



Financial Services Tribunal

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DECISION NO. FST-RSA-21-A001(a)

In the matter of an appeal under section 54 of the *Real Estate Services Act*, SBC 2004 c. 42

BETWEEN:	Wei Qing (Wendy) Yang	APPELLANT
AND:	Superintendent of Real Estate	RESPONDENT
BEFORE:	James P. Carwana, Panel Chair	
DATE:	Conducted by way of written submissions concluding on September 15, 2021	
APPEARING:	For the Appellant:	Jeffrey P. Scouten, Counsel
	For the Respondent:	David T. McKnight, Counsel

DECISION ON INTERIM STAY APPLICATION

APPLICATION

[1] The Appellant has filed an appeal to the Financial Services Tribunal (the "FST") in respect of two decisions by a Discipline Hearing Committee (the "Committee") of the Real Estate Council of British Columbia. The Appellant has filed an application to stay the effect of the suspension set out in one of those decisions pending a decision on the merits of her appeal, and submissions have been sought regarding that stay application. This is an application for an interim stay of the Committee's decision imposing a suspension on the Appellant until the main stay application can be decided.

BACKGROUND

[2] The Appellant is a real estate agent. She was charged with professional misconduct under the *Real Estate Services Act* ("RESA") relating to various matters which occurred in 2015 and 2016.

[3] A hearing was held regarding the charges before the Committee in October and November 2020. Submissions on the issue of liability were subsequently made

by legal counsel for the parties in January 2021, and the Committee reserved judgment.

[4] On April 9, 2021, the Committee issued its decision regarding liability in respect of the charges (the "Liability Decision"). The Committee made findings of professional misconduct and conduct unbecoming a licensee against the Appellant in relation to several of the charges.

[5] In the Liability Decision, the Committee stated that it would "hear evidence and submissions from the parties concerning orders under section 43(2) of the *RESA*, and expenses under section 44(1) of the *RESA*, and any other actions available to the Committee, at a date, time and place to be set."¹

[6] In May 2021, the Committee received written submissions concerning sanctions and enforcement expenses to be ordered against the Appellant.

[7] On July 29, 2021, the Committee rendered its decision on penalty (the "Sanction Decision"), where it ordered:

- a. the Appellant be suspended for one (1) year;
- b. the Appellant be prohibited from acting as an unlicensed assistant during the license suspension period;
- c. the Appellant, at her own expense, register for and successfully complete the Council's Real Estate Trading Services Remedial Education Course, and the Real Estate Institute's Ethics in Business Practice course, within one (1) year from the date of its decision;
- d. the Appellant pay enforcement expenses to Council in the amount of \$150,000 within one (1) year from the date of its decision; and
- e. if the Appellant fails to comply with any of the terms of the decision as set out above, the Council may suspend or cancel their licence without further notice pursuant to section 43(3) and 43(4) of the *RESA*.

[8] The BC Financial Services Authority ("BCFSA") began handling the matter effective August 1, 2021 under amendments pursuant to Bill 8 - *Finance Statutes Amendment Act, 2021*². By letter dated August 9, 2021, the BCFSA delivered the Sanction Decision to the Appellant via the Appellant's counsel. In its letter, the BCFSA advised the Appellant her licence would be suspended effective August 16, 2021.

[9] On August 11, 2021, the Appellant filed a Notice of Appeal to the FST. In it, the Appellant appealed both the Liability and Sanction Decisions.

[10] On August 12, 2021, counsel for the Appellant wrote to the BCFSA to request that the implementation of the Appellant's suspension be delayed. The Appellant requested that the implementation be delayed to allow her to make an application for a stay of the suspension to the FST. In this request, the Appellant referenced the fact that there was an automatic stay under section 55 of the *RESA* prior to August 1,

¹ Liability Decision at para 156.

² See Bill 8 - *Finance Statutes Amendment Act, 2021* at section 126.

2021. On August 12, the BCFSA advised the Appellant that the implementation date would not be delayed.

[11] On August 13, 2021, counsel for the Appellant wrote to the Chair of the Committee to request that the Committee "delay the commencement of her suspension for a brief period to allow time for her to apply to the FST for a stay". Counsel for the Appellant advised the Committee that the BCFSA had refused to delay the implementation and the practical effect of such a refusal was to render useless the Appellant's right to apply to the FST "for a stay of the Committee's Sanction Decision pending the outcome of her appeal".

[12] On August 15, 2021, the Committee, through a letter from independent legal counsel, distributed the substance of its decision and reasons to the parties relating to the Appellant's request to delay the commencement of her suspension. The Committee's decision was to amend its Sanction Decision to add that the Appellant's suspension "commences on the thirtieth (30th) day from August 9, 2021, the date on which the BCFSA delivered its letter enclosing the Sanction Decision". The letter from legal counsel stated that the decision and its reasons would be put in the form of an addendum to the Sanction Decision the following week.

[13] On August 19, 2021, the Committee issued its "Supplemental Reasons for Decision Regarding Sanction" signed by the members of the Committee. The Committee stated that it continued to have jurisdiction over the matter and that the supplemental decision was part of the Sanction Decision. The substance of the Committee's supplemental reasons and decision were as communicated in the August 15, 2021 letter from legal counsel referred to above.

[14] The Appellant subsequently applied to the FST for a stay of the suspension imposed under the Sanction Decision pending the outcome of her appeal. The Appellant also sought the Respondent's agreement to delay commencement of the suspension until a decision on the stay application. Failing such agreement, the Appellant also sought an interim stay of the suspension until the stay could be determined. The Respondent did not agree to delay the commencement of the suspension as requested.

