

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29;

AND IN THE MATTER OF an application for hearing filed by Jason William Reid on August 7, 2008 concerning a Notice of Proposal issued by the Superintendent of Financial Services on July 11, 2008;

AND IN THE MATTER OF a hearing conducted pursuant to Section 21 of the *Act*.

B E T W E E N:

JASON WILLIAM REID

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

Date of Hearing:
September 25, 2008

Appearances:
No one appearing for the Applicant
For the Superintendent: Larissa Easson

DECISION Re Applicant's Failure to Appear

On July 11, 2008, the Superintendent of Financial Services issued a Notice of Proposal ("the Notice") to refuse to issue a mortgage agent's licence to Jason William Reid. The grounds for the proposed refusal provided in the Notice were twofold: that he had made a false statement or provided false information to the Superintendent with respect to his application for a licence, and also that his past conduct afforded reasonable grounds for the belief that he would not deal or

trade in mortgages in accordance with the law and with integrity and honesty. Reasons provided with the Notice set out the particulars which were the basis for the Superintendent's proposed decision. They included Mr. Reid's past criminal record, and the fact that he had failed to disclose the nature of that record in his licensing application.

The Notice of Proposal advised Mr. Reid that he had a right to request a hearing before this Tribunal. Mr. Reid filed an application for a hearing on August 7, 2008, and accordingly this hearing was scheduled for September 25, 2008. Jason Reid was served by the Tribunal with Notice of Hearing in this matter on August 18, 2008. That notice was served upon him by registered mail and regular mail and also by electronic mail at the addresses provided in his application. In accordance with the Tribunal's Rules of Practice and Procedure, the Notice of Hearing spelled out that if Mr. Reid did not participate in the proceeding, the Tribunal could proceed in his absence. We understand that the registered letter containing the Notice of Hearing was not picked up and was returned to the Tribunal. According to Rule 9.06, service was validly effected by mid-August by all three of the methods of service used, notwithstanding that the registered letter was not picked up. The Registrar has had no further contact from Mr. Reid since he filed his application for hearing. No Pre-Hearing Conference was held in this matter, nor was one requested.

We were advised by Superintendent's counsel, Ms. Easson, that Joe Nemet, counsel with carriage of this file for the Superintendent, made a number of efforts to contact Mr. Reid since he filed his application, and to engage him in the process of preparation for hearing contemplated by the *Practice Direction Pertaining to Proceedings Brought Under the Mortgage Brokerages, Lenders & Administrators Act, 2006*. Efforts were made to communicate by letter, by courier, by telephone, including voice mail, and by email at the email address provided by Mr. Reid, an address which the Superintendent's office had used successfully before to reach him. Mr. Reid did not respond to any of these overtures by Mr. Nemet.

Mr. Reid did not appear this morning at the scheduled time of 9:30 AM. He had not advised either Superintendent's counsel or the Registrar's office, that he would not be attending today's proceedings. He did not provide any explanation for his non-appearance. The Panel waited until 9:45 A.M. to commence the proceedings. At that time we heard from Superintendent's counsel on the issue of whether or not the hearing should proceed. We then adjourned the proceedings until 11:00 A.M. to provide Mr. Reid with a further opportunity to appear or to provide an explanation for his non-appearance. When we reconvened at 11:00 AM, there was still no sign of Mr. Reid. We therefore issued an oral decision, the substance of which is set out in these reasons.

In a situation such as outlined above, the Tribunal has a number of options which must be considered: to adjourn the proceedings and await communication from

the applicant, to proceed in the applicant's absence, to dismiss the application as abandoned, or to apply Rule 37, the Summary Dismissal Rule as provided for in the Tribunal's Rules of Practice and Procedure. It is the latter course of action that is urged upon us by the Superintendent.

The Superintendent has made reasonable efforts to draw Mr. Reid's attention to the requirement set out in the Practice Direction that disclosure of evidence be made in advance of the hearing. Mr. Reid has not responded, and has not given any indication that he intended to call evidence or file documents at the hearing. If he did intend to call evidence, he has missed a number of key deadlines established by the Practice Direction. Mr. Reid has been given full and fair notice of the proceedings, and of the potential consequences should he fail to appear. He has not appeared, and has provided no explanation for that. Under those circumstances we might have been inclined simply to dismiss Mr. Reid's application when he failed to appear this morning, if the Superintendent had requested that course of action. However, the Superintendent has not asked us to dismiss the application. Instead, the Superintendent has taken what is in essence a 'more lenient' position: that we should apply Rule 37.

