



Financial Services Tribunal

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DECISION NO. 2017-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: ROGER BRUCE SCHOEN **APPELLANT**

AND: REAL ESTATE COUNCIL OF BRITISH COLUMBIA **RESPONDENTS**
and SUPERINTENDENT OF REAL ESTATE

BEFORE: THEODORE F. STROCEL, Q.C., PANEL CHAIR

DATE: WRITTEN SUBMISSIONS CONCLUDING ON MAY
14, 2018

APPEARING: For the Appellant: Roger Bruce Schoen
For the Respondents: Jean Whittow, Q,C and
Joni Worton

DECISION ON COSTS OF APPEAL

[1] On April 19, 2018, I issued my decision in this appeal and gave the parties the opportunity to address costs in further submissions.

[2] The Real Estate Council of British Columbia ("RECBC") has made a submission, and based on its substantial success in the appeal asks for costs in the aggregate amount of \$4,910.05. Mr. Schoen has been given an opportunity to respond and to make his own submissions, however, he has not done so.

Power to award costs

[3] Pursuant to s. 47 of the *Administrative Tribunals Act*, SBC 2004, c. 45, and s. 242.1(7)(g) of the *Financial Institutions Act*, RSBC 1996, c. 141, this Tribunal (the "FST") has the power to issue an order requiring a party to pay all or part of the costs of another party.

[4] The FST has issued Practice Directives and Guidelines which include criteria which the FST may consider in determining whether a party is liable to pay the costs of another party. These criteria include (Guideline 3.24):

- 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.

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

[6] Sections 12(2) and 13(2) of the *Administrative Tribunals Act* provide that a tribunal is not bound by its practice directives. In *Brewers Distributor Ltd. v. the Brewery, Winery and Distillery Workers, Local 300, and the Superintendent of Pensions* (2010-PBA-001(c)), the FST concluded that (at para 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.

[7] This reasoning was accepted in *Kadiolgu v. the Real Estate Council of British Columbia and the Superintendent of Real Estate*, (2015-RSA-003(c)) and *Yang v. the Real Estate Council of British Columbia*, (2017-RSA-001(b)).

[8] I find the reasoning outlined in these decisions applicable to the present appeal. I will refer to both the criteria in the FST Practice Directives and Guidelines, and to the BC Supreme Court Civil Rules, but ultimately in this decision I am exercising my discretion as to what, if any, costs should be awarded to the Appellant.

Factors which favour an award of Costs

[9] While the FST does not routinely award costs to the successful party, I find that there are several factors in favour of an award of costs to the RECBC in the present case, namely:

- a. the RECBC was completely successful on appeal. All the grounds of appeal were dismissed;

- b. many of the Appellant's legal positions on appeal were manifestly unfounded;
- c. the Appellant made numerous unsubstantiated and unwarranted allegations of bias and wrongdoing on the part of the REBC, which allegations were exacerbated by the use of insulting language in his submissions; and
- d. the Appellant sought to rely on claims and assertions of fact that were not included in the appeal record. The RECBC sought to introduce affidavits to counter such claims and were partially successful. Although the Appellant made no submissions to introduce new evidence, I treated the submissions as an implicit application to introduce new evidence. In the decision, I rejected the application.

[10] The Appellant did not proceed reasonably in this appeal. He raised numerous unfounded claims which unnecessarily added to the complexity of this appeal.

Award

[11] In *Kadioglu*, the FST found that the tariff items under the BC Supreme Court Civil Rules which were most closely applicable to FST proceedings were (at para 14): 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).

[12] Although the RECBC takes the position that Costs should be assessed at Scale B because the present matter was a matter of "ordinary difficulty", the RECBC seeks the maximum 10 units each under tariff items 7 and 36 because the appeal was unnecessarily complicated by the Appellant's numerous unfounded claims.

[13] Regarding the application to admit new evidence, the RECBC claims five units under tariff item 23.

[14] The total number of units claimed is 25, each with a value of \$110, for a total of \$2,750, to which is added \$137.50 in GST and \$192.50 in PST. I find this to be reasonable.

[15] The RECBC has claimed disbursements in the amount of \$1,830.05, all of which are reasonable.

[16] In summary, Mr. Schoen is ordered to pay to the RECBC costs in the total amount of \$4,910.05.

"Theodore F. Strocel"

Theodore F. Strocel, QC
Financial Services Tribunal

August 29, 2018