

Case No. D19/08

Salaries tax – whether the appeal was out of time – one-month period starts to run from ‘transmission’ to the appellant of the Determination – meaning of ‘transmission’ – the Board may extend the period if the taxpayer was prevented by illness or absence from Hong Kong or other reasonable cause – anyone seeking to obtain the exercise of the discretion in his or her favour must come ‘with clean hands’ and good reasons.

Panel: Chow Wai Shun (chairman), James Julius Bertram and Ho Chi Wai.

Date of hearing: 17 April 2008.

Date of decision: 5 August 2008.

The preliminary issue is whether the appellant’s patently late appeal could and should be entertained. This depends on whether the appellant’s appeal is out of time; and if so whether this Board should extend the time period as permissible under the legislation.

Under the cover of a letter dated 11 July 2006, the Determination was posted by air mail to the appellant in City A, China. Before this date, the appellant had not informed the Respondent of any change to this correspondence address. Under the cover of a facsimile letter dated 25 October 2006 from the appellant to the Respondent, a notice dated 10 August 2006 was enclosed which informed the Respondent of the appellant’s new address. On 27 October 2006, the assessor wrote to inform the appellant that the record of his correspondence address had been duly changed to the new address and a copy of the Determination was enclosed pursuant to his request. Under the cover of another facsimile letter dated 9 February 2007 from the appellant to the Respondent, a copy of another letter dated 14 November 2006 from the appellant was enclosed indicating his wish to appeal against the Determination. By way of a letter dated 12 February 2007, the assessor informed the appellant of the proper procedure for lodging an appeal to this Board with contact details of this Board for the appellant’s reference. The appellant’s Notice of Appeal dated 15 June 2007 was received by this Board on 6 July 2007.

By way of a letter dated 9 July 2007, the Clerk to this Board wrote to the appellant acknowledging receipt of his notice of appeal and informing him that the Determination attached to his Notice of Appeal was incomplete in that none of the even numbered pages and none of the Appendices had been included. By way of a letter dated 4 September 2007, the appellant wrote to request that a complete copy of the Determination be resent to him. A copy of the Determination was sent by the assessor to the appellant under cover of a letter dated 5 September 2007. On 19

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September 2007, this Board received from the appellant a full and complete copy of the Determination under cover of a letter dated 17 September 2007.

The appellant gave oral evidence and contended that he had already moved out of the old address when the Determination was first mailed to him. He did not receive it and consequently could not respond in a timely manner. He also claimed, as he made such a claim in his Notice of Appeal, that the appeal was delayed as the Respondent had not properly and duly updated his correspondence address.

Held:

1. The statutory provision is clear. The one-month period starts to run from 'transmission' to him of the Determination. 'Transmission' means the end of the process of transmission and the process would normally end when the Determination reaches the address that it was sent to. It does not require actual receipt. At the time the Determination was to be sent to the appellant, the Respondent could only do so by posting the same to the appellant's last known address on record and that was the old address. Evidence shows that the letter under cover of which the Determination was sent was not returned. It had reached the address that it was sent to. It had been 'transmitted' to the appellant (D2/04 IRBRD, vol 19, 76 at 80; D76/04 IRBRD, vol 19, 590 followed).
2. This Board may extend the period as it thinks fit if it is satisfied that the appellant was prevented by illness or absence from Hong Kong or other reasonable cause. This Board found no fact to support any proposition that the appellant was ill. Although the appellant was absent from Hong Kong, this Board did not find that he was so prevented from giving the notice within time. He has been residing outside Hong Kong for some time and he has left with the Inland Revenue a correspondence address outside Hong Kong for dealing with tax matters. As alleged by the appellant himself, he has been in contact with the Inland Revenue via other means such as telephone, fax or email.
3. The Board found that the appellant had failed to explain why he only asked for a full copy of the Determination almost two months after he was alerted by the Clerk to this Board. Not only was he ignorant of the proper procedure for an appeal, but he has shown little, if any, concern for his tax affairs and has failed to devote more time and give higher priority to them (Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687 followed).
4. The IRO prescribes procedures to comply with and stipulates time limits to observe. Whenever a time limit is imposed, it must be observed. Although this Board is given

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the power to extend the time limit, anyone seeking to obtain the exercise of the discretion in his or her favour must come ‘with clean hands’ and good reasons. With reference to the Board’s analysis above, it found neither of these in this case. In the Board’s judgment, it would be erroneous and a waste of the resources of every party involved if it was to proceed any further (D3/91 IRBRD, vol 5, 537 followed).

