

BEFORE THE FINANCIAL SERVICES REVIEW PANEL

2018 FSRP 7

In the matter of –

VR

Applicant

v

The FSC

Respondent

DETERMINATION

1. This is an application for a review of a decision of the EC dated 26 October 2017 disqualifying the Applicant from holding a position as officer in any licensee of the Respondent for a period of 2 years.
2. At the sitting of 22 November 2017, the Respondent raised a preliminary objection to the effect that the application was made outside delay. It was agreed that the preliminary objection be thrashed out together with the merits of the application. Written submissions were exchanged both on the preliminary objection and on the merits and it is appropriate for us to first determine the preliminary objection.
3. The application was received by the Review Panel on 16 November 2017.
4. It is here appropriate to refer to section 53(4) of the Financial Services Act which provides as follows –
 - (4) *Any licensee who is aggrieved by the decision of the EC 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.*
5. The law relating to computation of time is well settled and has been the object of elaborate consideration by the Review Panel in B v Financial Services Commission 2016 FSRP 5 and C v Financial Services Commission 2016 FSRP 6. In these two cases, the Review Panel held that section 53(4)(a) of the Financial Services Act was

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.

6. Relying on E v The State & Ors 2004 SCJ 294 and section 38 of the Interpretation and General Clauses Act, the Review Panel further held that the date of the decision of the EC was included in the 21-day period provided for in section 53(4)(a) of the Financial Services Act.
7. In R (a company) v The Financial Services Commission 2017 FSRP 1, the Review Panel considered section 40 of the Interpretation and General Clauses Act which provides as follows –

40. Service by post

Where an enactment authorises or requires a document to be served by post, whatever the expression used, the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document and be presumed to have been effected at the time when the letter would be delivered in the ordinary course of post. [Emphasis is ours]

8. In the light of the above, the last day for the application to have been received by the Review Panel under Section 53(4)(a) of the Financial Services Act ought to have been 15 November 2017.
9. What is therefore the effect of the application having been received by the Review Panel on 16 November 2017? This too has been the object of extensive consideration by the Review Panel in H v Financial Services Commission 2016 FSRP 4, C v Financial Services Commission (op. cit.) and R (a company) v The Financial Services Commission (op. cit.), where the case of R v The Mauritius Revenue Authority and Anor. 2012 SCJ 380 was examined at length.
10. R was an appeal against the decision of the Assessment Review Committee setting aside the motion of the Applicant to amend the representation form in order to set out the reasons for making the representation under section 19 of the Mauritius Revenue Authority Act when such reasons had not been given in the first place.
11. Section 19 of the Mauritius Revenue Authority Act provides as follows –

19. Lodging written representations with Committee

(1) Subject to subsection (2), any person who is aggrieved by a decision, determination, notice or claim under any or the enactments specified in the fifth Schedule may within 28 days of the date of the decision, determination, notice or claim, as the case may be, lodge with the Clerk to the Committee, written representations specifying the reasons for asking for a review of the decision, determination, notice or claim, as the case may be.

(2) *Where a person has failed to make his representations within the time specified in subsection (1) and the Chairperson is satisfied that the failure was due to illness or other reasonable cause, the Chairperson may direct that the representations shall be accepted.*

(3) *Where representations referred to in subsection (1) are received and accepted the Chairperson shall refer the matter to a panel for a hearing and a decision.*

12. The Court in R was of the view that the provisions of Section 19(1) of the Mauritius Revenue Authority Act are comparable to section 93 of the District and Intermediate (Criminal Jurisdiction) Act which sets out the procedure governing appeals from lower Courts.
13. The Learned Judges referred to a number of cases where the Supreme Court reaffirmed the well-established principle that: “...*on appeal non-compliance with any one of the required formalities within the prescribed delay is fatal to the hearing thereof unless such non-compliance was due to no fault of the appellant.*” [Emphasis is ours]
14. The Court in R further held that “... *a close parallelism can be drawn between section 93 of the District and Intermediate Courts (Criminal Jurisdiction) Act which deals with the procedure governing appeals from decisions of lower Courts and the present matter*” (namely section 19 of the Income Tax Act referred to above).
15. The Court in addition cited the following passage from M on the Interpretation of Statutes 6th Edition at page 655:

“So, enactments regulating the procedure in Courts seem usually to be imperative and not merely directory. If, for instance, an appeal from a decision be given, with provisions requiring the fulfillment of certain conditions, such as giving notice of appeal and entering into recognisances, or transmitting documents within a certain time, a strict compliance would be imperative, and non-compliance would be fatal to the appeal.” [Emphasis is ours]
16. The Court finally concluded that “*the above principles clearly established that statutory formalities governing appeals are there to be observed and not to be flouted with impunity and the Court will not easily condone the laches of an appellant or his legal advisers resulting in the non-fulfillment of the formalities, unless there are, in the Court’s views, sufficient justifications for the exercise of its discretion*”.
17. In the absence of any reasonable cause justifying the making of the application outside delay, the preliminary objection must succeed.
18. Having upheld the preliminary objection, we do not find the necessity of delving into the merits of application and accordingly confirm the decision of the EC.

Y. Jean- Louis

(Vice - Chairperson)

S. Lalmahomed

(Member)

Date: _____