

**FINANCIAL SERVICES TRIBUNAL**

In the matter of *Real Estate Service Act S.B.C.2004.42* and *Real Estate Act and Regulations*

BETWEEN:

BELLA DANIELS

APPELLANT

AND:

REAL ESTATE COUNCIL OF BRITISH COLUMBIA

RESPONDENT

AND:

SUPERINTENDENT OF REAL ESTATE

RESPONDENT

**INTERIM DECISION (ADMISSION OF NEW EVIDENCE)**

Chair: Dale R. Doan LLB, Member, Financial Services Tribunal

Bella Daniels, Self-represented

Jessica Gossen, Counsel for the Real Estate Council of British Columbia

Richard Fernyhough, Counsel for the Superintendent of Real Estate

Interim Order Date: May 7, 2007

## **INTRODUCTION**

The Appellant, Bella Daniels, has made application for the admission of 16 documents as new evidence for consideration by the Financial Services Tribunal (the “FST”) in relation to her appeal of the Insurance Council of British Columbia’s (the “Council”) disciplinary decision dated November 28, 2006 (the “Appeal”).

For the purposes of this application for the admission of new evidence, I have reviewed the decision of Council, the submissions of the Appellant, the documentary evidence that she wishes to present as part of this FST Appeal procedure, and the submissions of legal counsel for both the Superintendent of Real Estate and Council.

## **BACKGROUND**

Section 242.2(8)(b) of the *Financial Institutions Act* deals with the introduction of new evidence. There is no question that the FST has the ability to admit new evidence however two tests must be met. First, the proposed new evidence must be substantial and material to the decision in question. Second, the proposed new evidence must not have existed at the time the original decision was made, or, did exist at the time but was not discovered and could not, through the exercise of reasonable diligence have been discovered.

## **DECISION**

I accept without reservation the submissions of legal counsel for the Superintendent of Real Estate and of legal counsel for Council. The preponderance of the proposed new evidence is neither substantial nor material to the decision of Council. The Appellant is apparently of the view that parties to these proceedings as well as third parties, in some cases witnesses before Council, are biased towards her and are prejudiced towards her, wishing to harm her professional and personal reputations as well as her real estate business. The decision under Appeal clearly centers around allegations of the Appellant’s misconduct, negligence and incompetence. The secondary portion of the Appeal deals with the penalty assessed against the Appellant by Council. Neither of these elements in the decision of Council are affected materially by any of the proposed new evidence in my view.

I appreciate that the admission now of certain of the documents or certain portions of the documents may be consented to by legal counsel for Council, however in these few exceptional cases, the proposed items of evidence still do not meet the tests set out in section 242.2(8)(b) of the *Financial Institutions Act*.

## **CONCLUSION**

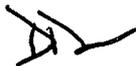
The application for the admission of new evidence by the Appellant is dismissed.

With respect to the question of costs, I appreciate that Ms. Daniels is representing herself in these proceedings. The application for the admission of new evidence has taken a great deal of time and has caused a delay in this Appeal procedure. Further, Ms. Daniels did not comply with the

time deadline set by the FST for the presentation of her submissions with respect to the new evidence. Following her additional request, more time was provided resulting in her eventual submissions and presentation of proposed new evidence. In the interim, the FST on more than one occasion specifically asked her to address the criteria found in the *Financial Institutions Act* that must be met before new evidence will be admitted in an appeal process. She has failed to do so. The basis of her application was simply that the new evidence did not exist at the time the original decision was made. No consideration or submissions regarding the materiality of the new evidence or even its relevance to the initial decision of Council has been provided. The Appellant did take the time to propose unsubstantiated allegations on matters unrelated to the Appeal. In these circumstances, I am of the view that costs should be awarded in favour of the Superintendent of Real Estate and Council. Therefore, the Appellant is ordered to pay costs in the amount of \$500.00 to the Superintendent of Real Estate and costs in the amount of \$500.00 in favour of the Real Estate Council of British Columbia within 30 days of the date of this Interim Decision.

Finally, the Appellant is directed to file with the Deputy Registrar of the FST her submissions with respect to the Appeal proper strictly in accordance with the time limits set out in the Guidelines of the FST as provided by the Deputy Registrar of the FST following the filing of this Interim Decision.

Respectfully submitted this 7th day of May, 2007



Dale R. Doan LLB  
Member Financial Services Tribunal