Application dismissed.

Cases referred to:

Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687
D11/89, IRBRD, vol 4, 230
D57/99, IRBRD, vol 14, 506
D3/91, IRBRD, vol 5, 537
D16/07, IRBRD, vol 22, 454
D2/04, IRBRD, vol 19, 76
D76/04, IRBRD, vol 19, 590

Taxpayer in person.

Chan Wai Yee and Hui Chiu Po for the Commissioner of Inland Revenue.

Decision:

1. This is an appeal against the Determination of the Acting Deputy Commissioner of Inland Revenue dated 11 July 2007 (‘the Determination’) whereby the salaries tax assessment for the year of assessment 2004/05 under charge number 9-0210251-05-4, dated 2 August 2005, showing assessable income of \$2,450,000 with tax payable thereon of \$392,000 was confirmed.

2. In his notice of appeal filed with the Clerk to this Board dated 15 June 2007 which was received by this Board only on 6 July 2007 (‘Notice of Appeal’), the Appellant argued (a) that he did not have any income giving rise to salaries tax; (b) that in the event that his directors’ fees were subject to salaries tax for the relevant year of assessment, such fees amounted to a substantially smaller amount and consequentially the assessment was incorrect; (c) that he had been a resident in City A in China since 2003 and lived and worked there with no office or other presence in Hong Kong; (d) that although he was in Hong Kong for a small number of days over 60 days in the relevant year of assessment, the significant majority of his time in Hong Kong was spent on holiday and assisting his family in packing up their flat for moving from Hong Kong to join him in City A.

3. The preliminary issue for this appeal is whether the Appellant's patently late appeal could and should be entertained. This depends on whether the Appellant's appeal is out of time; and if so whether this Board should extend the time period as permissible under the legislation. The Appellant gave oral evidence at the hearing.

Facts relevant to the preliminary issue

4. On the materials before us, we make the following findings of fact:

- (1) Under the cover of a letter dated 11 July 2006, the Determination was posted by air mail to the Appellant in City A, China [' Old Address']. Before this date, the Appellant had not informed the Respondent of any change to this correspondence address.
- (2) Under the cover of a facsimile letter dated 25 October 2006 from the Appellant to the Respondent, a notice dated 10 August 2006 was enclosed which informed the Respondent of the Appellant's new address in City A, China ['New Address']. Before the date of such notice, there had been correspondence from the Respondent to the Appellant at the Old Address.
- (3) On 27 October 2006, the assessor wrote to inform the Appellant that the record of his correspondence address had been duly changed to the New Address and a copy of the Determination was enclosed pursuant to his request.
- (4) Under the cover of another facsimile letter dated 9 February 2007 from the Appellant to the Respondent, a copy of another letter dated 14 November 2006 from the Appellant was enclosed indicating his wish to appeal against the Determination with three grounds of appeal stated: (a) that the significant majority of the days that he was present in Hong Kong during the relevant year of assessment were to visit his family who had not yet relocated with him to City A or to help them pack up their belongings and assist them to move from their flat in Hong Kong to City A while a number of the days were public holidays; (b) that the number of days he was present in Hong Kong carrying on services in connection with his employment were less than 10 days – the Appellant's own estimate was about eight days; (c) that his director's fees, if liable to tax, totalled HK\$50,000 for the relevant year of assessment so that the assessment had no basis in law or fact.
- (5) By way of a letter dated 12 February 2007, the assessor informed the Appellant of the proper procedure for lodging an appeal to this Board with contact details of this Board for the Appellant's reference.

