

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

CUNNINGHAM A.C.J., LANE and MOLLOY JJ.

B E T W E E N:

JAGUAR INSURANCE BROKERS INC.

Appellants

- and -

**REGISTERED INSURANCE BROKERS
OF ONTARIO**

Respondent

)
)
) *David F. Bell,*
) *for the Appellant*
)
)

)
)
) *John W. Goldsmith,*
) *for the Respondent*
)
)

) **HEARD:** May 17, 2005

CUNNINGHAM A.C.J.

[1] This is an appeal by Jaguar Insurance Brokers Inc. from the order of the Qualifications and Registration Committee (the “Committee”) of the Registered Insurance Brokers of Ontario (“RIBO”) dated July 14, 2004 (“the order”). That order revoked the appellant’s certificate of registration with RIBO, thereby prohibiting the appellant from carrying on business.

[2] Because an individual’s registration is only valid when the individual is associated with a registered brokerage firm, the appellant’s owner and principal broker, Nirmaljit Singh Chadha (“Chadha”), was advised by letter dated July 16, 2004 that his individual licence became “inactive” effective July 14, 2004, the date of the order.

[3] It is apparent that the Committee revoked the appellant's certificate of registration on the ground that he did not meet the requirements of s. 6(1)(a)(i) of Ont. Reg. 991 of the *Registered Insurance Brokers Act*, R.S.O. 1990, c. R-19 which provides:

6(1) A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

(a) the only business conducted by it is that of,

(i) an insurance broker

[4] In its written reasons, the Committee stated that the appellant "does not meet the requirements of section 6(1)(a)(i) of Ont. Reg. 991, as amended, in that Jaguar Insurance Brokers Ltd. is not in a position to carry on business as a broker on the basis that the firm currently does not have at least two contracted markets, thereby being unable to provide the public with any choice of insurance products." It is the appellant's position that the respondent erred in law in holding that section 6(1)(a)(i) of Ont. Reg. 991 requires an insurance broker to have at least two contracted markets and that it misapprehended the scope of the complaint before it and erred in failing to respond appropriately.

[5] By way of background, the appellant is an insurance broker and has been in business for nearly 30 years. In 1981, the appellant began selling facility insurance through Fireman's Insurance, which was sold to Wellington Insurance, which in turn was eventually sold to ING Insurance Company of Canada ("ING").

[6] For many years, the appellant has sold facility insurance exclusively. More recently, the appellant obtained such insurance from ING pursuant to a written contract. ING was, at all times, a member of the Facility Association, whose members operate a risk-sharing pool and participate in various programs in connection with the automobile insurance industry.

[7] On March 22, 2004, ING, through its counsel, advised RIBO that it had suspended the appellant as an agent from conducting any further Facility Association business and would be terminating its contract effective May 17, 2004. Apparently ING took this action as a result of alleged non-payment of overdue premiums of approximately \$1 million allegedly due to it by the appellant. The appellant denies owing any money to ING. The appellant says that despite several requests for supporting documentation and quantification of monies allegedly owed, ING had, to date, refused to provide such documentation or to quantify the amount allegedly owed by the appellant. Clearly there is a serious issue between the appellant and ING which the appellant says has not been resolved. On May 18, 2004, ING advised the appellant it was rescinding the March 22nd notice of termination it had issued.

[8] By letter dated March 30, 2004, RIBO advised Chadha and the appellant that it had received notice from the Facility Association that the contract for Jaguar Insurance Brokers Ltd. was suspended. The letter stated:

It is a requirement of licensing that a brokerage maintain active contracts with at least two (2) standard insurance markets.

Please forward confirmation from two contracted insurers that the brokerage firm has an active contract in force no later than April 5, 2004. Failure to comply will result in brokerage's file being presented to the Qualification and Registration Committee on April 14, 2004 for review.

Chadha, on behalf of the appellant, responded to RIBO's request by letter dated April 5, 2004 indicating that the appellant did not represent two standard markets.

[9] In an internal Committee document dated April 2004 regarding the appellant and Chadha, it states,

REQUEST FOR: Proposal to review and revoke Certificate of Registration Ont. Reg. 991, section 6(1)(b)

DETAILS:

On March 22, 2004, RIBO received notice from the Facility Association that they suspended their contract with Jaguar Insurance Brokers Ltd. as a result of non-payment of overdue premiums.

RIBO requested the Principal Broker, Nirmaljit Chadha to obtain written confirmation from two standard market insurers that active contracts continue to be in place. On April 5, 2004, Mr. Chadha confirmed by fax that the brokerage did not represent any standard markets.

