

FST 05-010

FINANCIAL SERVICES TRIBUNAL

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

BETWEEN:

JEFF CHAMBERS

APPELLANT

AND:

REAL ESTATE COUNCIL OF BRITISH COLUMBIA

RESPONDENT

APPEAL DECISION

Chair: Stanley W. Hamilton, member of the Financial Services Tribunal

Counsel for the Respondent Real Estate Council of British Columbia, David P. Berger
Mr. Jeff Chambers, Appellant, appears for himself.

INTRODUCTION

By virtue of a letter dated August 24, 2005 I was appointed the member of the Financial Services Tribunal (“FST”) to consider the appeal of the decision of the Real Estate Council of British Columbia (the “Council”) dated July 22, 2005 regarding Mr. Jeff Chambers.

This appeal arises pursuant to section 54(1)(1) of the *Real Estate Services Act* (the “Act”). The July 22, 2005 decision of the Council determined that Mr. Jeff Chambers would not be granted exemption from the Managing Broker’s Licensing Examination.

The Council determined that:

“Based on your recent request, the committee felt that while you had substantial experience managing your company, C&C Property Group Ltd., this experience has not been in a licensed capacity. As a result, the committee determined that you should demonstrate your competency by challenging the Broker’s Licensing Examination.”

BACKGROUND

The following points are taken from the Record. The facts upon which the Council made their decision are not in dispute.

Mr. Chambers is co-owner, President and Property Manager with C&C Property Group Ltd. C&C Property Group Ltd. is an unlicensed firm specializing in the management of approximately 850 strata units. Mr. Chambers has over nine years of experience in strata property management. In addition, Mr. Chambers is co-owner of C&C Properties Group (2001), a real estate brokerage firm that was licensed in 2001.

Mr. Chambers has experience in strata property management as well as experience in managing his own real estate portfolio and assisting family members with management of their real estate. His property management activities, for other than his immediate family, were limited to strata properties. As part of this experience, Mr. Chambers manages the daily operations of his strata management company, prepares budgets, trains and mentors staff, arranges audits, designs and administers control systems and databases, and arranges the insurance and bonding programs for the company.

Prior to his work with C&C Property Group Ltd. Mr. Chambers worked with the Insurance Corporation of British Columbia from 1991-2000 on all types of automobile insurance claims, liaison with clients, and administration of claims.

Mr. Chambers has a Bachelor of Science from the University of British Columbia, has satisfied the requirements as a Chartered Insurance Professional, Insurance Institute of Canada and successfully passed the Property Management Pre-Licensing Examination offered by the University of British Columbia on behalf of the Council.

On February 24, 2005, Mr. Chambers wrote to the Council “applying for an exemption of the educational and experience requirements specified by the Council for the Managing Broker license.” Mr. Chambers submitted that:

“The combination of my education, professional, business experience, client retention and my reputation is at least equivalent to the educational and experience requirements specified by the Council as necessary to carry out operations of property management company and to protect the public.”

On March 31, 2005 Mr. Chambers wrote to the Council offering further information to assist the Council in their decision. Mr. Chambers summarized his experience and attached his resume Mr. Chamber asked “the Council to consider my application for exemption to the education and experience requirements as set forth under Sections 2.8.4 and 2.10.1 of the Rules for a Managing Broker.” Reference to the “Rules” is to “Council Rules” made by the Real Estate Council under Section 86 of the Act.

Section 2-8(4) of the Council Rules states:

“2-8 Educational requirements for new licensees...

(4) Managing broker and associate brokers-In addition to the other requirements under this section, an applicant for a new license as a managing broker or associate broker must

(a) have taken the applicable managing broker courses, if any, respecting the real estate services in relation to which the application is made, and

(b) have passed the examination, if any, corresponding to those courses, no longer than 5 years before the date of the application.”

Section 2-10(1) and 2-10(2) of the Council Rules states:

“2-10 Experience qualifications for managing brokers and associate brokers...

(1) Previous experience in B.C.-In order to be licensed for the first time as a managing broker or associate broker, the applicant must have been providing real estate services as a licensee for at least 2 years during the 5 years before the date of the application.

(2) Exceptions-The Council may waive the requirements of subsection (1) if satisfied that

(a) the applicant has had experience and training equivalent to that which he or she would have obtained if he or she had provided real estate services as a licensee as required by that subsection, or

(b) in the case of an applicant for a managing broker license, there is an immediate need of a managing broker in the location where the applicant proposes to carry on business...”