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- (6) The Appellant's Notice of Appeal dated 15 June 2007 was received by this Board on 6 July 2007.
- (7) By way of a letter dated 9 July 2007, the Clerk to this Board wrote to the Appellant acknowledging receipt of his notice of appeal and informing him that the Determination attached to his Notice of Appeal was incomplete in that none of the even numbered pages and none of the Appendices had been included.
- (8) By way of a letter dated 4 September 2007, the Appellant wrote to the Respondent requesting that a complete copy of the Determination be resent to him. A copy of the Determination was sent by the assessor to the Appellant under cover of a letter dated 5 September 2007.
- (9) On 19 September 2007, this Board received from the Appellant a full and complete copy of the Determination under cover of a letter dated 17 September 2007.

The statutory provisions

5. Section 66 of Inland Revenue Ordinance ('IRO') provides:

- (1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within –*
- (a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or*
 - (b) such further period as the Board may allow under subsection (1A),*

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal.

- (1A) If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice*

of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1)....'

Appellant's evidence and his contention

6. The Appellant gave oral evidence first acknowledging his unfamiliarity with the appeal procedure before corresponding with this Board. However, the Appellant accepted that ignorance of law would not be considered a defence.

7. The Appellant confirmed that he had been under employment with Company B as the Chief Financial Officer and Executive Director since 2003. He also gave a brief account of his dealings with the Respondent before he moved to the New Address in July 2006 to demonstrate that he had been co-operative and in constant communication with the Respondent.

8. The Appellant also claimed that (a) there existed a time lag for posting letters between Hong Kong and City A; (b) that letters were not automatically forwarded from the Old Address to the New Address; and (c) that the fact that letters were not returned to the Respondent did not mean that he had received them. In these regards and in relation to other related matters, the Appellant told this Board that he could produce as evidence if so required but after the hearing (a) a copy of his current lease in respect of the New Address; and (b) further evidence from the Management Office of the Old Address regarding undelivered mail addressed to former residents.

9. In summary, the Appellant contended that he had already moved out of the Old Address when the Determination was first mailed to him. He did not receive it and consequentially could not respond in a timely manner. He also claimed, as he made such a claim in his Notice of Appeal, that the appeal was delayed as the Respondent had not properly and duly updated his correspondence address.

Respondent's submission

10. By way of written submissions, the Respondent referred this Board to Chow Kwong Fai v Commissioner of Inland Revenue [2005] 4 HKLRD 687 in which the appellant alleged that his lateness in filing an appeal to the Board was due to his misunderstanding of IRO section 66(1). The Court of Appeal held:

- (a) that the word 'prevented' is best understood to bear the meaning of the term in the Chinese language version of the subsection which means 'unable to' and although providing a less stringent test than the word 'prevent' imposes a higher threshold than a mere excuse;
- (b) that 'reasonable cause' cannot possibly be extended to cover unilateral

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mistakes made by a taxpayer. A unilateral mistake on the taxpayer's part cannot be properly described as a reasonable cause which prevented him from lodging a timely notice of appeal; and

- (c) that if there is a reasonable cause and because of that reason an appellant does not file the notice of appeal within time, then he has satisfied the requirement of IRO section 66(1A).

11. This Board was further referred to two of our previous decisions.

12. In D11/89, IRBRD, vol 4, 230, this Board commented:

'... The provisions of section 66(1A) are very clear and restrictive. As was pointed out by the Commissioner's representative, an extension of time can only be granted where the Taxpayer has been 'prevented' from giving notice of appeal within the prescribed period of one month. In this case, it cannot be said that the Taxpayer was prevented from appealing. He could well have appealed within the time prescribed. He was in no way prevented from so doing by the fact that he did not have evidence to prove his case.

Furthermore, even if he had been prevented, he had no reasonable excuse because he had had more than sufficient time to put his house in order.'

13. The taxpayer in D57/99, IRBRD, vol 14, 506, filed a notice of appeal which was incomplete over 13 months after the determination was made and nearly 10 months after it was sent to him by ordinary post. Correspondence was then entered into between the Clerk to this Board and the taxpayer by which he was reminded of the requirement to file various missing items. Even taking the date that the taxpayer admitted having received the determination, he was late in submitting a properly constituted notice of appeal as required by the provision by about 3 to 4 weeks. This Board, in rejecting an application for extension of time to file an appeal, said:

