

FINANCIAL SERVICES TRIBUNAL

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

BETWEEN:

WILLIAM DAVID BLACKALL

APPELLANT

AND:

THE REAL ESTATE COUNCIL OF BRITISH COLUMBIA

RESPONDENT

APPEAL DECISION

A. Background

On October 17, 2005 the Financial Services Tribunal ("FST") received a Notice of Appeal filed by Mr. William David Blackall with respect to a decision made by the Real Estate Council of British Columbia ("the Council"). Mr. Blackall had made application under Section 2.7 (3) of the Real Estate Services Act for an exemption from the Strata Management License Course and Strata Management Supplemental Examination. The Council granted the exemption from the course but denied the exemption for the examination. This denial forms the basis for this appeal.

I was assigned as the FST member to consider the appeal on October 18, 2005.

The record of the Council with respect to the background for the appeal was received by the FST on October 31, 2005.

Mr. Blackall's submission in response to the record was dated November 14, 2005 and received by the FST on November 17, 2005.

The Council was unable to file its submission by November 28, 2005. An extension was granted, with no objection from Mr. Blackall, until December 9, 2005.

The Council's submission was received by the FST on December 7, 2005 and included a book of authorities. In addition, the Council submitted an application to Submit New

Evidence regarding the appeal. The new evidence consisted of a two page letter dated December 2, 2005 from Mr. David Moore, Director, Licensing Education, Sauder School of Business, University of British Columbia to Mr. David Berger, Legal Counsel for the Council. The letter provided an explanation of the structure and content of the Strata Management Licensing Course and the Strata Management Supplemental Course.

In a letter dated December 9, 2005, Mr. Blackall objected to the submission of this new evidence and argued that Mr. Moore was present when the decision to deny his exemption application was made and could have presented the material contained in the letter at that time.

The Council replied in a submission dated December 15, 2005. The submission argued that the evidence submitted by Mr. Moore was not germane to the original decision that the Council made regarding Mr. Blackall. Mr. Blackall had applied for an exemption based on his reputation and experience rather than on the basis of the content of the Strata Management Licensing Course. It was only after Mr. Blackall raised the issue of course content in his submission dated November 14, 2005, that the explanation of the structure and content of the Strata Management Licensing Course and Strata Management Supplemental Course became necessary.

I believe that the Council's argument in this matter is correct. The letter of Mr. Moore has, indeed, helped me better understand the content and structure of the courses in question. Accordingly, I have accepted this evidence.

On December 21, 2005 the FST received a response to the written submissions of the Council from Mr. Blackall.

Finally, in a letter dated January 6, 2006 Mr. Blackall indicated that through inadvertence he may have only provided one half of one of his exhibits in his response of December 21, 2005. He enclosed the other portion of this exhibit. I do not regard this as new evidence and have fully accepted this submission.

I have made my decision with respect to this appeal on the basis of the documents described in the preceding paragraphs.

B. Licensing of Strata Managers and Grandfathering

The provisions of the Real Estate Services Act for the licensing and operation of strata managers came into effect on January 1, 2006. They are designed to increase public protection with respect to the operation of strata corporations. As part of the public protection regime, companies and individuals offering management services to strata corporations are required to become licensed and abide by the provisions of the Real Estate Services Act, regulations and rules established by the Council. Prior to January 1, 2006, persons providing such services did not require licensing.

It is clear that public protection will be enhanced if those offering management services to strata corporations have the appropriate skills and knowledge. To achieve this objective, licenses will only be granted to those that meet certain predefined educational requirements as established by the Council. Section 2.7 of the Real Estate Services Act allows the Council to establish training courses and examinations for the purposes of meeting the educational requirements necessary to obtain licensing.

The Council, in conjunction with the University of British Columbia has designed an educational course to address the needs of persons entering the field of strata management. This course is called the Strata Management Licensing Course. It covers a core curriculum of subjects such as the fundamentals of the legal system, interests in land, contract law and the title system. It also covers sector specific subjects such as the conduct of strata meetings, fund accounting and budgeting for strata corporations.

The Council has also developed a condensed version of this course called the Strata Management Supplemental Course. It covers only the sector specific subjects. This course is designed for those who have completed the core curriculum through one of the other licensing courses. The intent of the supplemental course is to allow ease of movement between various real estate sectors without repetition of course material. Finally, a special Strata Management Supplemental Course has been developed for grandfathered individuals. This course has been further condensed from the Strata Management Supplemental Course and recognizes the prior experience of those that were engaged in the field of strata management prior to January 2006.

Section 2.7(3) of the Real Estate Services Act states:

“The council may waive, on the basis of an applicant’s previous knowledge or training, some of the requirements of this Division in relation to (a) a course, (b) a corresponding examination, or (c) a course and its corresponding examination.”

This waiver is of particular importance at the current time due to the commencement of licensing. Many persons have been engaged in the provision of strata management services for a number of years and have developed a certain level of expertise. However, prior to 2006, there were no particular educational requirements necessary to enter the business of providing strata management services.

