Citation: Anderson (Re), 2023 BCRMB 12

Date: 2023-10-23

File No. INV20.304.59125

IN THE MATTER OF THE *MORTGAGE BROKERS ACT,*

RSBC 1996, c. 313 as amended

AND

IN THE MATTER OF

JOHN HAWKINS ANDERSON

(REGISTRATION #145618)

DECISION ON PENALTY AND COSTS

[This Decision has been redacted before publication.]

Date of Hearing:	October 5, 2023 via written submissions
Counsel for BCFSA:	Simon Adams
Respondent:	Self-Represented
Hearing Officer:	Andrew Pendray

Introduction:

1. In an August 15, 2023 decision, *Anderson (Re)*, 2023 BCRMB 11, I found that John Hawkins Anderson had conducted mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the *Mortgage Brokers Act*. Specifically, I found that:

    - Mr. Anderson conducted mortgage business in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA, when he failed to disclose borrower financial liabilities to lenders in respect of four mortgage applications submitted in 2020; and

    - Mr. Anderson conducted mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the MBA when he failed to verify the accuracy of the borrowers' information in respect of two of those mortgage applications.

2. This decision relates to the appropriate orders to be issued against Mr. Anderson in respect of those findings, in accordance with sections 8(1) and 8(1.1) of the *MBA*.

3. This hearing proceeded by way of written submissions.

4. BCFSA seeks an order that Mr. Andreson pay an administrative penalty in the amount of $50,000, and an order that Mr. Anderson pay investigation and hearing costs in the amount of $18,137.05.

5. Although provided with the opportunity to do so, Mr. Anderson did not provide any submissions in reply, nor did he indicate that he wished to have the opportunity to have the issue of penalty heard by way of an oral hearing.

Issues

6. The issue is the appropriate orders to be issued in respect of Mr. Anderson's conduct, as provided for by section 8(1) and 8(1.1) of the *MBA*.

7. Additionally, there is the question of whether Mr. Anderson should be required to pay investigative and hearing costs pursuant to section 6(9) of the *MBA*.

Jurisdiction

8. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers (the "Registrar") in respect of orders under section 8 and 6(9) of the MBA, pursuant to a May 16, 2023 Acting Capacity Instrument.

Background

9. Mr. Anderson was originally registered as a submortgage broker on January 15, 2010. He worked at the same brokerage, Dominion Lending Centres Integra Mortgage ("Integra Mortgage"), from the date of his initial registration until October 29, 2020, when his registration was transferred to VERICO Compass British Columbia Mortgage Group.

10. On November 23, 2020, [Complainant 1] of Integra Mortgage provided a verbal complaint regarding Mr. Anderson to the Registrar. [Complainant 1] followed up by filing a Registrar of Mortgage Brokers Complaint Information Form with the Registrar on December 4, 2020.

11. As set out in *Anderson (Re)*, I concluded that there were four mortgage applications completed by Mr. Anderson in 2020 in which Mr. Anderson had failed to disclose borrower financial liabilities to lenders. I further concluded that in two of those applications he had also failed to verify the accuracy of the applicants' information provided in those applications. I found that those actions on the part of Mr. Anderson constituted the conducting of business in a manner that was prejudicial to the public interest, contrary to section 8(1)(i) of the *MBA*.

12. The following is a general summary of the transactions in question, as well as of my findings in respect of each transaction.

[Borrower 1] and [Borrower 2] Application - Filogix [Application 1] – [Lender 1]

13. Mr. Anderson, on September 28, 2020, submitted a mortgage application on behalf of his clients, [Borrower 2] and [Borrower 1], for a mortgage of $333,750 to be used to purchase a building lot.

14. In that September 28, 2020 application, Mr. Anderson indicated that the applicants were the owners of a property located at [Property 1] in Kamloops (the "[Property 1] Property"). Mr. Anderson indicated that the value of that property was $450,000, with a mortgage balance of $143,000. Mr. Anderson indicated that the applicants were owners of [Property 1] despite the applicant, [Borrower 2], having indicated to Mr. Anderson that [Property 1] in fact remained in the name of her deceased husband and her deceased husband's parents.

15. The lender to whom Mr. Anderson submitted the application, [Lender 1] ("[Lender 1]"), enquired with Mr. Anderson as to how the applicants would be funding their purchase and home build. [Lender 1] specifically noted that the applicants did not own the property at [Property 1]. Mr. Anderson indicated to [Lender 1] again, as he had on the September 28, 2020 mortgage application, that the applicants did in fact own [Property 1].

16. [Lender 1] replied to Mr. Anderson on October 6, 2020, and noted that it had obtained a title search related to [Property 1], and that the results of that title search did not indicate the applicants as owners of that property.

17. The following day, on October 7, 2020, [Lender 1] requested further documents it would require from the applicants, including a copy of [Borrower 1]'s separation agreement.

18. Mr. Anderson subsequently provided a copy of that separation agreement to [Lender 1]. The separation agreement set out that, as of February 3, 2020, [Borrower 1] was required to pay child support in the amount of $4,500 per month.

19. In finding that Mr. Anderson's conduct in respect of the [Borrower 1] and [Borrower 2] application constituted the conducting of business in a manner that was prejudicial to the public interest, I concluded that:

> 98. …it was not reasonable for Mr. Anderson to have identified [Borrower 2] as the owner of [Property 1] on [Application 1], without having taken some steps to confirm that was the case. In my view, once Mr. Anderson had received the information that he had from [Borrower 2], it was incumbent upon him to enquire further as to who in fact had ownership of [Property 1], prior to listing [Borrower 2] as the owner of that property on [Application 1].
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> 99. I note that nowhere in [Application 1] is there any indication to the lender that [Borrower 2] was not on title of [Property 1], that other individuals were on title of that property, and that the property was in fact subject to the probate process.

