was ultimately agreed between the then principal parties that the better course was to pursue an appeal of this kind.

[13] Accordingly, I order that Mr. Lin be granted an extension of time to file an appeal in this matter, with the result that his Notice of Appeal, in the form of the September 15, 2016 letter from his counsel, has been validly filed.

Stay of the Order

[14] While this is provided for in section 55(2) of *RESA*, and therefore not strictly necessary to be commented upon by me, as there has been discussion in correspondence between this tribunal and the parties about the timing of any stay of the Order below as a result of this appeal, I hereby observe that such a stay pursuant to that statutory provision is now in effect. Council has adumbrated a future application for an order lifting the stay, and the Superintendent has indicated it will consider that possibility, but that will be for another day.

The Application to Adduce New Evidence

[15] As I have indicated, Council has advised that, if the extension of time were granted, it would not oppose Mr. Lin's application to adduce the new evidence on appeal that he has described. I note that Mr. Lin recently provided to this tribunal,

and I presume to the Respondents, the two transcripts of cross-examination, the Affidavit and a certified translation and transcription of an audio recording, all of which he wishes to introduce on this appeal. I will presume (unless told otherwise) that Council's lack of opposition extends to all of that material. I am not aware at this stage whether the Superintendent maintains its initial opposition to the application to adduce this new evidence.

[16] This tribunal is authorized under section 242.2(8)(b) of the *Financial Institutions Act, supra*, to permit the introduction of new evidence, if it is substantial and material to the decision and did not exist at the time the original decision was made, or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered (this language is also found in paragraph 3.15 of the FST "Practice Directives and Guidelines"). To this point the parties have not made submissions on the merits of this request, and the different positions taken upon it are not presently entirely clear. Accordingly, Mr. Lin will have until November 17, 2016 to provide a submission regarding the new evidence he wishes to introduce, each of the Respondents will have until December 1, 2016 to reply, and Mr. Lin will then have until December 8, 2016 to file a rebuttal, if he wishes.

"Patrick F. Lewis"

Patrick F. Lewis, Vice-Chair
Financial Services Tribunal

November 3, 2016