Mr. Chambers' application was considered by the Education and Licensing Committee of Council on April 26, 2005 and by Council on the same date. By letter dated April 28, 2005, Mr. Chambers was advised that Council decided to grant the following exemptions:

- “ a) An exemption from the Broker's Licensing Course provided you successfully challenge the Broker's Licensing Examination within 180 days or by October 28, 2005;
- b) A waiver of section 2-10 of the Council Rules.”

On June 10, 2005 Mr. Chambers wrote to Council asking that Council reconsider its position and that he be granted an exemption from the Managing Broker's Licensing Course and Examination. In his letter, Mr. Chambers provided a lengthy comparison of the Brokerage Course requirements and his past education and experience.

The Education and Licensing Committee of Council considered this application on July 19, 2005. Following the recommendation of the Committee, Council denied his request for exemption from the Broker's Licensing Examination. Council determined that Mr. Chambers must challenge the Broker's Licensing Examination to demonstrate his competency. Council noted that:

“the committee felt that while you do have substantial experience managing your company, C&C Property Group Ltd., this experience has not been in a licensed capacity. As a result, the committee determined that you should demonstrate your competency by challenging the Broker's Licensing Examination.”

Council also advised Mr. Chambers of his rights to appeal.

Following the July 19, 2005 decision of Council, Mr. Chambers wrote to Council indicating he wished to make application for an exemption respecting the education and examination for the Managing Broker's License to provide Strata Management Services. Council indicated they would provide Mr. Chambers with the necessary application and forms.

On August 17, 2005 Mr. Chambers wrote to the Financial Services Tribunal to file his appeal. Mr. Chambers requests:

“That the Tribunal recognize my education, experience and contribution to property owners in British Columbia and the real estate industry over the past nine years is sufficient to qualify me for a Managing Broker's license under the Real Estate Services Act and require that the Council issue me this license, without the need for further requirements. ... I also request that the Tribunal require the Council to issue me a license authorizing me to act as a managing broker for the provision of strata management service based upon the merits of my previous application, without the need to complete their educational course or examination.”

ISSUES

Two issues are raised in the appeal. First, did Council err in concluding Mr. Chambers does not qualify for exemption from the Broker's Licensing Examination? Second, does this Tribunal have the authority to require Council to issue a license prior to Council considering an application that falls within their authority?

SUMMARY OF SUBMISSIONS

In his submission dated September 6, 2005, Mr. Chambers notes that the Record was incomplete and he provided copies of correspondence between himself and Council that was missing. Two letters in particular are cited by Mr. Chambers. The first, dated May 9, 2005 provided further information to Council and asked Council whether they would consider a "qualification hearing so they may question me orally?" The second letter, July 5, 2005 provides further information and documentation in support of his request for exemption from the Managing Broker's Examination. While Council did not include these two letters in the Record, reference is made in the Record to the fact that Mr. Chambers was in touch with Council staff on several occasions.

Throughout the process Mr. Chambers has articulated an argument that his experience and educational background should be considered to be sufficient to grant him exemption from the experience requirements, education course requirements and the examination. He offered detailed summaries of his past experience and a comparison of his experience and education, cross-referencing materials from the Managing Broker's Course.

Mr. Chambers argues that Council erred in not completing its investigation of his competency by means other than a written examination. He argues that as an experienced member of the real estate community he should be evaluated using an alternative to the written examination.

Mr. Chambers wrote to Council on August 9, 2005, providing further information that he thought may not have had available to Council when they made their decision.. Mr. Chambers also indicated that he wished to make application for an exemption of Council Rule 2-7(3) respecting the education and examination for the Managing Broker's License to provide Strata Management Services. Mr. Chambers also requested information from Council on the number of examination exemptions granted in the past in order to help understand the extent to which such exemptions occur.

In the Written Submissions on Behalf of the Real Estate Council of B.C., the Respondent notes that Mr. Chambers was granted an exemption under section 2-10(2) which is the experience and training equivalent qualification in order to be licensed as a managing broker or associate broker. He was also granted exemption from the Broker's Licensing Course, provided he successfully challenges the Broker's Licensing Examination within

180 days or by October 28, 2005. The Respondent noted that Mr. Chambers was qualified to be licensed as a representative to provide property management services.

The Respondent notes that while Mr. Chambers had experience in C&C Property Group Ltd., the firm was not licensed during this period. Mr. Chambers was also a co-owner of C&C Property Group (2001) Ltd., a real estate brokerage that was licensed in 2001. While both companies were located in the same office, and Mr. Chambers was involved in the daily management operations of both companies, he was not personally engaged in the role of real estate or the management of rental properties, both of which require a license.

