

Before the Financial Services Review Panel

In the matter of –

Anderson Ross Consulting Limited

Applicant

v/s

The Financial Services Commission

Respondent

DETERMINATION

1 Introduction

On 21 February 2011, the Enforcement Committee of the Financial Services Commission “the Commission” notified Anderson Ross Consulting Limited (ARC) that its management licence was revoked with immediate effect.

On 23 February 2011, Mr. Attorney A. P. Mungroo wrote to the Commission and gave notice that ARC was applying for a review of the decision of the Enforcement Committee pursuant to section 53(4) of the Financial Services Act “the Act”.

On 24 February 2011, the Commission passed on the letter to the Secretary of the Review Panel.

Mr. Mungroo wrote three more letters dated 04 March 2011, 11 March 2011 and 22 March 2011. Counsel appearing for ARC wrote a letter dated 15 March 2011.

2. The Complaints of ARC

The complaints of ARC are to be found in the letters referred to above and may be summarized as follows –

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1. the Commission has caused grave prejudice to ARC by announcing the revocation of the management licence of ARC on its website without indicating that the revocation was subject to review;
2. the Enforcement Committee has not given any reasons for revoking the management licence of ARC with the result that ARC cannot formulate the reasons for the review it is seeking;
3. no public notice has been given of the setting up of the Review Panel with the result that ARC did not know the address of the Review Panel and the names of its members;
4. ARC was not effectively being given its right of review under the Act;
5. the letter of revocation speaks of immediate revocation while the Act provides that the revocation shall be effective immediately after the expiry of 21 days;
6. ARC was not able, accordingly, to service its existing clients and was suffering grave prejudice.

It must be pointed out that the above are complaints and not specified as grounds of review. As a matter of fact, no ground of review has been put forward.

3. The requests of ARC

Several requests were made by ARC as follows, especially in the letter of 15 March 2011

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1. the Review Panel is invited to confirm that the decision of the Enforcement Committee cannot be effective until the period of 21 days has elapsed;
2. the Review Panel is invited to declare that the effect of the impugned decision is suspended till the final determination of the application to overturn and revoke the decision;
3. alternatively, the Review Panel is invited to declare that the permission granted to ARC to service its existing clients should be extended till the final determination of the review;

4. the Review Panel is invited to make any ancillary order to mitigate the damage being caused to ARC by failure of the Commission to make a fair and frank disclosure as to the effect of the impugned decision on the business of ARC.
5. the Review Panel should order the Commission to provide, in advance of the hearing of the application for review, full disclosure of the facts, documents and report considered by the Enforcement Committee in reaching its decision and the reasons of the decision.
6. it is crucial in order to safeguard the integrity of the review process that all papers, documents or communications provided by the Commission to the Review Panel be shared with ARC.

It must be pointed out again that the above requests are not grounds of review as such. From what Counsel for ARC submitted later, the Review Panel was being invited to take action pursuant to section 53(7) of the Act. This means, as Counsel suggested, that the Review Panel has a wider jurisdiction than appears. The Review Panel is of the view that the subsection must be read in , and not out of, context. At any rate, the question of jurisdiction does not arise in this case.

4. The preliminary meeting

A preliminary meeting was held by the Review Panel on 17 March 2011. The following two issues were identified and retained for discussion at a hearing proper –

- (1) whether there was a valid application before the Review Panel;
- (2) whether the proceedings of the Review Panel would be held in public as provided by the Act.

The matter was postponed to 29 March 2011 for argument.

5. The hearing of 29 March 2011

- (1) Learned Counsel for the Commission submitted that there was no valid application before the Review Panel as none of the letters complied with section 53(4) of the Act which provides that –

- (a) an application must be made to the Review Panel by registered post;
- (b) a copy of the application must be sent to the Commission by registered post;
- (c) the application must be made within 21 days of the decision of the Enforcement Committee;
- (d) the application must specify the grounds of review.

It was pointed out by Learned Counsel for the Commission that the letter of revocation was sent to ARC on 21 February 2011 and ARC acknowledged receipt of it on the same date. This means that the letter of 15 March 2011 was outside the delay.

It was also pointed out that there was no prayer made to bring into play section 53(6) of the Act.

(2) Learned Counsel appearing for the ARC admitted non-compliance with section 53(4) of the Act but added that the Commission had prevented ARC from complying with the law –

- (a) by failing to give notice of the possibility of applying for a review;
- (b) by keeping ARC in the dark about the address of the Review Panel and the names of the members of the Panel.

In other words, it is suggested that the notice would have given ARC the address of the Review Panel and the names of the members and this would have enabled ARC to address a proper application for review to the Review Panel.

6. The findings of the Review Panel

The letter of 23 February 2011 states that ARC is applying for a review of the decision of the Enforcement Committee but does not advance any ground of review and is addressed to the Commission.

The letter of 04 March 2011 too is addressed to the Commission and does not specify any ground of review.

The letter of 11 March 2011 is equally addressed to the Commission and states, inter alia, that ARC cannot give any ground for review because the Enforcement Committee or the Commission has not given any ground to support the revocation of the licence of ARC. The Review Panel believes that if the failure of the Commission to give grounds was a serious matter, it could have been made a ground of review, but this has not been done.

The letter of 15 March 2011 too does not specify any ground of review, quite apart from the fact that it was outside the delay provided by the Act.

Learned Counsel for ARC rightly conceded that the various letters had not strictly complied with section 53(4) of the Act. The Review Panel could have stopped there but has considered it fair to examine the propositions specified in paragraph 5, subparagraph (2), above without going into the merits of the case. The Review Panel is of the view that it cannot give directions to the Commission even on the assumption that the Commission or the Enforcement Committee were in the wrong. Moreover, ARC had made written representations to the Enforcement Committee as appears from the letter of 21 February 2011.

We wish to draw attention to the fact that the second point retained for argument on 29 March 2011 was not considered because priority was given to the issue of the validity of the application for review.

The issue of the failure of the Commission to give notice of the possibility of applying for a review is relevant only to the connected issue that ARC did not know the address of the Review Panel.

The right of review is provided by law. There was no special need to mention it in the letter of 21 February 2011. After all, in the first letter of 23 February 2011, the attorney for ARC did apply for a review.

With regard to the address of the Review Panel, we believe that it could have been easily ascertained by enquiring from the Commission or the Solicitor-General or the

Financial Secretary in view of the statutory composition of the Review Panel (see section 55 of the Act).

For the reasons given above, the Review Panel concludes that there is no valid application before it and cannot proceed further with the case.

Date: 24.5.2011.....