

FST-06-021

FINANCIAL SERVICES TRIBUNAL

In the matter of *Financial Institutions Act* R.S.B.C. 1996, C. 352

BETWEEN:

GRIMM'S FINE FOODS LTD.

APPELLANT

AND:

SUPERINTENDENT OF PENSIONS

RESPONDENT

INTERIM ORDER

Chair: Dale R. Doan I.I.B, Member, Financial Services Tribunal

Counsel for the Superintendent of Pensions, Sandra A. Wilkinson
Director of Finance and Administration of Grimm's Fine Foods Ltd., Sandy Liu

Interim Order Date: May 8, 2006



INTRODUCTION

Prior to the Financial Services Tribunal ("FST") considering the merits of the appeal (the "Appcal") launched by virtue of Notice of Appeal filed by the Appellant, Grimm's Fine Foods Ltd. in this matter, two issues arose requiring interim orders of the FST. As the member charged with responsibility for the Appeal, I have been asked to rule on each of these interim matters. The first relates to the completeness of the Record for this Appeal. The second involves the representation of the Appellant, Grimm's Fine Foods Ltd. or the lack of representation thereof in this matter. An allegation that the Appellant is represented by Heath Benefits Consulting Inc. and/or its manager, Pensions Division, Mr. Greg R. Hurst in a manner that offends the *Legal Profession Act* as well as the Law Society of British Columbia Rules has emerged and requires consideration at this time.

FACTS IN RELATION TO THE INTERIM MATTERS

A. Completeness of the Record

This Appeal was launched by way of Notice of Appeal dated March 24, 2006 and filed with the FST on March 28, 2006. The named Respondent is the Superintendent of Pensions and the Appeal relates to a decision of the Acting Superintendent of Pensions dated February 27, 2006 which required the Appellant, Grimm's Fine Foods Ltd., to amend the definition of spouse contained in the pension plan for the employees of that company to comply with the *Pension Benefits Standards Act* within 30 days.

A package of materials representing documentation presented to the Acting Superintendent of Pensions has been prepared representing the "Record" with respect to this Appeal. The Appellant takes issue with the package of documents and alleges that the Record is incomplete. Lengthy correspondence from Heath Benefits Consulting Inc. and in particular Mr. Hurst of that company, alleged that the Record required the inclusion of:

- (a) the Acting Superintendent of Pension's final decision as set out in his February 27, 2006 letter to the Appellant (and respecting the same I advise that the said final decision was included in the package of materials provided to me as the member responsible for the Appeal),
- (b) substantially all of the documents held by either the former Pension Standards Branch or the current Pensions Department of FICOM that relate to the Appellant company, and
- (c) a legal opinion of one Mr. Arnold dated April 3, 2002.

As I have noted above, the final decision of the Acting Superintendent of Pensions is included in the Record for consideration in this Appeal. The other two series of items have not been included in the Record presented to me at this time. The correspondence from Mr. Hurst appears to mistakenly confuse the formal requirements of a Record in an FST appeal as set out in section 3.8 of the "Financial Services Tribunal Directives and Practice and Guidelines" (the

- 3 -

To clarify and to ensure that this Appeal progresses in the manner required by the Act, I point out that section 242.2(7) of the Act requires the original decision-maker (in this case the Superintendent of Pensions) to forward to the Chair of the FST a copy of the Record. Section 242.2(6) of the Act defines the Record as consisting of the following:

- The Record of all evidence, if any, before the original decision-maker;
- Copies of originals of documentary evidence before the original decision-maker;
- Other things received as evidence by the original decision-maker; and
- The decision and written reasons for it, if any, given by the original decision-maker.

This definition of the Record would not require the inclusion of such things as documents, information circulars, research materials or other materials held by the former Pension Standards Branch or the current Pensions Department of FICOM, the April 3, 2002 letter of Mr. Arnold or any other materials whatsoever even if the same relate to the Appellant company, if those documents and materials were not presented before the Acting Superintendent of Pensions at the hearing before him. If, however, any of those documents or materials were so presented, the original decision-maker must include the same in the Record provided to the FST in this Appeal. From the correspondence that I have reviewed including the FST's letter to the Superintendent of Pensions dated March 29, 2006 requesting the submission of the Record documentation and Ms. Wilkinson's letter of April 3, 2006 confirming that the Record requirements of section 242.2(5) of the Act have been met, I have concluded that these documents and materials referred to above were not so presented to the Acting Superintendent of Pensions and that the Record as presented to me is complete. If, however, my reading of the correspondence and Appeal documentation thus far is incorrect in that regard, I order that any of the said documents or materials that were presented before the Acting Superintendent of Pensions at the original hearing of this matter be assembled and submitted at this time via the FST office.

If I am correct in my understanding – namely, that none of the said documents or material brought into question by the Appellant were presented to the Deputy Superintendent of Pensions at the original hearing of this matter – then the Appellant may consider an application for the submission of new evidence pursuant to section 3.13 of the Guidelines and section 242.2(8)(b) of the Act. A careful review of the criteria for the submission of new evidence should be made by the Appellant prior to any application as new evidence must not only be substantial and material to the decision, it must also have not been in existence at the time the original decision-maker heard the matter or did exist but was not discovered and could not through the exercise of reasonable diligence have been discovered at that time.

B. Allegation Respecting the Unauthorized Practice of Law

By way of FST letter dated April 20, 2006, the Deputy Registrar of the FST advised the parties to this Appeal that in the view of the fact that Grimm's Fine Foods Ltd. was self represented at that time I would not be addressing the allegations regarding the unauthorized practice of law.

