

**CITATION:** *Peterson Valuation Services v Valuers Registration Board of Queensland* [2015] QCATA 12

**PARTIES:** Peterson Valuation Services  
(Applicant/Appellant)  
v  
Valuers Registration Board of Queensland  
(Respondent)

**APPLICATION NUMBER:** APL531-14

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Acting Deputy President Stilgoe OAM**

**DELIVERED ON:** 27 January 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **1. The application to stay the tribunal's decision of 6 November 2014 is refused.**

**CATCHWORDS:** APPEAL – LEAVE TO APPEAL – OCCUPATIONAL REGULATION – where disciplinary proceedings – where valuer's registration cancelled – where appeal – where application for stay – whether grounds for stay

*Elphick v MMI General Insurance Ltd & Anor* [2002] QCA 347  
*Legal Services Commissioner v Madden* [2008] QCA 52  
*Leach v Chief Executive, Department of Justice and Attorney-General* [2012] QCATA 271  
*Jaravaza v Medical Board of Australia* [2013] QCAT 44

**APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

## REASONS FOR DECISION

- [1] Phillip Peterson, a valuer, trades under the name Peterson Valuation Services. On 6 November 2014, the tribunal found that Mr Peterson had engaged in incompetence or negligence in his performance as a valuer. As a consequence, the tribunal cancelled Mr Peterson's registration for a period of 6 months.
- [2] Mr Peterson has filed an application for leave to appeal or appeal. He has also filed an application for a stay of the decision. These reasons deal with the application to stay the decision.
- [3] To succeed in his application, usually, the tribunal must consider four factors<sup>1</sup>:
- a) Is there a good arguable case on appeal?
  - b) Will Mr Peterson be disadvantaged if a stay is not ordered?
  - c) If the stay is granted, will the competing disadvantage to the Board outweigh the disadvantage suffered by Mr Peterson if the stay is not granted?
  - d) Will success on the appeal be rendered nugatory if no stay is granted?
- [4] Because this is an appeal from a disciplinary proceeding, I should also consider the factors considered by a tribunal in an application to stay disciplinary proceedings under review.<sup>2</sup>

### Good arguable case on appeal

- [5] Mr Peterson has five grounds of appeal. All except one ground take issue with the way the learned Member dealt with the evidence. Mr Peterson submits that, in excluding evidence of the South East Queensland Regional Plan, the learned Member failed to provide procedural fairness. He submits that the learned Member failed to consider relevant evidence, that he erred in dismissing Mr Sommerville's evidence and that the learned Member did not consider all relevant evidence when making his decision.
- [6] It is necessary to put these submissions into context. Mr Peterson valued a series of blocks in Red Oak Drive Tallai, at the request of the owner. He valued them on the assumption that the blocks could be subdivided. The expert evidence before the learned Member suggested that Mr Peterson had relied too heavily on information from his client and that he did not conduct the necessary inquiries about the subdivision.
- [7] Whether or not the properties could be subdivided was not the issue before the learned Member. The issue was whether Mr Peterson took

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<sup>1</sup> *Elphick v MMI General Insurance Ltd & Anor* [2002] QCA 347 at [8].

<sup>2</sup> *Leach v Chief Executive, Department of Justice and Attorney-General* [2012] QCATA 271.

sufficient care to investigate the possibility of subdivision. Mr Peterson's criticism of the evidence goes to the former question – whether the blocks could be subdivided – not whether Mr Peterson acted appropriately. I therefore consider Mr Peterson has very poor prospects on appeal.

### **Will Mr Peterson be disadvantaged if the stay is not ordered?**

- [8] If the stay is not ordered, Mr Peterson will not be able to work as a valuer. That is a natural consequence of the learned Member's order. In disciplinary proceedings, the party's personal circumstances are not usually sufficient to warrant granting a stay.<sup>3</sup> They are no more than any valuer would experience by the imposition of those sanctions<sup>4</sup>.
- [9] Mr Peterson has not pointed to any other disadvantage. I am not persuaded that this factor, by itself, is sufficient to grant a stay.

### **The competing disadvantage to the Board**

- [10] The Board has an obligation to protect the public. Given that the events the subject of the disciplinary proceedings occurred in 2005, that horse has probably bolted. This is not a ground to refuse a stay.

### **Will the appeal be rendered nugatory if the stay is not granted?**

- [11] The principle that a stay should be granted if the appeal is rendered nugatory appears in cases involving private litigation. In cases where there is a public interest in the outcome, there is no presumption that the principle applies<sup>5</sup>.
- [12] It is likely that Mr Peterson will have served his period of cancellation by the time the appeal is heard. Having said that, the tribunal will endeavour to expedite the hearing to avoid that unfortunate potential.
- [13] As I have formed the view that Mr Peterson has poor prospects on appeal, the fact that the penalty will have been served is not a sufficient ground to grant a stay. A successful appeal may provide other benefits to Mr Peterson; the reprimand might be removed and his otherwise clear professional record be restored.
- [14] For these reasons, and given the public interest nature of the proceedings, I am not minded to grant the stay.

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<sup>3</sup> *Legal Services Commissioner v Madden* [2008] QCA 52.

<sup>4</sup> *Jaravaza v Medical Board of Australia* [2013] QCAT 44 at [28].

<sup>5</sup> *Legal Services Commissioner v Madden* supra at page 6, 7.