

STATEMENT of REASONS

Re

APPEAL

By

FRAIKIN LIMITED (TRUCK RENTAL)

In respect of

Garage, Unit 1, 1 Melford Road, Righead
Industrial Estate, Bellshill ML4 3LR

This appeal was listed to be dealt with by the Committee of the Panel on 1st June 2006. The Assessor maintained that the appeal was invalid as the written appeal had been lodged too late.

A letter dated 10th March 2006 from the agents for the appellants requested that the appeal be dealt with by written representations. On 28th March 2006 the Secretary to the Valuation Appeal Panel wrote to the agents for the appellants advising that the appeal could not proceed by way of written representations as this method of disposal was available to the Panel only where both parties agreed and in this case the Assessor did not. The appeal accordingly remained set down for an oral hearing on 1st June 2006. The appellants could, if they so wished, submit a written statement for that date instead of attending, but the Assessor would be free to attend with witnesses, to lead oral evidence and to make oral submissions as he felt appropriate. The agents for the appellants were asked to confirm whether or not they wished to proceed in this way or intended to appear at the hearing. In a letter dated 3rd April 2006 the agents for the appellants advised that they intended to proceed in this fashion. By letter dated 5th April 2006 the Secretary of the Panel advised the appellants that, in that event, they should lodge their written statement not later than five working days prior to 1st June 2006.

When the Committee met on 1st June 2006 to deal with the appeal, no written statement had been received by the Panel from the appellants' agents. The Assessor advised that he had received a letter from the agents for the appellants dated 28th April 2006 requesting that the contents of the letter be accepted as their "written statement of Grounds of Appeal". A copy was supplied by the Assessor to the Committee and the Committee regarded this as the written statement supplied for the appellants as referred to in the correspondence. The letter referred to an enclosure, being a copy of a fax transmission journal. The Assessor advised that this had not been enclosed with the letter of 28th April but that a copy had been sent on 23rd November 2005. The copy was made available to the Committee.

The position of the appellants was that their agents had posted an appeal in letter form on 29th September 2005 in respect of the appeal subjects. This had been faxed to the Assessor that day. On the same day the agents for the appellants had posted and faxed a similar letter with respect to appeal subjects at 2 Deerdykes Place, Cumbernauld on behalf of different appellants. There was produced a copy of the letter of appeal in respect of the appeal subjects. There was also produced a fax transmission receipt timed at 17.11 on 29th September. This was photocopied on to a copy of the appeal letter in respect of 2 Deerdykes Place.

The position of the agents for the appellants was that the appeal had been timeously lodged.

The Assessor's position was that he had received no letter of appeal in respect of the appeal subjects within the timetable. He had not known about the intention to appeal in respect of the appeal subjects until he received a telephone call in mid November 2005 querying whether or not the Assessor had received the appeal. A written appeal had been received for the first time on 24th November 2005. The Assessor produced a copy of his mail logging system's records. These showed receipt of a fax in respect of 2 Deerdykes Place on 29th September 2005 and two letters in respect of 2 Deerdykes Place on 30th September 2005. The terms of the letter in respect of 2 Deerdykes Place, which had been received, were identical to the terms of the letter which the agents for the appellants said they had sent in respect of the appeal subjects, with the exception of the heading, the name of the appellants and the amount of the rateable value.

The Assessor pointed to the fact that on 29th September 2005 the agents for the appellants had sent two faxes in respect of subjects at 19/21 Fairfield Place, East Kilbride and two faxes in respect of subjects at Unit 3a, Bedlay View, Uddingston with a further fax in respect of 19/21 Fairfield Place on 30th September.

The Assessor spoke to these matters through a witness who was available to be questioned by the Committee. The appellants' agents were of course not available at the hearing for their version of events to be tested.

Having given careful consideration to the matter the Committee was not satisfied that an appeal letter had been sent by post and faxed on 29th September 2005 in respect of the appeal subjects. On a balance of probabilities, what happened was that the appellants, having intended to send similar letters in respect of the appeal subjects at 2 Deerdykes Place, Cumbernauld and the appeal subjects, had in fact duplicated the letter of appeal in respect of 2 Deerdykes Place. Particularly, the Committee noted that no fax receipt had been produced in respect of a letter of appeal in respect of the appeal subjects. The fax receipt was copied on to an appeal letter in respect of 2 Deerdykes Place. If the appellants' position was as they had described, the Committee could not understand why the appellants' agents had not produced a fax receipt for the appeal letter in respect of the appeal subjects.

The duplicating of other faxes the same day indicated a degree of inefficiency in the systems of the agents for the appellants consistent with the above interpretation of the facts.

The application of the Valuation Appeal Committee etc. Regulations 1995 (Regulation 2(1) and Regulation 3(1) and (2)) and the Valuation Appeal Timetable Order of 1995, Article 3, was to the effect that the last day for lodging an appeal in writing was 30th September 2005. No appeal had been lodged for the appeal subjects by that date. There was accordingly no valid appeal.

For the sake of fullness the Committee then considered whether or not it would be appropriate to exercise the powers available to it as described in para 5-16 of Armour on Valuation for Rating (Fifth Edition) to waive strict compliance with the timetable. There was no request from the agents for the appellants that the Committee should do this but it was felt appropriate to do so as a matter of fairness. However, the Committee did not consider that it was appropriate to exercise its discretion in the circumstances existing here.

The discretion available to the Committee to waive a failure to comply with the time limits should be used where the failure to comply has been caused by excusable mistake or by some cause over which he who has failed had no control. The time limits should not be lightly disregarded (National Commercial Bank of Scotland Limited -v- Assessor for Fife 1963 SC 197). In that case the appeal had been late by two days one of which was a Sunday. Here, on the Committee's interpretation of events, no appeal in writing had been lodged until 24th November 2005, a considerably longer period. There was not only the initial failure on the part of the agents for the appellants to send the letter of appeal, but there was a failure to notice this for several weeks thereafter. The Committee did not consider that this was an excusable mistake nor was there was some cause over which the agents for the appellants had no control.

NOTE:

For the sake of completeness, the Committee should record that agents for the appellants (who had acquired the business of the previous agents) faxed to the Panel Secretary at 13.28 on 1st June 2006 a further written statement on which they said they wished to rely at the hearing. This arrived after the Committee had reached its decision. This written statement was not taken into account by the Committee but does not appear to be in substance any different from the written statement sent to the Assessor which was before the Committee when making its decision.