Rule 37 provides as follows:

37.01 Where a party who has initiated a proceeding has taken no step in the proceeding for an undue period of time or has missed a deadline set out in these Rules or in a Practice Direction or imposed by the Tribunal at a pre-hearing conference, the Tribunal may, through the Registrar, give that party notice of intention to dismiss the proceeding, without a hearing, as frivolous, vexatious or commenced in bad faith, if proper steps are not taken within 30 days of the giving of the notice, which notice shall advise the party to whom the notice is given of the right to make written submissions as set out in Rule 37.03.

37.02 Where a party has initiated a proceeding that, in the opinion of the Tribunal, is,

- (a) frivolous, vexatious or commenced in bad faith;
- (b) relates to matters that are outside the jurisdiction of the Tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met,

the Tribunal may, through the Registrar, give notice of intention to dismiss the proceeding without a hearing,

- (i) to that party, if clause (a) or (c) applies, or
- (ii) to all parties, if clause (b) applies,

setting out the reasons for the proposed dismissal and advising the party or parties to which the notice is given of the right to make written submissions as set out in Rule 37.03.

- 37.03 A party who is entitled to notice under Rule 37.01 or 37.02 shall have the right to make written submissions to the Tribunal with respect to the dismissal of the proceeding within 30 days of the giving of the notice.
- 37.04 After having given notice under Rule 37.01 and after considering any submissions made in accordance with Rule 37.03, the Tribunal may dismiss the proceeding, as frivolous, vexatious or commenced in bad faith, if the party to whom the notice was given has not taken the steps specified in the notice within the 30 day period referred to in Rule 37.01 and, in that event, the Tribunal, through the Registrar, shall give notice of dismissal of the proceeding to the party to whom notice was given under Rule 37.01.
- 37.05 After having given notice under Rule 37.02 and after considering any submissions made in accordance with Rule 37.03, the Tribunal may dismiss the proceeding, on any of the grounds specified in the notice, and, in that event, the Tribunal, through the Registrar, shall give notice of dismissal of the proceeding to the party or parties to whom notice was given under Rule 37.02.

Rule 37 addressed two situations. Rule 37.01 provides parties who fail to abide by the Tribunal's procedural rules with an opportunity to persuade the Tribunal that notwithstanding their delinquency, they nevertheless have a genuine intention of proceeding with their applications, and should be permitted to do so. Rule 37.02 permits the Tribunal to give notice of its intent to dismiss an application without a hearing, where, among other reasons, it has reasonable grounds to believe that it is "frivolous, vexatious or commenced in bad faith". Rule 37.02 may, in our view, apply where the Tribunal has reasonable grounds to believe that an applicant does not genuinely intend to proceed with an application.

We have considered the Superintendent's submissions and determined that either Rule 37.01 or 37.02 can be applied in this case. While it is somewhat unusual to apply Rule 37 at the hearing stage, it would appear under all the circumstances that there are reasonable grounds for concluding that Mr. Reid does not genuinely intend to proceed with his application, and therefore that it was filed frivolously, vexatiously or in bad faith. Mr. Reid has missed a number of key deadlines established by the Practice Direction for providing disclosure of witness statements and documents on which he might wish to rely at any

hearing. He has also missed the hearing, which could fairly be described as the ultimate deadline. He has provided no explanation for any of this. Accordingly, we direct the Registrar to issue a Notice of Intention to Dismiss the application pursuant to Rule 37.01 and 37.02. In that Notice, Mr. Reid will be advised that he has thirty days from the date of the Notice to make written submissions as to why the Tribunal should not dismiss his application. If Mr. Reid does not provide submissions within the time limit, his application will be dismissed. If he does provide submissions within the time limit, those submissions will be taken into account in determining whether or not to dismiss his application.

DATED at Toronto, Ontario, this 26th day of September, 2008

“Elizabeth Shilton”

Elizabeth Shilton, Member of the Tribunal
and Chair of the Panel

“Ralph Scane”

Ralph Scane, Member of the Tribunal
and Member of the Panel

“Shiraz Bharmal”

Shiraz Bharmal, Member of the Tribunal
and Member of the Panel