[15] The FST subsequently set a schedule for submissions on the main stay application and obtained submissions from the parties in relation to the current application for an interim stay.

POSITIONS OF THE PARTIES

[16] The Appellant says the circumstances here are unique in terms of the timing of the Sanction Decision and the change in legislation effective August 1, 2021. Prior to the repeal of Section 55 of the *RESA* effective August 1, 2021, there was an automatic stay of decisions by the Real Estate Council when an appeal was filed. The Appellant argues that because the decisions under appeal are decisions of the Real Estate Council, "there are grounds for questioning whether the repeal of s. 55, which came into effect on August 1st, negates the effect of s. 55 as it pertains to decisions made by the Real Estate Council before its repeal". The Appellant argues this will require further examination on the main stay application.

[17] The Appellant submits the immediate commencement of her suspension "is not required or warranted in the public interest" nor would it "create any risk of harm

to the public". The Appellant argues that the timing of her suspension makes no practical difference in terms of the legitimate sentencing objectives that the suspension was meant to achieve, and if the main stay application is denied, the Appellant can start her suspension afterwards without any harm to the public interest.

[18] The Appellant says she "currently has approximately 11 active listings which are at various stages of progress toward an eventual sale". The Appellant says there will be "serious and lasting damage stemming from the shuttering of her practice" if an interim stay is not granted. She states an interruption in her current ability to work and meet her clients' needs on pending transactions would cause her and her clients needless harm and inconvenience should her stay application ultimately be allowed. Further, the Appellant notes that if her suspension takes effect immediately and is later reduced to a period less than she serves, she will have been unfairly denied the ability to work for a longer period than the period of suspension ultimately imposed.

[19] The Respondent says that "decisions of courts and tribunals take effect from pronouncement and are to be treated as correct unless and until an appellate body holds otherwise". In response to the interim stay request here, the Respondent argues there is a risk to the public if the Sanction Decision does not take effect immediately. The Respondent relies on the findings of the Committee and says there will be actual harm to the public interest caused by "an erosion of trust and confidence in the real estate regulatory regime" if the suspension does not take effect immediately.

[20] The Respondent says the Appellant has not established that she or her clients will suffer harm or inconvenience if the interim stay is not granted. Further, the Respondent submits that that the Appellant should serve her suspension immediately since it is likely the eventual result here will be a suspension of at least two to three months.

[21] In reply, the Appellant submits that "there is not a shred of evidence, and no basis in the Committee's decisions, to suspect that delaying the commencement of Ms. Yang's suspension – and, in particular, over the limited period of an interim stay – would pose any risk whatsoever to the public". The Appellant says she has provided details regarding her active listings, and it is self-evident that there will be harm and inconvenience if she is required to shut down her practice until the main stay application is determined, and then attempt to restart it if the main stay application is granted. The Appellant further submits that the interim stay application is "not the appropriate forum for determining whether or how likely it is that a suspension of some length will be the eventual result".

ANALYSIS AND DECISION

[22] I begin by noting that while I agree that orders such as the Sanction Decision speak from their pronouncement and should be treated as correct unless an appellant body holds otherwise, when a stay of such a decision is sought, the circumstances of the particular case must be examined to determine if a stay is appropriate. When an interim stay is sought, the matter will generally need to be adjudicated on a shorter time frame, with less fulsome submissions than the main stay application and with a focus on the interim time period. Moreover, it goes

without saying that each case involving an interim stay application will turn on its own particular facts and circumstances.

[23] I agree with the Appellant that the circumstances here raise an issue regarding the timing of the Sanction Decision and the change in legislation effective August 1, 2021. The Appellant has raised serious questions regarding the effects of the legislative change on the stay of a decision such as the one here, issued by a Discipline Committee of the Council prior to August 1, 2021. These questions are more appropriately considered on the main stay application with more fulsome submissions including a more detailed examination of the legislation and jurisprudence.

[24] I turn now to considering whether an interim stay should be granted in the present case. Based on the submissions to date, I am unable to determine the extent to which there may or may not be a suspension, or what the length of any such suspension is likely to be, as the eventual result of the appeal. The Respondent has raised the impact on the public interest if the Appellant's suspension does not take effect immediately. In considering that matter, I note the Committee in its Supplemental Reasons did not identify any particular risk to the public interest if the suspension did not occur immediately. Further, the Committee delayed the effect of the suspension for 30 days from delivery of the Sanction Decision to the Appellant by the BCFSA. Regarding the time involved with an interim stay here, I find that it will be relatively short compared to the time involved with a stay pending a decision on the appeal itself, and as a practical matter there will be little to no impact on the public interest if the Appellant begins her suspension after the main stay application is decided should that application be denied. On the other hand, the Appellant has provided information indicating that she currently has a significant number of active listings at various stages of progress toward an eventual sale, which will result in the Appellant and those involved with the listings being adversely impacted to a greater extent if the suspension takes immediate effect. Thus, I have decided the circumstances in the present case favour granting an interim stay until the Appellant's main stay application is determined by the FST.

[25] In the result, I grant an interim stay of the suspension of the Appellant under the Sanction Decision pending the determination by the FST of the main stay application.

[26] I remain seized of this matter, and in making this interim stay order, I grant the Respondent liberty to apply any time under section 242.2(10)(a)(ii) of the *Financial Institutions Act* to lift this interim stay order, in the event the Respondent believes it has become in the public interest to do so.

"James P. Carwana"

James P. Carwana, Panel Chair
Financial Services Tribunal

September 20, 2021