

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the “Act”);

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the “Superintendent”), dated January 20, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a “locked-in account”) based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent’s Notice of Proposal to Refuse to Consent dated January 20, 2003, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent’s ground for denial was that this application (the “December 12, 2002 Application”), which was made on the basis of low income, was made within 12 months after the date of another successful application (the “August 2002 Application”) made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the “Regulation”), as follows:

89.-(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the December 12, 2002 Application.
4. The August 2002 Application was signed by the Applicant on August 8, 2002. On August 23, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the August 2002 Application was a successful application.
5. On December 12, 2002, the Applicant signed the December 12, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful August 2002 Application, which was also based on low income, the December 12, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 12, 2002 Application cannot be granted because it fails to meet one of those requirements. If in August 2003, 12 months after the date of the successful August 2002 Application, if the circumstances of the Applicant are such that he wishes to do so, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 20, 2003, in respect of the December 12, 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 20, 2003, directed to the Applicant.

Dated at Toronto, this 5th day of March 2003.

“J.P. Martin”

Mr. J. P. Martin
Member, Financial Services Tribunal