It is common when new regulatory requirements are introduced to grandfather certain persons on the basis of their previous experience. Grandfathering is typically defined as a legal provision exempting certain preexisting classes of people from the requirements of new regulation. In the case of strata management licensees, the Council has, in fact, grandfathered certain persons by lessening their licensing requirements with respect to training and education.

The Council outlined its grandfathering provisions in a Special Report to Licensees which was issued in July 2005:

1. Persons currently licensed under the Real Estate Services Act and who have carried out the business of strata management for a period of at least 3 months prior to January 2006, will be granted a temporary license and be required to pass the Strata Management Supplemental Exam by January 1, 2007. These persons have been granted special "grandfathering" consideration due to the fact that they are currently licensed under the Real Estate Services Act and have previously passed an exam in this regard and have experience in the strata management business.
2. Persons currently licensed under the Real Estate Services Act and who have not carried out the business of strata management for a period of at least 3 months prior to January 2006, will be required to take the Strata Management Supplemental Course and pass the exam prior to obtaining a license to carry out the business of strata management. There is no special consideration for these persons because they have no previous experience in the strata management business.
3. Persons not currently licensed under the Real Estate Services Act, but who have carried out the business of strata management for a period of at least 3 months prior to January 2006, will be granted a temporary license but will be required to take the Strata Management Licensing Course and pass the exam by January 1, 2007. Special consideration is given to these persons due to the fact that they have experience in the strata management business.
4. Non grandfathered persons will be required to take the Strata Management Licensing Course and pass the exam prior to licensing.

As can be seen from the preceding paragraphs, there are two different grandfathering provisions. The most favorable grandfathering provisions are granted to those that currently have an existing real estate license and experience in the business of strata management. Less favorable grandfathering provisions are granted to those with experience in the business of strata management but no real estate license.

The Council's July 2005 Special Report to Licensees also indicated that individuals with an educational background deemed equivalent to the licensing programs may qualify for a waiver of the licensing course and/or examination. The Special Report went on to indicate that because of the new requirements of the Real Estate Services Act and the Council rules related to strata management services, it is extremely unlikely that any exemption from the requirement to pass an examination would be granted.

The evidence suggests that this grandfathering policy was adopted by Council on June 21, 2005.

In response to a number of requests for exemption from the examination, the Education and Licensing Committee of Council reconsidered the grandfathering policy at its meeting of September 20, 2005. The minutes of the meeting suggested that there was lengthy discussion with all issues being considered including those brought forward by major stakeholders. It was decided, with one abstention, that the policy as outlined in the July 2005 Special Report to Licensees would remain as stated.

This decision was affirmed at the full Council meeting of September 20, 2005 with one member of Council opposed to the motion.

C. Mr. Blackall's Exemption Application

Mr. Blackall applied to the Council on August 12, 2005 for an exemption from the Strata Management Licensing Course and Strata Management Supplemental Examination. His application for exemption was based on his claim that he had provided strata management services to more than one strata management corporation for more than 25 years.

On August 24, 2005, Ms. Caroline Allen, Education and Licensing Coordinator of the Council, sent a letter to Mr. Blackall indicating that the Council would consider his request at their meeting of September 20, 2005. She urged the submission of more detailed information including experience, curriculum vita, letters of reference and any other documentation.

Mr. Blackall responded on August 30, 2005. Highlights of his background and experience as presented in his letter of August 30, 2005 are as follows:

- First licensed as a real estate salesman in the mid 1970's;
- Involved in strata management since 1980;
- In the 1980's became majority shareholder of what is now Century 21 Prudential Estates Ltd. which is licensed as a real estate agency and also carries on the business of rental property and strata management;
- Around 1980 became the nominee for Century 21 Prudential Estates;
- Currently performs general management functions for in excess of 100 strata corporations;
- Currently oversees 40 employees in strata management and trains new strata managers;
- Currently oversees over 250 separate trust accounts of strata corporations; and,
- Has maintained a strong compliance record with respect to the Real Estate Act.

Clearly, Mr. Blackall has extensive real estate and strata management experience.

At the Education and Licensing Committee meeting of September 20, 2005, Mr. Blackall's request for an exemption from successfully passing the Strata Management Supplemental Exam was denied. The implication was that Mr. Blackall would be granted a temporary license, would not be required to take any course, but would be required to pass the Strata Management Supplemental Exam (condensed grandfathered version) by January 1, 2007. The Council upheld the decision of the Education and Licensing Committee at its meeting of September 20, 2005. There were no reported abstentions or negative votes with respect to the Blackall decision made by the Education and Licensing Committee or the full Council.

The Council informed Mr. Blackall of its decisions in a letter dated September 24, 2005. The letter states in part:

“After careful deliberation the Council has decided not to grant any exemptions from the requirements to pass an examination, whether it is the full or a supplemental strata management licensing examination. The Council strongly believes that, on balance, this policy is essential for consumer protection purposes and to maintain public confidence in both the licensing process and the industry. Therefore, I regret to inform you that your request was denied.”