- '25. [The taxpayer] accepted in his evidence that he did not take any active steps to find out precisely what he had to do to give a properly constituted notice of appeal. He made no enquiries with either the clerk to this Board or the Revenue. He also accepted that at least by 3 March 1999 he knew he must submit his grounds of appeal as well as the Determination to this Board. He has no excuse for not submitting the grounds of appeal until 10 March 1999 and the Determination until after another reminder on 19 March 1999.*

Ruling

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26. *The time limit within an appeal is to be lodged under the statute is for all to observe. This Board cannot function efficiently unless taxpayers exercise their right to appeal timeously. While this Board will exercise its discretion in favour of taxpayers who fail to appeal in time due to unavoidable or excusable circumstances, we will not exercise our discretion in favour of someone who blatantly and persistently ignores his obligation to observe the time limit laid down by statute.'*

14. The Respondent submitted (a) that there was no concrete evidence showing that the Appellant did not receive the Determination; (b) that the letter dated 14 November 2006 from the Appellant to the Respondent which was only received by the Clerk to this Board on 6 July 2007 could not be regarded as a valid notice of appeal; (c) that there was no concrete evidence showing that the copy of the Determination sent to the Appellant at first instance was incomplete and even if that was the case such alleged incompleteness (i) should not have escaped the Appellant's attention for such a long time and only have come to his knowledge after he was informed of it by the Clerk to this Board; and (ii) did not prevent the Appellant from giving a timely notice of appeal to the Board; (d) that the Appellant's failure to file the Notice of Appeal to this Board until 6 July 2007, at least about 4 months after being informed of the Board's contact details, was in no circumstances be accused by the alleged failure of the Respondent to update his correspondence address properly or the alleged incompleteness of the Determination; and (e) that the Appellant could have filed a complete copy of the Determination at a much earlier date than 17 September 2007. Hence, the representative of the Respondent contended that the Appellant's appeal is out of time and no extension of time should be granted to the Appellant.

15. In response to a question from this Board as to whether the Appellant might have been prevented from lodging the appeal within time because of his absence from Hong Kong, the Respondent submitted that it was not the case since the Appellant at all material times had left with the Respondent a correspondence address outside Hong Kong.

Appellant's reply

16. By way of a written reply submitted after the hearing, the circumstances leading to which will be explained below, the Appellant reiterated his claim that he did not receive the Determination first sent to his Old Address because he and his family were in another country from 1 July 2006 until the end of July 2006 and moved to the New Address upon their return.

17. His absence from China in July 2006 and the reason therefor were not raised in any of the previous correspondence between the Appellant and the Respondent filed with this Board; nor were they drawn to the attention of this Board at the hearing while the Appellant gave evidence. This Board is not bound to accept any evidence adduced after the hearing. This had been explained to the Appellant and reiterated before the close of the formal hearing. Although in his reply the Appellant referred to Exhibit A which, according to the Appellant, contains copies of his passport

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stamps showing that he was away from China from 1 to 18 July 2006, such copies were not received by the Office of the Clerk to this Board until 31 July 2008.

18. The Appellant alleged that the Management Office of the Old Address had confirmed with him that if any registered mail arrived at an address where no one was at home or no one resided, it was their practice to accept the mail and keep it until such time as it was claimed by the resident, failing which after a period of time they would dispose of it. Since neither the Appellant nor his family returned to the Old Address or checked with its Management Office during the months of July and August 2006, as alleged by the Appellant, the Management Office did not give the Appellant the Determination, even if in fact they had ever received it. In this regard, however, the Appellant said that the Management Office had refused to participate in his submission in any manner. Even if the Management Office agreed to give collaborative evidence, again, this Board is not bound to accept it.

19. While he challenged the Respondent's approach as one requiring him to prove a negative, he adopted exactly the same approach and argued in his reply that the Respondent had produced no evidence to show (a) that the Determination was delivered to him in July 2006; (b) that the Determination was received by him or his representatives except a letter signed by the Management Office of the Old Address; or (c) that the Respondent did not receive his notice of change of address dated 10 August 2006.

20. The Appellant also alleged that throughout late August to October 2006 and thereafter, he was in frequent telephone communications with the Inland Revenue, during which: (a) he was assured that the Inland Revenue would update his address in their records; and (b) never once did the Inland Revenue notify him that he had not properly appealed. The Appellant also accused the Inland Revenue of not providing him forms to submit to this Board until 'sometime in 2007'.