The circumstances in which Council will exempt an individual from having to write and pass the Broker's Licensing Examination (Education Waivers Policy-Record, Tab 12) are referenced. Mr. Chambers has not completed the specific educational programs outlined in the Education Waivers Policy.

The Respondent submits that it is necessary to ensure that the Appellant can demonstrate that he has the equivalent knowledge and training of a managing broker and submits that the only objective way to have the Appellant demonstrate this is by requiring that the Appellant write and pass the Broker's Licensing Examination.

On August 10, 2005 Council replied to Mr. Chamber's letters of July 22, August 8 and August 9, 2005 and provided information Mr. Chambers had requested relating to the exemption requests Council received in the previous three years.

On August 17, 2005 Council wrote to Mr. Chambers indicating the Council had available the information Mr. Chambers felt may have been missing at the time Council made their decision to deny exemption from the Broker's Examination.

ANALYSIS

This appeal arises pursuant to the *Real Estate Services Act*, Section 54(1) that states:

“Section 54(1) Appeals to the financial services tribunal may be made as follows:

(a) the appellant may appeal a refusal to issue a license;...

(4) Subject to this Division, sections 242.2 [practice and procedure] and 242.3 [judicial review] of the Financial Institutions Act apply in relation to an appeal under this section.”

The thrust of Mr. Chambers' appeal to the Tribunal is found in his letter dated August 17, 2005. Mr. Chamber argues that his past experience, including nine years experience in real estate, prior nine years experience with the Insurance Corporation of British Columbia, experience managing real estate on behalf of himself and his family, coupled

with his formal education, should be sufficient grounds to grant an exemption from the Managing Broker's Licensing Course, the Managing Broker's Licensing Examination and the experience requirements for a Managing Broker's License.

In support of his request for exemption from the Managing Broker's Course, the Mr. Chambers presents a lengthy comparison of topics in the broker's Licensing Course and argues that many of the topics are similar to those he covered in his degree program or Insurance programs, others do not relate to his business, and some are focused on real estate areas other than strata management. Mr. Chambers also argues that his studies with the Insurance Institute provided coverage on trust funds and supervision that is comparable to that included in the Broker's Licensing Course. He cites the "principal-agent relationship" as one specific example that is common to both the insurance and the real estate industry. He also argues he obtained general management experience in the insurance business, including experience in human resource management, accounting, advertising, marketing, and auditing procedures, all of which relate to real estate brokerage.

I accept the submission that Mr. Chambers may have covered some of the educational materials in his previous studies. But while the comparison of education courses is helpful, Mr. Chambers does acknowledge that there are some differences and some areas that he may not have previously covered in equivalent detail. However, Council has accepted that Mr. Chambers has the education and experience that is sufficient to justify granting an exemption from the Managing Broker's Course. This exemption is not automatically granted and Council did conclude that his prior education and experience, while unlicensed, was important.

What is in dispute is whether Mr. Chambers should be required to demonstrate his knowledge and training by writing and passing the Managing Broker's Licensing Examination.

Mr. Chambers argues that through his involvement in the day-to-day management of C&C Property Group Ltd. and co-ownership of C&C Property Group (2001) Ltd. that he has gained experience that is at least equivalent to the experience he might have gained had he been licensed. Council has accepted that Mr. Chambers has the experience that is sufficient to grant exemption from section 2-10.

Mr. Chambers argues that the Council may not have adequate resources to fully and properly evaluate applications for exemptions, particularly applications from senior experienced members of the industry. I find no evidence in the file to support such a claim. Indeed the Council appears to have had sufficient resources to evaluate the submissions made by Mr. Chambers for exemption from the course and experience requirements and this is basically the same materials Mr. Chambers uses to support his application for exemption from the examination.

Mr. Chambers argues that the Council's practices are unfair in that the Council allows one licensee to provide services to both the residential or commercial areas without

specialized courses for each, but requires specialized education, training and experience for strata management. There are four levels of licenses specified in section 5(1) of the Act. Section 5(5) provides that within the license levels a person may be licensed within a category that is established by the rules on the basis of the real estate services permitted to be provided under the license. The categories of licenses are specified in section 2-1 of the Council Rules. The three primary categories are “trading services”, “rental property management services” and “strata management services”. Licensees may be in one or any combination of these three categories. Licensees must take the applicable licensing course and examination respecting the real estate services in relation to which the application is made. This argument is advanced in support of his request that the Tribunal grant an exemption respecting the education and examination for the Managing Broker’s license to provide Strata Management Services. Each of the three categories has a set of qualification requirements including experience, education and examination. Mr. Chambers argues that “Trading Services” includes both residential and non-residential brokerage, two different types of properties, yet “Strata Management Services” requires a different license from “Rental Property Management Services”. The Act clearly states that the categories are to be based on the real estate services provided, not the type of real estate. Mr. Chambers fails to note that “Rental Property Management Services” is not restricted as to the type of property and may apply to both residential and non-residential properties. Similarly the “Strata Management Services” is not restricted to the type of property, only the services are provided to or on behalf of a strata corporation.