RECOMMENDATIONS:

1. The manager proposed to revoke the registration based on the fact that the firm has no standard insurance markets.
2. The findings and decision of the Committee shall be published in the RIBO bulletin.

[10] By letter dated April 14, 2004, entitled "Notice of Review of Qualifications and Proposal to Revoke Certificate of Registration", Chadha was advised that the appellant was entitled to a hearing with respect to the company not meeting the requirements of s. 6(1)(a)(i) of Ont. Reg. 991, as amended. The letter stated the particulars as follows: "1. That Jaguar Insurance Brokers Ltd. is not in a position to carry on business as a broker on the basis that the firm has no contracted markets." Mr. Chadha did not request a hearing and the Committee considered the matter without further notice to Mr. Chadha or the appellant and confirmed the proposed decision in his absence. The minutes of a meeting of the Committee held Thursday, July 14, 2004 provide as follows:

Jaguar Insurance Brokers Ltd.

It was moved by Byron Moffitt and seconded by Al Hawco that the proposal to revoke the brokerage firm registration be made. It was moved by Al Hawco and

seconded by Rod Finlayson to publish the decision in the next issue of the RIBO Bulletin. Motion carried.

[11] The reasons for the Committee's decision are set out in the order revoking the appellant's Certificate of Registration as follows:

(The appellant) does not meet the requirements of section 6(1)(a)(i) of Ont. Reg. 991, as amended, in that Jaguar Insurance Brokers Ltd. is not in a position to carry on business as a broker on the basis that the firm currently does not have at least two contracted markets thereby being unable to provide the public with any choice of insurance products.

[12] By letter dated July 16, 2004, Mr. Chadha was advised that because an individual registration is only valid when associated with a registered brokerage firm, his individual licence was listed as "inactive" effective the date of the order.

[13] The two issues for determination on this appeal are as follows:

1. Did the Qualification and Registration Committee misapprehend the scope of the complaint before it – specifically, did the Qualification and Registration Committee have jurisdiction to make the order?

and

2. Did the respondent err in law in determining that subsection 6(1)(a)(i) of Ont. Reg. 991 requires an insurance broker to have at least two contracted markets and thereby did the respondent err in law in determining that the appellant was in breach of the said subsection?

[14] This court derives its jurisdiction to hear this appeal from s. 21(1) of the *Registered Insurance Brokers Act* (the "Act") which provides:

Appeal to Court

1. Any party to proceedings before the Discipline Committee or the Qualifications and Registration Committee may appeal from its decision or order to the Divisional Court.

[15] Pursuant to s. 21(2) of the Act, the powers of the Divisional Court to this appeal are as follows:

Powers of Court of Appeal

2. An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the committee appealed from and may exercise all powers of the committee and may direct the committee or the corporation to take any action which the committee or the corporation may

take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the committee, or the court may refer the matter back to the committee for rehearing, in whole or in part, in accordance with such directions as the court may consider proper.

Standard of Review

[16] In our view, the questions of law and fact on this appeal fall squarely within the respondent's area of specialized expertise and accordingly the appropriate standard of review is reasonableness. See *Cartaway Resources Corp. (Re)* (2004) 238 D.L.R. (4th) 193 (S.C.C.).

Issue 1

[17] In our view, the respondent had the requisite jurisdiction to make the order and did not misapprehend the scope of the complaint before it.

[18] Under the Act, in addition to powers and duties conferred upon it pursuant to subsections 13(2) and 13(4), the Committee has the following authority under the Act,

13(3) The Qualification and Registration Committee may direct the manager to issue or refuse to issue certificates and renewals.

14(1) Where the Qualification and Registration Committee proposes to refuse to grant a certificate to an applicant, the manager on behalf of the Committee shall serve notice of the proposal of the Committee together with written reasons therefore on the applicant.

Notice Requiring Hearing or Review

(3) A notice under subsection (1) shall inform the applicant that he, she or it is entitled to a hearing by the Qualification and Registration Committee if he, she or it mails or delivers within 15 days after the notice under subsection (1) is served on the applicant, notice in writing to the Committee requiring a hearing.

Powers of Committee

(4) Where an applicant does not require a hearing by the Committee in accordance with subsection (3) the Committee may refuse the application.

Powers of Committee upon Hearing or Review

(7) The Committee shall after a hearing or review,

(a) confirm the proposed decision,

(b) require the applicant to take qualifying examinations or additional training as a condition for registration, or both, as specified by the Committee, or

- (c) direct the manager to register the applicant on any appropriate register subject to such conditions as the Committee considers appropriate in cases where the Committee finds that the applicant meets the requirements for registration.

