



# Financial Services Tribunal

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## **DECISION NO. FST-FIA-20-A001(a)**

In the matter of an appeal under section 242 of the *Financial Institutions Act*, RSBC 1996 c 141

<b>BETWEEN:</b>	Xiaomei (May) Zou	<b>APPELLANT</b>
<b>AND:</b>	Insurance Council of British Columbia	<b>RESPONDENT</b>
<b>AND:</b>	British Columbia Financial Services Authority	<b>THIRD PARTY</b>
<b>BEFORE:</b>	Michelle Good, Panel Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on October 19, 2020	
<b>APPEARING:</b>	For the Appellant:	Ross Davidson, Legal Counsel
	For the Respondent:	Naomi J. Krueger, Legal Counsel
	For the Third Party:	Jessica Gossen, Legal Counsel

## **APPLICATION OVERVIEW**

[1] On December 30, 2019 the Financial Services Tribunal (“FST”) issued its decision<sup>1</sup> in an appeal of the Insurance Council of British Columbia’s (the “Council”) February 08, 2019 decision in which the Appellant, Xiaomei (May) Zou, was ordered to pay a fine of \$3,000 as well as hearing costs in the amount of \$5,875.71 (the “First Order”).

[2] The FST found that the penalty ordered by the Council in the First Order was reasonable in all the circumstances. The FST did however find that the decision to levy hearing costs against the Appellant in the First Order was unreasonable in that the Council “failed to provide any explanation of its costs as provided by its own Policy and Guidelines, and failed to provide any rationale for exercising its discretion” in the manner in which it did.

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<sup>1</sup> Decision No. 2019-FIA-001(a) (*Zou No. 1*).

[3] The FST elected to remit the matter back to the Council with directions to reconsider “both the order for costs and the amount of costs”. The FST also stated that it expected the Council, on reconsideration, to provide adequate written reasons for whatever decision it came to.

[4] The Council reconsidered the issue of the assessment of hearing costs on February 11, 2020, and on April 02, 2020 issued an amended order (the “Amended Order”) along with reasons. The reasons accompanying the Amended Order set out the Council’s rationale for assigning hearing costs against the Appellant. Neither the Amended Order nor the attached reasons substantively address or change any element of the First Order other than the element of hearing costs<sup>2</sup>.

[5] The Appellant submitted an appeal of the Amended Order and that appeal is currently before me. On September 30, 2020 the Appellant submitted an application for a stay of the Amended Order.

[6] The Appellant provided very sparse submissions in support of her stay application, which I have reproduced in their entirety as follows:

**I am writing this letter to ask stay of the council order dated April 2, 2020**

[Counsel] from Council said: both my licences will be suspended today, I could not know why she want to burn both my licences. General licence was fined \$1,000.00 and I managed paid that \$1,000 but she said: if I not pay life license fine, she will suspend both my licence. A lot insurance agent just have one licence, why she is going to burn both my licence? What is the reason bundled together. [emphasis in original]

[7] The Appellant appears to be seeking a stay of the entire Amended Order, though she has not explained on what basis she is seeking to have the order stayed. She discusses partial payment of the fine imposed in the Amended Order, and implies that part of the fine remains outstanding.

[8] In its submissions, which were agreed with and adopted by the Third Party British Columbia Financial Services Authority, the Council consents to a stay of the assessment of hearing costs against the Appellant pending final determination of the current appeal, but opposes a stay of any other elements of the Amended Order.

[9] The Council submits that the fine assessed against the Appellant is not at issue in the current appeal because the Appellant has only raised the issue of hearing costs in her submissions on appeal, or, alternatively, because the FST has exhausted its jurisdiction with respect to the fine in the first appeal. The Council further submits that the Appellant has not met the test for a stay in any event.

## **ANALYSIS AND DECISION**

[10] I find it unnecessary for the purposes of this application to consider the test for a stay. I find that the matter of penalty is not before me on this appeal, having

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<sup>2</sup> Though I note that certain dates have been amended and the word “any” has been added to the first condition of the Amended Order.

been decided with finality in the FST Decision of December 30, 2019 wherein the Panel Chair found that (*Zou No. 1* at para 70):

In this case, the monetary penalty was not extreme insofar as the range of monetary penalties was up to \$10,000, and it was in line with cases with similar factual underpinnings. I find the penalty was reasonable in all the circumstances.

[11] Further, the Panel Chair, consistent with the discretion provided her in section 242.2(10)(a) of the *Financial Institutions Act* (FIA), gave direction to the parties that the stay that was in place during the course of the original appeal expired with the issuance of the December 30, 2019 decision<sup>3</sup>. Without making an order regarding time frame for payment, the Panel Chair recommended that the said time frame mirror the three-month time frame for payment articulated in the original Council decision.

[12] For the purposes of the present application, I note that section 242.2(2) of the FIA, clearly sets out that the filing of an appeal does not trigger an automatic stay of the appealed order.

[13] Given that the matter of penalty has been decided with finality in the previous appeal, the only issue before me in the current appeal is the matter of whether or not the hearing costs were reasonable.

[14] Given the consent of the Council to a stay of the part of the Amended Order which deals with hearing costs, I order that the following element of the Amended Order shall be stayed until the current appeal has concluded:

4. The Licensee is assessed Council's hearing costs of \$5,875.71, to be paid on or before September 29, 2020.

"Michelle Good"

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Michelle Good, Panel Chair  
Financial Services Tribunal

November 24, 2020

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<sup>3</sup> *Zou No. 1* at para 105.