I agree with Council’s submission that since Mr. Chambers was not operating in his licensed capacity his experience was not equivalent to that which a licensed individual would receive. Being a co-owner of the C&C Property Group Ltd and C&C Property Group (2001) Ltd. does not imply that he was “personally engaged in the role of real estate or the management of rental properties both of which require a license...” I accept this position as it relates to C&C Property Group Ltd. since Mr. Chambers acknowledged that he restricted his activities to those areas that did not require a license. Mr. Chambers also argues that his work with his own rental properties and those of his immediate family contribute to his experience, but again this is not in a licensed capacity.

Council has agreed that Mr. Chambers be exempted from the Broker’s Licensing Course and granted exemption from the experience requirements, I agree with Council’s submission that the Appellant should be required to demonstrate that he has the equivalent knowledge and training for the Managing Broker’s License. However, it is necessary to acknowledge that passing the Broker’s Licensing Examination is not the only manner of demonstrating one has the knowledge and training. Council argues “this is a public protection measure by ensuring that applicants for a managing broker’s license can demonstrate competency in his or her knowledge and understanding of the *Real Estate Services Act*, its Rules, Regulations, and by-laws as well as those responsibilities of a managing broker that are required in the operation of a real estate brokerage.” I agree with Council’s submission as it relates to the important role of protecting the public.

The licensing processes documented in the Record indicate that the usual path for an applicant for a Managing Broker's License in any category is to first have the necessary experience as a licensee, second complete the Managing Broker's Course(s) and finally write and pass the Managing Broker's Examination(s). Council argues that the written examination is the only objective way to determine whether an applicant has the necessary knowledge and training. While it is an exaggeration to claim written examinations are the only objective way to demonstrate knowledge and training, it is certainly one instrument used frequently in both academic and professional environments. Council observes that a similar approach is used with respect to other professions such as physicians from other countries who wish to become licensed in Canada, but are required to pass a competency examination by the Canadian medical Licensing authorities.

Mr. Chambers argues that a personal interview and contacting references may have been a preferred alternative to adequately evaluate his application, and in other cases involving owners and managers of ongoing businesses who are leaders in their community. Mr. Chambers does not argue that examinations are inappropriate as a means of evaluating applicants, only that other means may be more appropriate in circumstances such as his case.

I do not believe the process of evaluation of applicants for licenses used by Council is a matter to be determined by this Tribunal unless it can be shown that the process is inconsistent with the underlying authority or is demonstrably unfair to a subset of applicants. It is clear to me that Council has a well considered process to evaluate applicants; they ensure appropriate courses of study are available to prepare applicants; and they rely on examinations to form an important part of this process. Council is responsible to operate the licensing program for the entire province and must ensure both fairness and the appearance of fairness. I see no evidence to suggest the evaluation process is inconsistent with the underlying authority granted Council nor do I see a compelling case that the process is unfair to any subset of applicants.

Mr. Chambers argues that Council has a responsibility to act reasonably and fairly and need to recognize some unlicensed applicants may have equivalent qualifications to those of a licensed individual. It appears to me that this is exactly what Council has endeavored to do with Mr. Chambers. The exchange of correspondence on file indicates Council was not only prepared to accept and evaluate the materials submitted, but there are indications Council provided some guidance to Mr. Chambers in suggesting he provide additional information for his applications. Moreover, Council did conclude Mr. Chambers has some equivalent qualifications, simply not sufficient to grant exemption from the examination.

The evidence on file also suggests that Mr. Chambers has not been treated unfairly relative to other applications. In response to an inquiry by Mr. Chambers, Council indicated that over the previous three years, aside from those individuals who have completed the Urban Land Economics Diploma Program with the Real Estate Option, no examination exemptions were granted to any managing brokers nor was Council aware of

any Financial Services tribunal decisions or Commercial Appeals Commission decisions on this matter.

The reference to exemptions for applicants who have completed the Urban Land Economics Program is covered by Council Guidelines and Rules relating to exemptions from the licensing courses and examinations. It is instructive to note that exemption from the Broker's Licensing Course and Examination is limited to those individuals who are graduates from the University of British Columbia in programs of urban land economics, graduates from the Diploma Program in Urban Land economics in the Real Estate Management Option, individuals who commenced the Diploma Program in 1983 or earlier and who completed the first three years (including Real Estate Practice and Accounting in the case of 1973 to 1984 graduates) or individuals who have passed the Broker's Licensing Course and Examination no longer than 5 years ago. Mr. Chambers has not met any of these specific standards.