[19] The requirements for both the issuance and maintenance of a broker's certificate of registration are governed by subsection 6(1) of Ont. Reg. 991 under the Act. This provides:

6(1) A corporation is qualified to be issued and hold a certificate of registration as an insurance broker where,

(a) the only business conducted by it is that of,

(i) an insurance broker, or

(ii) an insurance broker and life insurance agent, and

(iii) such other business as the Qualifications and Registration Committee considers appropriate when carried on in accordance with such terms as the Committee stipulates.

(b) the corporation acts as an insurance broker under the direction and supervision of a principal broker as described in s. 7.2.

[20] In our view, the Committee has exclusive authority conferred by statute to determine the eligibility of applicants for certificates or renewals and impose conditions for eligibility (s. 13(2) of the Act). As well, it may direct the manager to refuse to issue certificates and renewals (s. 13(3) of the Act), and it may review the qualification of any member and impose conditions on their certificate (s. 13(4) of the Act) and make a proposal to refuse to grant a certificate to an applicant and confirm such proposal (s. 14(1)(7) of the Act) and it may determine what other business an insurance broker is entitled to conduct (regulation 991 s. 6(1)(a)(iii)). We are of the view that, by implication, the Committee also has the authority to make a proposal to revoke a broker's certificate of registration and confirm any such proposal prior to renewal where the requirements for holding a certificate of registration are no longer met. Various courts have granted to administrative tribunals those implied powers and jurisdictions necessary and inexorably linked to the exercise of a tribunal's function. The courts have also stated that overly technical interpretations of enabling statutes, which would sterilize the powers of the administrative tribunal, must be avoided. (See *CTV Television Network Ltd. v. Canada (Copyright Board)* [1993] F.C.J. No. 2 F.C.C.A.) This implied authority is quite explicitly stated in the "Qualification Guidelines for Registration of Member Firms" passed by the Committee March 12, 1997 (the "Guidelines") which were in force at the time of the Qualification and Registration Committee's decision. This Guideline states as follows:

Revocation of Existing Certificate of Registration

The qualification requirement "to act as an insurance broker" applies to applications for initial registration and also applies equally to every registered

member firm as a continuing qualification requirement, in order to continue “to hold” a certificate of registration on an ongoing basis. Accordingly, any registered member business is subject to having its qualifications for registration reviewed at any time by the Qualification and Registration Committee, to determine continued qualification for registration on this ground. Where the Qualification and Registration Committee finds that a registered member business no longer continues to qualify to hold its certificate of registration on this ground, it may in its discretion revoke such registration in accordance with its usual procedures.

[21] We are satisfied that pursuant to implied statutory authority, as well as the Guidelines, the Committee had the requisite authority to revoke the appellant’s certificate of registration and in doing so, it did not act *ultra vires*.

Issue 2

[22] We are of the view that the respondent did not err either in its interpretation of subsection 6(1)(a)(i) of the regulation or in determining that the appellant was in breach of the said subsection. The Committee has discretion to determine what constitutes “the business of an insurance broker” pursuant to subsection 6 of Regulation 991. Once again, the exercise of this discretion is governed by the Guidelines. The relevant Guideline provides as follows:

Initial Business Registration Policy

The guidelines in the Business Registration kit provide as follows: “Two (2) letters of intent from contracted insurers must be submitted with the application, as a broker must be able to provide some choice of product to a consumer and the Compulsory Automobile Insurance requires a broker to provide an application for automobile insurance when requested to do so.” Failure to satisfy this requirement will result in the manager proposing to refuse the application for registration and, where the Qualification and Registration Committee finds that the applicant firm does not meet this qualification requirement it may, in its discretion, confirm the manager’s proposal to refuse such application for registration.

Policy Reason

The reason for this policy is that the corporations, partnerships and sole proprietorships are only qualified to be issued and hold a certificate of registration as an insurance broker where the business conducted by it is that of an “insurance broker”.

That the business will “act as an insurance broker” is a fundamental qualification requirement to be issued or to continue to hold a certificate of registration. “Broker” inherently implies access to choice of markets.

[23] The courts have considered and upheld an administrative tribunal's right to pass and rely upon policies and guidelines: see *Capital Cities Communications Inc. v. Canada Radio-Television Commission* [1978] 2 S.C.R. 141. Moreover, Macauley and Sprague in "*Practice and Procedure before Administrative Tribunals*" state, "Thus I think it uncontestable, in law today in Canada, that an administrative agency has the authority to "policy make" without any expression of such authority being present in its mandate." Moreover, interpretations by RIBO of its enabling legislation have been specifically relied upon by the court. See *Misirlis (Trustees of) the Continental Insurance Co.* [1990] O.J. 91 No. 1459 (Ont.S.C.J.).

