

FINANCIAL SERVICES TRIBUNAL

**IN THE MATTER OF
THE REAL ESTATE SERVICES ACT
AND THE COUNCIL RULES
S.B.C. 2004, C. 42**

BETWEEN:

DONALD LAWRENCE TYMCHUK

NEW WAY REALTY INC.

APPELLANT

AND:

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA

RESPONDENT

COSTS DECISION

BEFORE: ROBERT J. HOBART PRESIDING MEMBER

APPEARING: DONALD L. TYMCHUK FOR THE APPELLANT

JESSICA S. GOSSEN FOR THE RESPONDENT

RICHARD FERNYHOUGH FOR THE
SUPERINTENDENT OF
REAL ESTATE

BACKGROUND

In a decision dated September 6, 2006, I found the appeal application of Mr. Tymchuk (“Tymchuk”) and New Way Realty Inc. to be improper, as it attempted to use the appeal with the Financial Services Tribunal (“Tribunal”) for an ulterior purpose unrelated to the *Real Estate Services Act*. In particular, Tymchuk had inappropriately attempted to use the appeal to put forward allegations that the Real Estate Council (“Council”) was a party to a price fixing conspiracy within the real estate industry.

The Council in their appeal submission argued that the appeal be dismissed with costs awarded to the Council. Section 47 of the *Administrative Tribunals Act* provides authority for the Tribunal to order a party or intervener to pay a “portion” of the costs of another party or intervener in connection with an appeal application. In considering the use of its discretion under this section, the Tribunal considers whether a party’s conduct has been improper, vexatious, frivolous or abusive. Due to the improper conduct of Tymchuk, it was my opinion that costs should be awarded.

In this context, I invited submissions from the Council and the Superintendent of Real Estate within 14 days of the date of the decision. These submissions were intended to outline the nature and magnitude of the costs incurred by each as a result of the appeal, and to present arguments as to the appropriate “portion” of the costs that should be paid by Tymchuk and New Way Realty Inc. Tymchuk and New Way Realty were provided with an opportunity to respond to the submissions.

A submission was received from the Superintendent of Real Estate on September 7, 2006. A submission from the Council was received on September 19, 2006. Both submissions were forwarded to Tymchuk in a letter from the Tribunal dated September 19, 2006. Tymchuk was asked to make any reply by October 3, 2006. As at the date of this decision, no reply had been received from Tymchuk.

SUMMARY OF ARGUMENTS REGARDING COSTS**A. The Real Estate Council**

The Council submitted a claim for costs totalling \$5,789.14 with details outlined in the attached Table. These include legal costs and the costs of producing the transcript of the Hearing. This transcript would not have been required had the appeal not taken place.

The Council did not make any argument regarding the “portion” of costs that should be paid by Tymchuk.

The Council submitted that costs ought to be awarded to serve as a deterrent to other parties bringing ill founded appeals.

B. The Superintendent of Real Estate

The Superintendent of Real Estate indicated that its actual costs were \$1,494.60 consisting of 14.1 hours of legal costs. It was argued that the appellants be ordered to pay a “significant” portion of these costs. It was also argued that the appellants should be required to pay a significant portion of the Tribunal’s costs. Finally, it was submitted that a significant award regarding costs in cases where an appeal has been made for improper purposes not only reimburses costs of those required to be a party to the appeal, but also serves as a deterrent to others who might otherwise bring an appeal to the Tribunal for improper purposes.

CONCLUSION

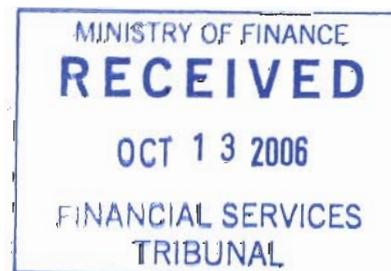
It is my opinion that the cost submissions by the Council and Superintendent of Real Estate are reasonable. I also agree that the appellants be ordered to pay a “significant” portion of these costs. In the absence of arguments with respect to what constitutes “significant”, I have determined that seventy five percent of the costs be paid by Tymchuk and New Way Realty Inc. This means that Council is to be reimbursed by Tymchuk and New Way Realty Inc. in an amount totalling \$4,342.16 and the Superintendent of Real Estate is to be reimbursed in an amount totalling \$1,120.95.

THESE COSTS IN THE AMOUNT OF \$5,463.11 ARE ORDERED THIS 13 DAY OF OCTOBER, 2006

DATED IN SURREY, BRITISH COLUMBIA, THE 13 DAY OF OCTOBER, 2006.
FOR THE FINANCIAL SERVICES TRIBUNAL



ROBERT J. HOBART
PRESIDING MEMBER



REAL ESTATE COUNCIL CLAIM FOR COSTS

Costs in Relation to Appeal

Regulation Tariff Item

Legal Services:

Submissions	10 hours x \$150.00 =	\$ 1,500.00	
Stay of Proceedings	6 hours x \$150.00 =	\$ 900.00	
		<u>\$ 2,400.00</u>	\$ 2,400.00

Photocopies (Books of Documents and Exhibits) \$ 100.00

Other Costs:

Transcripts of 7 days hearing	\$ 3,074.35	
GST 6%	\$ 215.19	
	<u>\$ 3,289.54</u>	\$ 3,289.54

Total \$ 5,789.54