- 4 -

Unfortunately, the circumstances have changed significantly and these allegations must now be addressed.

Heath Benefits Consulting Inc., and in particular Mr. Greg R. Hurst of that company, appears to have had a lengthy history "assisting" Grimm's Fine Foods Ltd. with respect to pension and related matters. The Record includes correspondence going back to April of 2002 and referring to earlier correspondence of September 2001 relating to pension plan amendments and interpretations involving the *Pension Benefits Standards Act* and its regulation. Further, the correspondence related to this Appeal and the Record includes lengthy letters from Mr. Hurst of Heath Benefits Consulting Inc. which delve into numerous interpretations of the legislation surrounding this Appeal as well as positions which may reasonably be interpreted as assertions of legal positions on behalf of the Appellant. Legal counsel for the Superintendent of Pensions addressed this matter head on in a letter dated April 7, 2006 addressed to the FST where she reviewed the definition of "Practice of Law" found in section 1 of the *Legal Profession Act* and the prohibition against persons other than lawyers engaging in the practice of law found in section 15 of the *Legal Profession Act*. Counsel reviewed Rule 2-10 of the Law Society Rules which prohibits a lawyer from knowingly facilitating by any means the practice of law by a person who is not a practicing lawyer or otherwise permitted to practice law under sections 15-17 of the *Legal Profession Act*, and thereafter requested that this matter be dealt with by the FST. She indicated that a complaint had been filed with the Law Society of British Columbia but that separate consideration of this issue would be required by the FST.

Grimm's Fine Foods Ltd. submitted a letter dated April 13, 2006 under the hand of its Director of Finance and Administration, Sandy Liu, advising that "we have agreed with Heath to a shift in roles." Ms. Liu stated that she would be making all of the Appellant's submissions in respect of the Appeal as an officer of the Appellant. She went on to say: "...however we will be continuing to use the services of Heath and Mr. Hurst to assist us in this matter."

By way of letter dated April 24, 2006, Ms. Liu, again on behalf of the Appellant, wrote to the FST directing correspondence of the FST and the Respondent to be addressed to her and delivered: "...c/o Greg Hurst, Heath Benefits Consulting Inc., 500 - 2025 West Broadway Vancouver, BC V6J 1A6...".

Legal counsel for the Superintendent of Pensions objected by way of letter dated April 24, 2006 and, in my view correctly submitted that Mr. Hurst and his company continued to act on behalf of the Appellant in this matter. Although the *Legal Profession Act* and the Law Society Rules are clear in their language, counsel also referred me to the British Columbia Court of Appeal decision *Law Society of British Columbia v. Lawrie* [1991] B.C.J. No. 2653, a case where our Court of Appeal considered the whole issue surrounding the purported practice of law by a non-lawyer. Although that case is distinguishable in terms of the nature of the infraction involved, the principles set forth in that case are, in my view, current and good law in the Province of British Columbia with respect to this issue. Accordingly, I agree with the submissions of legal counsel for the Superintendent of Pensions in her contention that Mr. Hurst and his company continue to represent Grimm's Fine Foods Ltd. in what appears to be a legal advisory role. I do not believe that Mr. Liu's subsequent undated letter, received by the FST on April 27, 2006, which rescinds her submission regarding the delivery of documentation to Mr. Hurst and advises

- 5 -

that Grimm's will accept service of documents in this Appeal, alleviates what is the inescapable conclusion that regardless of where and by whom documents are filed, Grimm's is not completing the legal analysis on its own behalf nor is it obtaining qualified, professional legal advice in this matter. Rather, the "services" of Mr. Hurst and his company may be expected to be utilized now and in the future in relation to this matter unless the same are prohibited by the Law Society of British Columbia pursuant to the complaint procedure which legal counsel for the Superintendent of Pensions has implemented.

For the purposes of this Appeal, I order that neither Greg R. Hurst nor Heath Benefits Consulting Inc. provide services, advice or representation to the Appellant, Grimm's Fine Foods Ltd., in a manner that contravenes section 15 of the *Legal Profession Act* and Rule 2-10 of the British Columbia Law Society Rules. Given the importance of the matter under the Appeal, it is my desire that the Appellant be represented by qualified legal counsel authorized to practice law in the Province of British Columbia. However, it is recognized that persons in British Columbia may represent themselves with respect to matters brought before the FST. In the same vein, an authorized director or officer of a company may represent the company in any matter brought before the FST.

CONCLUSION

With respect to the Record, in order to ensure that the conclusions that I have drawn from my review of the documentation and correspondence submitted in this Appeal, ensuring that the Record as it currently stands is complete and in accordance with the *Act* and the Guidelines, I ask the Superintendent of Pensions through its legal counsel to confirm by way of further letter addressed to the FST that those materials and documents referred to above (those that are requested to be added to the Record by the Appellant) do not represent documents or materials presented to the Acting Superintendent of Pensions when this matter was heard. From the date that legal counsel for the Superintendent of Pensions submits that letter to the FST assuming it is able to confirm this fact, the Appellant, Grimm's Fine Foods Ltd., shall have 30 days to file its argument submissions and book of authorities if any in this Appeal. Grimm's Fine Foods Ltd. shall have leave to make a further interim application for the submission of new evidence should it feel that the provisions of section 242(8)(b) of the *Act* allows it and the new evidence is material to this Appeal.

With respect to the allegation of the unauthorized practice of law involving Mr. Hurst and Heath Benefits Consulting Ltd., I have dealt with the same by way of order above.

Respectfully submitted this 8th day of May, 2006



Dale R. Doan LLB
Member Financial Services Tribunal