21. The Appellant also argued on the ground of fairness and equity that he should not be denied the right to appeal on the basis that he did not file the appeal in a timely manner if the assessment was obviously incorrect and the facts concerning the assessment were clearly in his favour. He referred to the Revenue's Determination in his favour for subsequent years as from 2005/06 on the same employment contract, same employment situation and, allegedly, identical factual circumstances. As a result, the Appellant urged for a hearing of the substantive matter of this appeal or else all time, effort and money spent by all parties involved including this Board would be wasted. The said Revenue's Determination was not referred to at the time of the hearing and was adduced for the first time in the Appellant's written reply.

Further response from the Respondent

22. The Respondent referred us to D3/91, IRBRD, vol 5, 537, another previous decision of this Board, in which the notice of appeal was late by just one day. The Board, in rejecting the

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application for an extension of time to file an appeal, said at 541:

‘... The delay... was only one day but that is not the point. Time limits are imposed and must be observed. Anyone seeking to obtain the exercise of the discretion of a legal tribunal must demonstrate that they are “with clean hands” and that there are good reasons for the extension of time.’

23. Our attention was further drawn to D16/07, IRBRD, vol 22, 454, another recent decision of this Board. Although the case is on another provision in relation to appeals against additional tax, there is no material difference between that provision and the provision relevant to this appeal. Both concern the Board’s power to extend time on the same grounds. In D16/07, the appellant’s notice of appeal arrived at the Office of the Clerk to this Board within the one-month period but the accompanying document as required was not received by the Clerk until after the expiry of the time limit. The appeal was thus held out of time. The allegation of the appellant that she had not received the required accompanying document was not accepted by the Board. On the facts found by the Board, it opined that since the notice of assessment stated that the written notice of appeal must be given to the Clerk within one month with the required accompanying documents, the appellant’s ignorance of such statement was at her own peril. The Board further stated that even contrary to its factual finding, the appellant should have asked the Revenue for a copy of the document timeously and in any event within the one month limit. Furthermore, the appellant’s attention to the omission was drawn by the Clerk who also requested the appellant to send the document to the Clerk’s office within a month of the giving of the notice of assessment. The Board stated that even contrary to its factual finding, the appellant should have asked the Revenue for a copy of the document timeously on receipt of the Clerk’s reminder and request and in any event within the one month limit. As the appellant did not approach the assessor for a copy of the document until after the expiry of the time limit, the Board declined to extend the time because the appellant had shown no reasonable cause.

24. In relation to the Determination referred to in paragraph 21 above, the Respondent explained that the acceptance of the Appellant’s exemption claim in respect of his employment income from his employer for years of assessment 2005/06 to 2007/08 was due to his stay in Hong Kong for not more than 60 days in each of those years of assessments. In support, the Respondent submitted a copy of their letter dated 20 March 2008 to the Appellant.

The analysis

25. The statutory provision is clear. The one-month period starts to run from ‘transmission’ to him of the Determination. ‘Transmission’ means the end of the process of transmission and the process would normally end when the Determination reaches the address that it was sent to: D2/04, IRBRD, vol 19, 76 at 80, applied in D76/04, IRBRD, vol 19, 590. It does not require actual receipt. At the time the Determination was to be sent to the Appellant, the Respondent could only do so by posting the same to the Appellant’s last known address on record

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and that was the Old Address. Evidence shows that the letter under cover of which the Determination was sent was not returned. It had reached the address that it was sent to. It had been 'transmitted' to the Appellant.

26. Even if this Board takes the point that the Determination was not 'transmitted' when it was first posted to the Appellant, another copy of the Determination was sent to the Appellant under the cover of the letter dated 27 October 2006 from the Inland Revenue informing him of the update of his address record with them. The Appellant acknowledged receipt of the same in his letter dated 14 November 2006 which but for the wrong addressee might have been regarded as a notice of appeal lodged within the one month period.

27. Even if this Board accepts the points that the Appellant did not receive the first letter under cover of which the Determination was first sent and that the letter dated 27 October 2006 referred to above did not specifically lay out the procedure for appeal so that the Appellant knew of the proper steps only from the subsequent letter to him by the Inland Revenue dated 9 February 2007, the Notice of Appeal dated 15 June 2007 was only received by the Clerk to this Board on 6 July 2007, almost 4 months afterwards. Furthermore, the said Notice of Appeal did not comply with the statutory requirements.

