

**Before the Financial Services Review Panel**

**2016 FSRP 5**

**In the matter of –**

**B**

**Applicant**

**v**

**Financial Services Commission**

**Respondent**

The Enforcement Committee of the Financial Services Commission has, by letter dated 24 August 2016, revoked the Management Licence held by B pursuant to sections 7(1)(c)(vi) and 52(3) of the Financial Services Act 2007 (the “FSA”).

Aggrieved by the decision, the Applicant submitted, through its Senior Attorney, a purported application by fax on 20 September 2016.

An application for review dated 20 September 2016 was forwarded by registered post and delivered to the Secretary of the Panel on 21 September 2016.

By letter dated 07 October 2016, the Respondent was requested to submit a show cause letter with copy to the Applicant.

The show cause letter was submitted to the Panel on 20 October 2016.

By letter dated 25 October 2016, the Applicant was invited to submit written arguments within 21 days of the date of the said letter.

It is a matter of regret that as at 14 November 2016, date on which the time frame lapsed, no written arguments were submitted by the Applicant.

The Respondent submitted that without prejudice to the grounds for review submitted by the Applicant on 21 September 2016, the application to review the decision of the Enforcement Committee dated 24 August 2016, is time-barred, for the following reasons:

*“i. The EC’s decision was issued on the 24<sup>th</sup> August 2016 and the Applicant’s letter for review was received on the 21<sup>st</sup> September 2016, hence outside the prescribed delay of 21 days as per section 53(4) of the Financial Services Act (“FSA”) which provides that:*

*(4) Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) –*

*(a) may, within 21 days of the issue of the written notification, forward, by registered post, an application to the Review Panel specifying the reasons for a review of the decision; and*

*(b) shall, at the same time, forward a copy of his application by registered post to the Commission.*

*ii. Furthermore, the procedural time limit for commencing the review application had been duly notified to the Applicant in the EC’s letter dated 24<sup>th</sup> August 2016. (Paragraph 5 at page 2 – as reproduced below)*

*“5. You are hereby informed that [B] may, within 21 days of the issue of this notice, make an application to the Financial Services Review Panel (the “FSRP”) for a review of the above decision of the EC, by registered post, specifying the reasons for the review, in accordance with section 53(4) of the Financial Services Act. A copy of the application must be sent, by registered post, to the Financial Services Commission.”*

The Respondent went on to state in its submission that-

*“3. Notwithstanding the expiration of the time limit under section 53(4) of the Financial Services Act, the Applicant is allowed a reasonable opportunity to show cause why it has failed to comply with the procedural time limit under section 53(5) of the Financial Services Act:*

*(5) Where a licensee is unable to make an application within the period of 21 days referred to in subsection (4)(a) and he proves to the satisfaction of the Review Panel that his inability to do so was due to illness or any other reasonable cause,*

*the Review Panel may accept to hear the belated application on such terms and conditions as it may determine.*

*4. However, there are no exceptional circumstances on record and no explanations have been provided as to why the review application has been made outside the statutory delay, to warrant any exercise of the FSRP's discretion in favour of allowing any belated review application to be entertained."*

## **Did the applicant forward its application within the prescribed delay?**

### **The Law**

Section 53(4) of the Financial Services Act provides that:

*(4) Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) –*

- (a) may, within 21 days of the issue of the written notification, forward, by registered post, an application to the Review Panel specifying the reasons for a review of the decision; and*
- (b) shall, at the same time, forward a copy of his application by registered post to the Commission.*

Section 53(4)(a) is akin to Section 37 of the District and Intermediate Courts (Civil Jurisdiction) Act and Section 93 of the District and Intermediate Courts (Criminal Jurisdiction) Act.