Mr. Blackall has appealed this decision and requested the Council be instructed to grant him an unrestricted license which would allow him among other activities to undertake the business of strata management on a permanent basis without being required to pass the Strata Management Supplemental Exam by January 1, 2007.

D. Analysis

Mr. Blackall’s primary allegation is that the Council made an arbitrary policy to not grant any waivers under Section 2.7(3) of the Real Estate Services Act. The evidence suggests that this allegation is not true. In fact, the Council has granted a waiver to Mr. Blackall in that he will not be required to take the Strata Management Supplemental Course. Moreover, he has been granted a temporary waiver with respect to successfully passing the examination. He was licensed to conduct strata management business effective January 1, 2006 on the condition that he successfully completes the examination before January 1, 2007. This waiver was granted because of Mr. Blackall’s status as a real estate licensee and his experience with respect to strata management.

The fact that the Council’s waiver policy is applied to a broad class of persons rather than applied on a case by case basis is a matter that must be decided by Council. The Council appears to have decided on its waiver policy for strata manager applicants on June 21, 2005 and communicated the policy to the industry during July, 2005. The policy is broad based. The Council policy does allow for individual waivers beyond the general waiver, but Council indicates that such waivers are unlikely.

The Council appears to be well aware that there is some dissatisfaction within the industry regarding the policy enunciated in July 2005. Because of this, the Education and Licensing Committee reexamined the policy in light of views expressed by industry, other stakeholders and individual applicants, including Mr. Blackall. The Committee upheld its original policy on September 20, 2005. This decision was ratified by Council on the same date.

It is acknowledged that Council member Mr. W. Brown voted against the decision of Council and wished to have his dissenting vote recorded. It is further acknowledged that Mr. Brown has a special status as a Council member. He is from the strata sector and was appointed by government to provide Council with some insight into the strata

management industry. His negative vote suggests that he argued against the Council's decision and no doubt provided advice as to why he thought the decision should not be taken. However, there is no evidence to suggest that Mr. Brown's arguments were ignored. Rather, as happens in many cases, there was a difference of opinion and for whatever reason his arguments were not sufficiently persuasive to change the position of any of the other members of Council. The evidence suggests that the Council made its decision in good faith because it felt that it was essential for both consumer protection and public confidence in the strata management business to require applicants to pass an examination.

It is clear that the Council could have chosen a different approach to granting waivers for those experienced in strata management. However, the Council's process in determining its approach was reasonable. The approach decided upon is also reasonable and objective in that it is based on a quantitative measure in the form of a test score. It requires the applicant to demonstrate his knowledge of relevant issues.

It could also be argued that the Council's approach is somewhat conservative in that an alternative approach could have been to grant a waiver from all requirements to anyone with a certain level of experience. This approach has been used by the Council in the past when the requirement for a property manager's license was introduced during the 1980's. However, there is nothing to preclude the Council from using different approaches at different times and for different types of licenses.

I can appreciate the Council's concerns with respect to the licensing of strata managers. The regulation and supervision of strata managers is a new function for the Council and because it is governed by new legislation, many strata managers will be required to conduct their business in a different manner. The Council has a duty to ensure that those conducting strata management business are familiar with the new requirements and has chosen an examination approach to accomplish this objective. The Council is providing assistance to applicants in this regard by designing a specially condensed "grandfathered" version of the Strata Management Supplemental Course to aid applicants in becoming familiar with the new requirements.

The Council should not be criticized for a conservative approach to consumer protection particularly with respect to the issuance of a new type of license. The Council's primary mandate is one of consumer protection while still taking into account the needs of the industry. The Council's primary mandate is not one of meeting the needs of the industry, while taking into account consumer protection issues. The Council's approach to waivers clearly recognizes this distinction.

E. Conclusion

It is clear that Mr. Blackall has extensive experience in the real estate industry and in the business of strata management. The Council has recognized this experience and granted him a temporary license on the condition that he passes the Strata Management Course Supplemental Exam by January 1, 2007. The Council is not willing to provide any

additional exemption to Mr. Blackall due to consumer protection issues and public confidence in the industry.

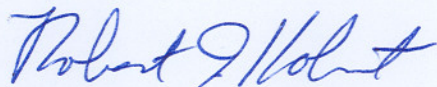
I do not find the Council's decision to deny Mr. Blackall an exemption from passing the examination to be unreasonable.

Therefore, Mr. Blackall's appeal is dismissed and the Council's decision of September 20, 2005 is confirmed.

There have been no submissions with respect to costs and no order has been made with respect to costs.

DATED AT VANCOUVER, BRITISH COLUMBIA, this 8th day of February, 2006.

FOR THE FINANCIAL SERVICES TRIBUNAL

A handwritten signature in blue ink, appearing to read "Robert J. Hobart".

ROBERT J. HOBART
PRESIDING MEMBER