28. Even if this Board takes the Appellant's case at its highest that the Determination he received did not contain the even numbered pages, he was alerted to this by the Clerk to this Board by the letter dated 9 July 2007. He only took action to follow this up with the Inland Revenue on 4 September 2007. A full copy of the Determination only reached the office of the Clerk on 19 September 2007.

29. This Board may extend the period as we think fit if we are satisfied that the Appellant was prevented by illness or absence from Hong Kong or other reasonable cause. This Board finds no fact to support any proposition that the Appellant was ill. Although the Appellant was absent from Hong Kong, we do not find that he was so prevented from giving the notice within time. He has been residing outside Hong Kong for some time and he has left with the Inland Revenue a correspondence address outside Hong Kong for dealing with tax matters. As alleged by the Appellant himself, he has been in contact with the Inland Revenue via other means such as telephone, fax or email.

30. Was the Appellant prevented by other reasonable cause? In light of the Court of Appeal decision in Chow Kwong Fai v Commissioner of Inland Revenue and the facts of the four previous decisions of this Board cited by the Respondent, we find the Appellant in no better position than those taxpayers involved in such cases. Even taking the Appellant's case at its highest, the Appellant has failed to explain why he only asked for a full copy of the Determination almost two months after he was alerted by the Clerk to this Board. Not only was he ignorant of the proper procedure for an appeal, but he has shown little, if any, concern for his tax affairs and has failed to devote more time and give higher priority to them.

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31. We also accept the Respondent's reply in respect of the Determination in the Appellant's favour for the subsequent years. The Appellant's ground of fairness and equity just demonstrates his misconception of the law and therefore cannot stand.

Conclusion

32. We accept the Respondent's submission that the Notice of Appeal is out of time and we find no reason for exercising our discretion in favour of the Appellant to extend the time period.

33. The IRO prescribes procedures to comply with and stipulates time limits to observe. Some of those time limits apply to taxpayers only, not too many to the Revenue solely and some to both. In this regard, we agree with the view taken by this Board in D3/91. Whenever a time limit is imposed, it must be observed. Although this Board is given the power to extend the time limit, anyone seeking to obtain the exercise of the discretion in his or her favour must come 'with clean hands' and good reasons. With reference to our analysis above, we find neither of these in this case. In our judgment, it would be erroneous and a waste of the resources of every party involved if we were to proceed any further.

34. In such circumstances, we see no point in proceeding to hear further the substantive appeal and rule that the assessment outlined in paragraph 1 be confirmed.

Appellant's conduct before, during and after the hearing

35. This hearing was first scheduled to be held on 13 December 2007. By way of letter dated 31 October 2007 from the Clerk to this Board, the Appellant was informed of the scheduled date for the hearing.

36. On request by the Appellant by way of email dated 10 December 2007 for the reason that he was 'required to be traveling on urgent and unexpected business', the hearing was postponed to 25 January 2008.

37. Three days before the postponed hearing, the Appellant asked for a further adjournment for business reasons. Not without reluctance, this Board acceded to the request but required the Appellant to provide dates in April 2008 for the further re-scheduled hearing. Incidentally or consequentially, one member of the original panel decided to withdraw. A substitute was found and the current panel was thereby constituted. The hearing was finally set for 17 April 2008.

38. As soon as the Respondent's submission ended, the Appellant was asked if he had anything to say in reply. The Appellant repeated his request to produce further evidence after the hearing including (a) a copy of his current lease in respect of the New Address; and (b) further

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evidence from the Management Office of the Old Address regarding undelivered mail addressed to former residents. He also made a plea to the Board to allow him to reply in writing on the grounds that he had just been given the written submission of the Respondent at the hearing and he needed time to digest it and respond and that he would also prefer to reflect further upon the point raised by the Board in paragraph 15 above.

39. In relation to the Appellant's move over to the New Address, the Respondent raised no issue concerning this and so no further evidence is necessary to be adduced. As to the second matter, the Appellant had ample time before his appeal was heard to make such evidence available and ready. In fact, he should (and could) have brought such evidence with him to the hearing. As to be noted below, the Appellant might not have been able to procure anything from the Management Office at the Old Address even if time were given.

