

**FINANCIAL SERVICES TRIBUNAL**

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

**BETWEEN:**

PETER LAWRENCE BUCHANAN

**APPELLANT**

**AND:**

REAL ESTATE COUNCIL OF BRITISH COLUMBIA

**RESPONDENT**

**DECISION ON LATE FILING**

**BEFORE:**

J. STEWART CUNNINGHAM

**CHAIR**

**SUBMISSION:**

PETER LAWRENCE BUCHANAN

ON HIS OWN BEHALF

FRITS VERHOEVEN

FOR THE REAL ESTATE COUNCIL

RICHARD FERNYHOUGH

FOR THE SUPERINTENDENT OF REAL ESTATE

This decision concerns a Notice of Appeal filed by Mr. Peter Buchanan with the Financial Services Tribunal on December 7, 2006 concerning a decision of the Real Estate Council reached on November 2, 2006. As Mr. Buchanan filed the Notice of Appeal after the 30 day limit set out in section 24 of the *Administrative Tribunals Act*, I must decide if “special circumstances” exist that would permit me to extend the time for filing his appeal.

The Notice of Appeal states as follows:

“Further, if I am but a few days outside of my allowable 30 day appeal period, it is as a result of my only recently been made aware of, after the rendering of this decision, information which strongly suggests that the chair of the Discipline Hearing Committee, Anne Petrone, who presided over this hearing, and whom in my opinion did not factually represent the record, has an underlying bias against Discount Commission Realtors which clearly influenced her rendering of this harsh and disproportionate decision and heavily prejudiced my opportunity to be heard before an impartial panel.”

The Notice of Appeal was circulated to counsel for the Real Estate Council and counsel for the Superintendent of Real Estate, who would be a party of right on this appeal. Both of these parties responded by arguing that the paragraph cited above did not constitute “special circumstances” and amounted to nothing more than a bare allegation of bias.

Counsel for the Real Estate Council also made two additional arguments. First, he noted that Mr. Buchanan received correspondence from the Real Estate Council pointing out to him that there was a 30 day time limit for filing appeals. Second, the Real Estate Council would suffer prejudice if the time limit for filing the appeal was extended because Mr. Buchanan’s suspension would be delayed.

As I believe that a liberal interpretation should be given of the statute because Mr. Buchanan is unrepresented, then the paragraph above states that Mr. Buchanan became more concerned with the correctness of the decision after receiving information about Ms. Petrone’s strong negative feelings concerning discount realtors. In Mr. Buchanan’s view, these strong feelings led Ms. Petrone to render a penalty that was incorrect. As Mr. Buchanan only recently became aware of Ms. Petrone’s feelings, he was not able to file the Notice of Appeal until after the 30 day period.

On balance, I have found that the paragraph noted above does set out “special circumstances” and that the time period for filing appeals should be extended to permit Mr. Buchanan to file the Notice of Appeal. Whether the facts Mr. Buchanan is alleging constitute a reasonable apprehension of bias does not have to be determined at this point, but these facts do provide some explanation why Mr. Buchanan filed late. I am not persuaded that the Real Estate Council would suffer prejudice if this appeal proceeds. While the appeal would suspend Mr. Buchanan’s penalty, this would have been the result if the appeal had been filed a few days earlier within the 30 day period.

However, I note that my decision would likely be different if the extension involved any longer period than a few days. The explanation provided by Mr. Buchanan barely meet the threshold set out in section 24 of the *Administrative Tribunal Act*.

Aside from the late filing issue, counsel for the Superintendent of Real Estate argues that the Notice of Appeal does not disclose a reasonable ground of appeal. Again, interpreted liberally, when read as a whole I believe the Notice of Appeal is arguing that the penalty imposed was incorrect in that it was unduly harsh and disproportionate. I believe this is a reasonable ground of appeal.

Consequently, I am permitting this Notice of Appeal to be filed.

After I had reached this decision, Mr. Buchanan forwarded to the Financial Services Tribunal by email a document that attempted to provide further explanation why he was filing late. As I had already reached my decision prior to receiving this communication, it does not form part of my reasons.

DATED IN VANCOUVER, BRITISH COLUMBIA, THE 18<sup>TH</sup> DAY OF DECEMBER, 2006

FOR THE FINANCIAL SERVICES TRIBUNAL

A handwritten signature in black ink, appearing to read "Stewart Cunningham". The signature is written in a cursive, flowing style with a large initial "S" and "C".

J. STEWART CUNNINGHAM  
CHAIR