



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

DECISION NO. 2019-RSA-001(b)

In the matter of an appeal under the *Real Estate Services Act* SBC 2004, c 42

BETWEEN:	Trevor Inglis	APPELLANT
AND:	Real Estate Council of British Columbia	RESPONDENT
AND:	Superintendent of Real Estate	THIRD PARTY
BEFORE:	Michelle Good, FST Panel Chair	
DATE:	Heard by way of written submissions closing July 03, 2020	
APPEARING:	For the Appellant: Wesley McMillan, Counsel For the Respondent: Sean K. Boyle, Counsel For the Third Party: Joni Worton, Counsel	

Decision on Costs of the Appeal

Overview

[1] On June 9, 2020 I issued my decision in this appeal, giving the parties the opportunity to make further submissions with respect to the matter of costs.

[2] The Appellant objects to any order of costs.

[3] The Real Estate Council of British Columbia (the "Council") seeks an order for \$2,454.00 in costs and \$1,555.64 in disbursements. The Superintendent of Real Estate does not seek costs.

Authority to Award Costs

[4] Pursuant to section 47 of the *Administrative Tribunals Act*, SBC 2004 c 45 (the "ATA"), the Financial Services Tribunal (the "FST") is authorized to issue orders for payment of the costs of another party.

[5] The FST's Practice Directives and Guidelines (the "Guidelines") sets out factors I may consider with respect to making costs orders. These are as follow:

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

[6] However, these Guidelines are not binding on the Tribunal and the Tribunal is not obliged to make an order for costs. This was considered by the FST in *Brewers Distributor Ltd., v Superintendent of Pensions*, Decision No. 2010-PBA-001(c), (*Brewers*) wherein the tribunal stated that (at para 13):

[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] Likewise, in *Kadioglu v Real Estate Council*, 2015-RSA-003(c) (*Kadioglu*), the Tribunal stated (at para 8), referring to *Brewers*, it is in the decision-maker's discretion as to whether or not costs should be awarded. I agree with that conclusion.

[8] Cumulatively, the Guidelines, and the manner in which they are elaborated on in *Brewers* and *Kadioglu*, combine to establish that the FST will only order costs in exceptional circumstances. Further, the Guidelines provide that costs will be calculated using the tariff in the BC Supreme Court Rules as a general guideline.

Discussion

[9] Given the above noted framework that guides the FST's decisions with respect to costs, the question I must answer is whether or not this matter can be described as exceptional and appropriate for making an order for costs.

[10] In addition to not being bound by the considerations that are included in the Guidelines, I am not limited to the considerations included in the Guidelines in the exercise of my discretion.

[11] As the decision reflects, the issues raised on appeal can be described as tenuous at best. For example, to suggest that the Committee applied the wrong standard of proof when it first described it as on the balance of probabilities based on clear and cogent evidence and then described it as on the balance of probabilities, is to articulate a distinction without a difference.

[12] The Appellant also raised on appeal an issue it conceded in the first instance. The impact of this was that this Tribunal was faced with a paucity of discussion on how the Committee arrived at its decision on this point. While this may fall short of being frivolous and vexatious, it is a questionable practice in that it fails to make an argument in the first instance, and then asks to make the argument on appeal.

[13] In effect, the Appellant conducted the appeal as though it were a re-hearing as opposed to one that targeted supportable legal errors. I accept the submission of the Respondents that the manner in which the Appeal proceeded was wasteful in that the RECBC was forced to spend considerable time and resources addressing issues that failed to raise legal errors.

[14] Given the tenuous nature of many of the issues raised on appeal and the fact that the Respondent was entirely successful on the appeal, I am of the view that an order for costs is appropriate in this case.

[15] The Respondents are correct that costs in matters before the FST are to be assessed according to the British Columbia Supreme Court Tariff and submits that costs in this matter should be assessed at Scale B given that the matter is of ordinary difficulty. Having said that, the Respondents submits the maximum allocation of points allowable under Scale B would result in an appropriate award of costs.

[16] The Respondent makes its claim for a maximum number of points in tariff items this tribunal has held to be the most appropriate in FST appeals. These are items 7, 23 and 36.

[17] The Tariff provides the maximum number of points is justified in "matters on which a great deal of time should ordinarily have been spent". Given that the Respondents were required to respond to eight grounds of appeal, I agree that it was required to expend a great deal of time in preparing its response to the Appeal.

Decision

[18] In light of the foregoing, I am satisfied that this is an appropriate case in which to exercise my discretion to award costs.

[19] Accordingly, I find the Respondent's application for costs in the amount of \$2,454.00 and disbursements in the amount of \$1,555.64 is reasonable and appropriate in this case. I so order that the Respondent shall have its costs and disbursements as requested.

"Michelle Good"

Michelle Good,
Panel Chair, Financial Services Tribunal

July 17, 2020