40. Not without reluctance, again, the Board acceded to the Appellant's second request. The Appellant was allowed 14 days to file a written reply. The Respondent was allowed a further period of 14 days to respond.

41. With hindsight, the end of the first 14-day period fell on 1 May, a public holiday. Upon request by the Appellant on the day before the end of the said period, it was clarified that the period was thereby automatically extended to the following day. Upon receipt of such notification, the Appellant wrote back to the Clerk to this Board saying that he was unsure if 2 May would also be a holiday in Hong Kong and that he would submit the reply on that day.

42. On the date the Appellant was expected to submit his reply, he wrote an email to the Clerk to this Board that early afternoon which is reproduced verbatim below:

'As today is a public holiday in China I am unable to submit my response to the Board of Review. I hereby request an extension of 3 days. I therefore would like to submit it to the Board of Review by close of business Monday, May 5, 2008. Please confirm if this is acceptable.

Further, despite request to IRD I have not received any electronic copy of their submission on the issue of Late Appeal which they presented to the Board of Review on April 17th. I require this electronic copy to prepare my submission in response. Would you please arrange to send me a copy by email in either word or pdf format. Thank you.'

43. This Board considered but declined both requests. The Appellant wrote an email to the Clerk to this Board on 30 April confirming that he would submit his reply by email on 2 May. He was in communication with the Clerk to this Board via email on 2 May. This Board simply could not figure out how an extension could be sought on the basis of 2 May being a public holiday in China. As the Appellant had been given a hard copy of the submission of the Respondent at the hearing,

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this Board could not see why an electronic copy was necessary.

44. On receipt of the reply from the Clerk to this Board, the Appellant responded at about 3:24pm:

‘I respectfully request that you ask the board again with this additional information. As today is a public holiday in China all offices are closed. My office is closed. I cannot access my office or my office computer where my files are stored. I am emailing you by telephone. I have no choice in this matter. If you choose not to recognize that today is a public holiday in China please state that in a written response to me. Please reconsider the position [as] I cannot submit it today.’

45. At about 4:30pm on 2 May, the Appellant wrote again:

‘I have just been informed by the management office of my residence that [the Internet Service Provider] has informed them that there will be no internet service in my residential area the remainder of today due to an urgent repair. You may confirm this by speaking to the management office at [telephone number given but omitted here] or contacting [the name of the Internet Service Provider given but omitted here] in [City A]. Therefore, because of the inaccessibility of my office due to the public holiday in China and the lack of internet at my residence I am prevented from submitting documents today. Thank you.’

46. This Board did not see any relevance of the fact that 2 May was also a public holiday in China except that with his experience of working in China the Appellant should be aware of the fact and that he could not have any access to his office on public holidays. The Appellant should have (and could have): (a) mentioned this earlier in his email either on 30 April or 2 May; (b) applied for a further extension earlier stating clearly his circumstances; and (c) probably as the best course of action got the files ready earlier and if necessary a notebook computer, rather than on the date when his written reply fell due.

47. His further explanation caused further, rather than cleared any, confusion. In the opinion of this Board, it was not necessary for the Appellant to inform us that the internet service in his residential area is being suspended if the real reason for his difficulty in complying with the direction by 2 May was because of his inability to gain access to his office and hence the computer files.

48. Rather reluctantly, the Board still acceded to the Appellant’s request in order to allow a fair opportunity to him to reply and consequentially postponed the deadline for the Respondent to respond. As analyzed above, however, the written reply added virtually no value to his appeal. The submission was made by e-mail, the hard copy of which, contrary to the directive of this Board, has never reached us. The mystery of ‘Exhibit A’ has yet to be resolved but the copies of his passport

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stamps covering the initial period of the first half of July 2006 do not assist the Appellant in any event in light of our analysis contained in paragraphs 26 to 30 above.

49. While we do not hold any view against the Appellant, nor do we feel this is directly relevant or have any significant bearing on our analysis of and decision on this case, we do find that the overall conduct of the Appellant has not been acceptable, and this perhaps could have warranted a cost order against him.