



Financial Services Tribunal

Fourth Floor, 747 Fort Street
Victoria BC V8W 3E9
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

Website: www.fst.gov.bc.ca
Email:
financialservicestribunal@gov.bc.ca

May 17, 2019
Via Email

Appeal File: 2019-FIA-004

Alexander Holburn Beaudin & Lang LLP
Suite 2700 - 700 West Georgia Street
Vancouver BC V7Y 1B8

Ministry of Attorney General
Legal Services Branch
1301 865 Hornby Street
Vancouver BC V6Z 2G3

Attention: David T. McKnight
dmcknight@ahbl.ca

Attention: Sandra Wilkinson
sandra.wilkinson@gov.bc.ca

Hakemi & Ridgedale LLP
1500-888 Dunsmuir Street
Vancouver BC V6C 3K4

Attention: Ravneet Arora
rarora@hakemiridgedale.com
(letter only)

Re: Appeal to the Financial Services Tribunal ("FST") – Xing v. Insurance Council of British Columbia and Financial Institutions Commission

DECISION ON INTERIM STAY APPLICATION

Application

On April 23, 2019 the Insurance Council of BC (the "Council") pronounced its decision in a matter against Mr. Xing, which included an order that Mr. Xing's life and accident and sickness insurance licence (the "Licence") be suspended for a period of one year commencing on April 23, 2019, and that upon future licensure, Mr. Xing be supervised by a supervisor approved by the Insurance Council (the "Suspension Orders").

On May 7, 2019 Mr. Xing (the "Appellant") filed an appeal to the FST from the April 23, 2019 decision of the Council (the "Appeal").

On May 7, 2019 the Appellant also filed an application with the FST seeking a stay of the Suspension Orders pending final resolution of the Appellant's appeal to the FST (the "Stay Application"). Included in the Stay Application was an application for an interim stay of the Suspension Orders pending determination by the FST of the Stay Application (the "Interim Stay Application").

By letter dated May 13, 2019, the FST gave notice to the Council and the Financial Institutions Commission (together the “Respondents”) of the filing of the Appeal, the Stay Application and Interim Stay Application. The Respondents were asked for their position as to whether they would consent to either of the Stay Application or the Interim Stay Application.

By letter dated May 14, 2019 legal counsel for the Council advised that Council does not consent to a stay of any terms of the April 23, 2019 order.

I note that in the May 13, 2019 letter the FST set a schedule for submissions on the Stay Application. The Respondents are to file their responses to the Appellant’s May 7, 2019 submissions by May 27, 2019, with the Appellant to file any final reply by June 3, 2019.

Analysis

Under section 242.2(10)(a)(i) of the *Financial Institutions Act*, RSBC 1996 c.141 (the “FIA”), the FST member hearing an appeal has the discretion to stay the decision under appeal for any length of time, with or without conditions.

As a matter of procedural fairness, other than in exigent circumstances, submissions from all parties should be considered prior to making decisions concerning any aspect of an appeal. Here the Respondents advise that they do not consent, but nothing more. I understand this could be explained by the very limited time afforded the Respondents for response and the unavailability of Respondents legal counsel.

I am well aware of the fact that decisions of the Council take effect from pronouncement and are to be treated as correct unless and until an appellate body holds otherwise. To stay an authoritative order, otherwise in effect and to be accepted as correct and binding, is a serious matter. This explains why a stay applicant typically needs to satisfy the requirements set out in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311. However, I have decided not to engage in the analysis that I anticipate will be applied to the Stay Application with the benefit of fulsome submissions from the Respondents.

Instead, I have considered the Interim Stay Application by balancing the harm that may be suffered by the Appellant if the Interim Stay Application is not granted, against any risk to the public if the Interim Stay Application is granted. The timeline for the exchange of submissions on the Stay Application is relatively short. However, a decision on the Stay Application could take a number of months to issue. According to the Affidavit of the Appellant, the economic interests of himself, his family and employees would be harmed significantly by a licence suspension of that length. On the other side of the ledger I observe that the Appellant appears to have continued to carry on his business under his Licence over the two year period subsequent to being issued the Notice of Intended Decision in May 2017 with no further incidents or complaints that the FST has been made aware of. On balance, fairness dictates that the Interim Stay Application should be granted.

Decision

Accordingly, I grant an interim stay of the terms of the Order suspending the Appellant’s License, and requiring supervision of the Appellant’s practice by a supervisor approved by Council, pending determination by the FST of the Stay Application.

In making this Interim Stay Order I grant the Respondents liberty to at any time make an application the FST under section 242.2(10)(a)(ii) of the FIA to lift this Interim Stay Order, should they feel it is appropriate in the public interest to do so.

Yours truly,

“Michael Tourigny”

Michael Tourigny
Acting Chair
Financial Services Tribunal

2019-05-17 Ruling on Interim Stay