



Financial Services Tribunal

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DECISION NO. 2017-MBA-002(a)

In the matter of an appeal under section 9 of the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313

BETWEEN: Soheil Arman Kia (aka Soheil Armon Kia) **APPELLANT**

AND: Registrar of Mortgage Brokers **RESPONDENT**

BEFORE: Michael Tourigny, Member

DATE: Conducted by way of written submissions
concluding on May 08, 2018

APPEARING: For the Appellant: Owais Ahmed, Legal Counsel
For the Respondent: Andrea Glen, Legal Counsel

The Application

[1] Mr. Soheil Arman Kia, aka Soheil Armon Kia (the "Appellant") appeals to the Financial Services Tribunal (the "Tribunal") under section 9 of the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313 (the "MBA") from specified orders and decisions made by the designate of the Registrar of Mortgage Brokers (the "Designate"), including a Decision on the Merits, together with a related Penalty Decision.

[2] This appeal is an appeal on the record being conducted by way of written submissions.

[3] The record in this appeal includes written submissions of the Appellant dated March 23, 2018, written response submissions of the Registrar of Mortgage Brokers (the "Respondent") dated April 20, 2018, and a written reply from the Appellant dated May 8, 2018. The record has subsequently been provided to the panel hearing the appeal (the "Panel").

[4] In the Appellant's written submissions, no substantive submissions are made in support of the appeal from the Penalty Decision, other than to assert that the Penalty Decision was overly harsh and unreasonable in all of the circumstances. Instead, the Appellant requests the opportunity to provide written submission on

the issue of penalty, if necessary, at a later date; presumably after the Panel has made its decision on the appeal from the Decision on the Merits.

[5] The Panel has determined that as a matter of procedural fairness, the Appellant's application will be addressed as a preliminary matter prior to proceeding with the substance of the appeal.

Submissions of the Appellant

[6] The Appellant's submission in support of the application is brief. In essence, he asserts that it is difficult to make submissions on the Penalty Decision without first knowing the results of the appeal on the Decision on the Merits. The Appellant argues that (at para 373):

If the Decision on Merits is not reversed by the Tribunal, it may set aside some of the findings made by the Designate or it may reaffirm all of the findings. The parties would therefore benefit in knowing the result of the appeal of the Search and the Decision on Merits, prior to filing written submissions on the issue of penalty.

Submissions of the Respondent

[7] The Respondent asserts that the Appellant's rationale for not providing submissions on the Penalty Decision until after the Panel's ruling on the Decision on the Merits does not make sense for a number of reasons, as follows (at paras 40-41):

First, the Registrar's Designate clearly made the Penalty Decision on the basis of his findings in the Merits Decision. Second, if the Tribunal accedes to the Appellant's argument on the merits, that would have obvious implications for the penalty and Appellant has already made those points.

The only logical reason to advance an appeal on penalty (that is separate from, or in addition to, an appeal on the merits) is to challenge the connection between the penalty decided and the merits as they were found at first instance. In other words, an appeal on penalty necessarily relies on the facts as found by the decision-maker to establish that the penalty was unreasonably decided based on those facts. There was nothing preventing the Appellant from making such an argument in his written submissions.

[8] The Respondent has arranged its submissions to respond only to those grounds and arguments addressed by the Appellant. The Respondent submits that in the absence of substantive submissions from the Appellant, the Panel should treat the appeal from the Penalty Decision as abandoned.

Discussion and Analysis

[9] In exercising his appeal rights under the MBA, the Appellant chose to include an appeal from the Penalty Decision as well as the Decision on the Merits.

[10] Without getting into the particular findings of fact or merits of the appeal itself, the Panel agrees with the Respondent that in the normal course of events a decision on penalty would be linked to and dependent upon a decision on the merits and associated findings of fact. The Appellant has made no suggestion in his submissions that this is not the present case.

[11] The Appellant should be well aware of the findings made by the Designate. Those findings provide the basis for the Penalty Decision, and can be challenged by the Appellant in his written submissions. Accordingly, it is reasonable and appropriate to expect that absent compelling reasons to the contrary, the Appellant should make his submissions on the Penalty Decision in the normal course of providing written submissions on the whole of his appeal; not after the Panel has made its decision on the appeal from the Decision on the Merits.

[12] The Appellant's submission that it would be difficult to make submissions on the Penalty Decision in the absence of this Tribunal's decision regarding the appeal of the Decision on the Merits is not a compelling or persuasive argument. The Panel agrees with the Respondent's submission that the Appellant's rationale for delaying the provision of submissions regarding the Penalty Decision lacks merit.

[13] The Panel finds that to grant the Appellant's application to split the timing of his submissions would be unfair to the Respondent, and to the process of the appeal. As a matter of procedural fairness fulsome written submissions from both parties on the Penalty Decision should be included in the record upon which the appeal is to proceed.

[14] The Respondent submits that the appeal from the Penalty Decision should be treated by the Panel as abandoned, based on the absence of substantive submissions by the Appellant. The Panel does not agree that the Appellant has evidenced any intention to abandon his appeal from the Penalty Decision. To the contrary, the Appellant submits that the Penalty Decision was "overly harsh and unreasonable in all the circumstances" (at para 373) and has evidenced an intention to make substantive submissions "on an expedited basis" (at para 374) if his application is not granted.

[15] The Panel has concluded that as a matter of procedural fairness, the record will be reopened for written submissions regarding the appeal from the Penalty Decision. These submissions will be filed on an expedited basis, in accordance with the schedule outlined below.

[16] In reaching this conclusion, the Panel has considered and has attempted to balance any prejudice to the Respondent by reason of delay resulting from the decision to reopen the record, against the prejudice to the Appellant if such a remedy was not granted.

Decision

[17] The Appellant's application to delay the provision of written submissions on the appeal from the Penalty Decision is dismissed.

[18] The Panel orders that the record on this appeal be reopened to allow written submissions regarding the Penalty Decision, to be filed on an expedited basis as follows:

- (a) The Appellant will file and serve written submissions regarding the Penalty Decision by Thursday May 31, 2018;
- (b) The Respondent will file and serve written response submissions regarding the Penalty Decision by Thursday June 7, 2018; and
- (c) The Appellant to file and serve any reply submissions by Monday June 11, 2018.

“Michael Tourigny”

Michael Tourigny
Panel Chair

May 24, 2018