In the final analysis, the issue is whether Council has erred in not granting Mr. Chambers an exemption from the Managing Broker's Examination. Section 242.2(11) of the *Financial Institutions Act* allows a member of the FST to "confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person or body whose decision is under appeal." I believe the appropriate standard of review in these circumstances is to ask if the Council could reasonably have reached the decision it made, based on all of the evidence and documentation presented to it and ask if the decision is fair relative to other applicants in similar circumstances. It is my view that Council has a carefully established process of evaluation for licensing, it has relied upon examinations, a well-established means of demonstrating knowledge and training, and the evidence indicates the submissions of Mr. Chambers were appropriately considered. Council did give weight to the education and experience Mr. Chambers documented and subsequently granted exemptions for the experience requirement and exemption from the Managing Broker's Course. Council submitted evidence that there are no other exemptions from the Managing Broker's Course in the past three years except for applicants completing the appropriate Urban Land Economics programs. A stringent approach to granting exemptions from the examinations seems to me to be reasonable and consistent with the goal of protecting the public.

Mr. Chambers made an application to Council requesting exemption relating to the education and examination for Managing Broker's License to provide Strata Management Services. He has requested that the Tribunal confirm that he will be exempted from the course and examination for strata property management. It would be inappropriate for this Tribunal to comment on a matter that remains in the jurisdiction of Council. Appeals to the Financial Services Tribunal are limited under the Act and Mr. Chambers' request that the Tribunal confirm an exemption relating to the education and examination for managing Broker's License to provide Strata Management Services before Council has issued a decision does not fall within the matters covered by this appeal provision.

CONCLUSION

Mr. Chambers' appeal is dismissed and the Real Estate Council's decision of July 19, 2005 is confirmed. I further direct that the Broker's Licensing Course exemption granted by Council to Mr. Chambers on April 26, 2005 be extended by 60 days from the date of this decision in order that Mr. Chambers has reasonable opportunity to prepare and challenge the Managing Broker's Licensing Examination.

Council has submitted that this appeal be dismissed with costs to the Respondent. I do not believe costs should be awarded in this appeal and no order is made.

DATED AT VANCOUVER, BRITISH COLUMBIA, this 28th day of October, 2005.

FOR THE FINANCIAL SERVICES TRIBUNAL

STANLEY W. HAMILTON
PRESIDING MEMBER

CORRECTION:

The FST has amended this decision to correct a typographical error. On page 8, the first sentence of the last paragraph of the original decision read:

Council has agreed that Mr. Chambers be exempted from the Broker's Licensing Course and granted exemption from the experience requirements, I agree with Council's submission that the Appellant should be required to demonstrate that he has the equivalent knowledge and training for the Mortgage Broker's License.

The decision now reads:

Council has agreed that Mr. Chambers be exempted from the Broker's Licensing Course and granted exemption from the experience requirements, I agree with Council's submission that the Appellant should be required to demonstrate that he has the equivalent knowledge and training for the Managing Broker's License.

FST Deputy Registrar
November 1, 2005

CORRECTION:

The FST has amended this decision to correct these typographical errors:

On page 7, the last sentence of the third paragraph read:

This exemption is not automatically granted and Council did conclude that his prior education and experience, while unlicensed, was importance.

The decision now reads:

This exemption is not automatically granted and Council did conclude that his prior education and experience, while unlicensed, was important.

On page 8, the first sentence of the second paragraph read:

I agree with Council's submission that since Mr. Chambers was not operating in as licensed capacity his experience was not equivalent to that which a licensed individual would receive.

The decision now reads:

I agree with Council's submission that since Mr. Chambers was not operating in his licensed capacity his experience was not equivalent to that which a licensed individual would receive.

On page 8, the first sentence of the last paragraph of the original decision read:

Council has agreed that Mr. Chambers be exempted from the Broker's Licensing Course and granted exemption from the experience requirements, I agree with Council's submission that the Appellant should be required to demonstrate that he has the equivalent knowledge and training for the Mortgage Broker's License.

The decision now reads:

Council has agreed that Mr. Chambers be exempted from the Broker's Licensing Course and granted exemption from the experience requirements, I agree with Council's submission that the Appellant should be required to demonstrate that he has the equivalent knowledge and training for the Managing Broker's License.

FST Deputy Registrar
November 1, 2005