[24] On the Friday before this hearing, the appellant served the respondent with a supplementary factum seeking to raise and argue an additional issue. This issue is as follows:

Did the Q & R Committee have the right to waive the hearing pursuant to s. 14 of the *Registered Insurance Brokers Act*, R.S.O. 1990, c. R-19 (the Act)?

[25] In support of its position, the appellant relied on the decision of *Amerato v. Ontario (Motor Vehicle Dealers Act, Registrar)* [2004] O.J. No. 4409 (Ont.Div.Ct.), leave to appeal this decision was granted by the Court of Appeal [2005] O.J. No. 293 (Ont.C.A.). It is the appellant's position that *Amerato* holds that the right to a hearing as mandated by s. 14 of the Act is created in the interests of the public and cannot be waived by the Committee or by the appellant. The appellant further argues that the manager of RIBO is required to follow the provisions of s. 14 meticulously in order to refuse to grant a certificate to an applicant.

[26] It is the position of the respondent that it acted in accordance with s. 14 of the Act and that in light of the appellant's failure to request a hearing, it was not required to hold the hearing in order to make its decision to revoke the appellant's certificate of registration.

[27] The respondent argues that *Amerato* is distinguishable on its facts. A hearing was not held in that case as the parties had entered into an agreement on consent. In the present case, the appellant did not request a hearing despite being advised of his right to do so. Further, proceedings of the Committee are held in private and do not attract the same public interest as may apply to proceedings before the Registrar, *Motor Vehicle Dealers Act*.

[28] We agree with the respondent that *Amerato* does not stand for the proposition that a licence can never be revoked without first holding a hearing. In *Amerato*, the appellant argued that upon collapse of the consent agreement, the tribunal could not revoke the appellant's certificate without first issuing a new proposal to revoke the licence. There the court simply ordered the respondent to serve a new notice stating that the appellant was entitled to a hearing if it mailed or delivered a request for a hearing within the prescribed time.

[29] In the present case, the respondent served such a notice on the appellant and the appellant chose not to request a hearing. In our further view, the appellant's reliance upon *Re Don Howson Chevrolet Oldsmobile Ltd. and Registrar of Motor Dealers and Salesmen* (1975), 6 O.R. (2d) 39 (Ont.Div.Ct.) is without basis. The *Don Howson* decision deals with the failure of the respondent Tribunal to issue reasons for its decision rather than the failure to hold a hearing. In the present case, the respondent RIBO issued reasons for its decision. Moreover, the court in

Don Howson, referring to s. 7(3) of the *Motor Vehicle Dealers Act*, stated that if the appellant does not require a hearing by the Tribunal, then the Registrar may carry out his proposal. We are of the view that s. 7(3) of the *Motor Vehicle Dealers Act* is quite similar to s. 14(4) of the *Registered Insurance Brokers Act*.

[30] Relying upon the rationale in *Don Howson* and as well in *Hassan v. Ontario (Registrar of Motor Vehicles)*, [2001] O.J. No. 421 (Ont.C.A.) and *NAV Canada v. International Brotherhood of Electrical Workers, Local 2228*, [2001] F.C.J. No. 257 (F.C.A.) we hold that, as it was the applicant's decision not to have a hearing before the Tribunal, the Tribunal was entitled to proceed to make its decision without a hearing, so long as the applicant had been advised of its right to a hearing.

[31] The respondent, in our view, fully complied with s. 14 of the Act providing the required notice and the appellant failed to request a hearing. Accordingly, the respondent is entitled pursuant to s. 14(4) of the Act to accept the Committee's proposal to revoke the appellant's certificate of registration without the necessity of holding a hearing. The appeal is dismissed.

[32] If the matter of costs cannot be agreed upon by the parties, we will receive brief written submissions in the usual sequence. These submissions should not exceed two pages each and the respondent is to provide its submissions within ten days of these reasons, following which the appellant will have seven days to respond and thereafter the respondent a further five days to reply.

Cunningham A.C.J.

Lane J.

Molloy J.

Released: November 28, 2005

DIVISIONAL COURT FILE NO.: 457/04
DATE: 20051128

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
CUNNINGHAM A.C.J.,
LANE and MOLLOY JJ.

B E T W E E N:

JAGUAR INSURANCE BROKERS INC.

Appellants

- and -

REGISTERED INSURANCE BROKERS OF
ONTARIO

Respondent

REASONS FOR JUDGMENT

Released: November 28, 2005