Section 37 reads as follows:

### **37. Time for appealing**

*(1) (a) Every person appealing shall, within 21 days of the date of the judgment, exclusively give notice in writing of such appeal to the clerk of the Court.*

*(b) ....*

Section 93 reads as follows:

### **93. Time for appealing**

*(1) Any person wishing to appeal under section 92 shall lodge a written notice of appeal with the clerk of the Court within 21 days of the adjudication.*

It is here apposite to refer to the case of **Emamally R.Z. v. The State & ors 2004 SCJ 294** where the Appellate Court held that the word “*within*” under section 93 of the District and Intermediate Courts (Criminal Jurisdiction) Act implies that the date of the adjudication is included as the given date from which the specified period of 21 days should start to run.

The Court found support from Section 38 of the Interpretation and General Clauses Act.

Sections 38(1)(b) and 38(1)(d) of the Interpretation and General Clauses Act provide—

**38. Computation of time**

(1) *In computing time for the purposes of any enactment or document-*

(a)

(b) *where there is a reference to a number of days between 2 events, whether expressed by reference to a number of clear days or "at least" a number of days or otherwise, the days on which the events happen shall be excluded in calculating the number of days;*

(c)

(d) *where there is a reference to a period of time specified to run from a given date, the period of time so specified shall be calculated so as to include the given day.*

**Determination**

Thus, in order to comply with the requirements of Section 53(4) of the Act, an Applicant should have forwarded its application by registered post within 21 days of the written notification. The first day to be included in the computation of the 21 day period is the 24 August 2016 and the statutory time frame for the application would lapse on 13 September 2016. (**C Moothen v The Queen 1981 MR 374**).

In its letter of application forwarded by registered post on 20 September 2016, the Applicant made reference to a notice under section 53(3) of the Financial Services Act and referred to a letter dated 24 August 2016 without challenging the date of issue of the said letter. In these circumstances, the Panel can but take the letter dated 24 August 2016 at its face value.

The Panel accordingly finds that the application was made outside the statutory timeframe.

Section 53(5) of the Financial Services Act confers a discretionary power on the Panel to entertain an application outside the prescribed delay provided that the Applicant is able to prove to the satisfaction of the Review Panel that his inability to do so was due to illness or any other reasonable cause. As rightly submitted by the Respondent, the Applicant failed to show any reasonable cause as to why the application has been made outside the statutory delay.

In the circumstances, we are not in a position to exercise our discretionary power provided under section 53(5) of the Financial Services Act.

#### **Is non-compliance with Section 53(4) of the Financial Services Act fatal?**

There is a long list of cases where the Supreme Court held that non-observance of the time-limit in making an appeal is always fatal to the hearing thereof unless such non-compliance was due to no fault of the appellant (**Yip Wai Man v Prayag 1961 MR 63, Dependants Pursun v Vacoas Transport Co. Ltd 1969 MR 148, Espitalier Noel v Serret 1980 MR 279, Duval v Seetaram & Anor 1991 MR 61, Ramtohul v State 1996 MR 207, Laurette v State 1996 SCJ 296, Emamally R.Z. The State & Ors 2004 SCJ 294, Rosunally B.B & Ors v The Mauritius Revenue Authority & Anor 2012 SCJ 380, Sewraz Freres Ltd v. British American Tobacco 2013 SCJ 400, Soodhooa D. v The Independent Commission against Corruption 2016 SCJ 57**).

It is here appropriate, to refer to a letter from Senior Attorney, appearing for the Applicant dated 17 November 2016, wherein the following issues were, amongst others, raised:

- (a) the procedure adopted by the Panel not being “within the parameters of the FSA 2007”; and
- (b) the Panel having been “misled by the Commission inasmuch as the letter of the Commission dated 24 August 2016 was never issued on such date”.

Suffice it to say that:

- (a) under section 62(3) of the Financial Services Act, the Panel has the ability to regulate its proceedings as it thinks fit provided that such proceedings are conducted in a manner which is consistent with the rules of natural justice and procedural fairness; and
  
- (b) as already mentioned, the issuing date of the letter of notification was not challenged in the application delivered to the Secretary to the Panel on 21 September 2016.

For all the reasons given, the application is set aside.

**R. N. Narayen**

(Chairperson)

**Y. Jean- Louis**

(Vice - Chairperson)

**Mr. S. Lalmahomed**

(Member)

**1 December 2016**