> 100. Simply put, the evidence before me does not indicate that Mr. Anderson took any steps to verify [Borrower 2]'s claim that she was the beneficial owner of [Property 1] prior to submitting the application to the lender indicating that she was.
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> 101. In the circumstances, I consider that Mr. Anderson must be found to have failed to take sufficient or any steps to verify [Borrower 2]'s information as to her ownership status on [Property 1] prior to submitting the application to the lender, and that such failure constitutes conducting mortgage business in a manner prejudicial to the public contrary section 8(1)(i) of the MBA.

20. I further determined that Mr. Anderson's failure to disclose [Borrower 1]'s monthly child support liability to the lender constituted conducting mortgage business in a manner prejudicial to the public contrary to section 8(1)(i) of the MBA. In reaching this conclusion I noted that:

> 104. The question, in my view, is whether the evidence shows that it is more likely than not that Mr. Anderson failed to take any, or sufficient, steps to verify the accuracy of the information [Borrower 1] had provided regarding his separation agreement, and whether Mr. Anderson knew, or ought to have known, about [Borrower 1]'s child support liability when he submitted the [Application 1] application.
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> 105. When he was asked about [Borrower 1]'s separation at his interview, Mr. Anderson indicated that he had thought that [Borrower 1]'s separation had involved him giving his wife "the house and there was no separation amount", until he "dug further into it". Mr. Anderson was asked whether he knew about [Borrower 1]'s separation agreement before sending the application to [Lender 1], and he replied that from what [Borrower 1] had told him, there were not going to be any ongoing payments associated with the separation. Mr. Anderson stated that he had not known about an ongoing monthly payment until after the application was submitted to the lender, and that he had not obtained the separation agreement until after [Lender 1] had requested it.
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> 106. Having considered the above, I find that it is more likely than not that Mr. Anderson failed to take any steps to confirm the accuracy of [Borrower 1]'s statements regarding his separation agreement financial obligations. On the evidence, I consider that Mr. Anderson's "digging into" the matter likely only occurred once [Lender 1] requested a copy of the separation agreement.

21. I concluded that Mr. Anderson's failure to take any steps to confirm the accuracy of [Borrower 1]'s statements on the nature of his separation agreement created a situation in which the lender was not made aware of [Borrower 1]'s relevant financial liabilities. I further concluded that it was a straightforward matter for Mr. Anderson to have made himself aware of [Borrower 1]'s liability in respect of the separation agreement, that Mr. Anderson ought to have been aware that liability, and that Mr. Anderson's failure to disclose that liability constituted conducting mortgage business in a manner prejudicial to the public interest.

[Borrower 3] and [Borrower 4] – [Property 2] Applications

22. On August 4, 2020 Mr. Anderson submitted a mortgage refinancing application for [Borrower 3] and [Borrower 4] related to a property located at [Property 2], Sun Peaks, BC. The application was submitted to the lender [Lender 2].

23. In the August 4, 2020 [Property 2] application, Mr. Anderson indicated that [Borrower 3] and [Borrower 4] owned another property at [Property 3] in Kamloops.

24. Mr. Anderson did not, in the August 4, 2020 application, indicate that [Borrower 3] and [Borrower 4] had also been co-applicants for a mortgage on another property located at [Property 4] in Kamloops, BC, which had, on July 31, 2020, received a commitment from [Lender 3] for a mortgage in the amount of $485,540.60.

25. Mr. Anderson was the mortgage broker who completed the application for [Property 4].

26. Mr. Anderson submitted a further mortgage application in relation to [Property 2] to another lender, [Lender 4], on August 6, 2020.

27. That application, like the August 4, 2020 application, made no mention of the fact that [Borrower 3] and [Borrower 4] were co-applicants on the [Property 4] mortgage for which a commitment had been received from [Lender 3].

28. Neither of the August 4 or August 6, 2020 refinancing applications for the [Property 2] property completed.

29. I nevertheless concluded that:

> 137. …the fact that [Borrower 3] and [Borrower 4] had in fact sought, and obtained a commitment for, financing for another mortgage, regardless of whether that mortgage had in fact funded at the time the [Property 2] applications were made, was financial liability information that was relevant to the lenders, that Mr. Anderson was aware of, and that was not disclosed to the lenders by Mr. Anderson.
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> 138. Mr. Anderson's failure to disclose that financial liability information constituted, in my view, the conduct of mortgage business in a manner prejudicial to the public interest.

[Borrower 5] and [Borrower 6] Application – Filogix [Application 2] – [Lender 3]

30. On October 14, 2020, Mr. Anderson submitted a mortgage refinancing application on behalf of [Borrower 5] and [Borrower 6], in respect of a property located at [Property 5] in Surrey, BC. The application was submitted to [Lender 3].

31. In that October 14, 2020 application, Mr. Anderson did not identify to the prospective lender the fact that [Borrower 5 & Borrower 6] were owners of other properties. The proposed lender, [Lender 3], subsequently determined that [Borrower 5] was in fact an owner of two other properties. Each of those additional properties had outstanding mortgages.

32. In finding that Mr. Anderson had failed to disclose a borrower's financial liabilities to a lender I concluded that:

> 142. I have difficulty understanding how it is that Mr. Anderson could have done a credit check, which did not show [Borrower 5]'s mortgages associated with the two rental properties, while the lender's credit check did show those mortgages. In my view, it is more likely than not that if Mr. Anderson had in fact followed his general practice of conducting a credit bureau check on [Borrower 5], he would have been made aware of the mortgages on the two rental properties.
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> 143. As a result, I consider it to be more likely than not that that with proper diligence, Mr. Anderson would have been aware of [Borrower 5]'s additional two mortgages on the two rental properties. I find that Mr. Anderson ought to have known about those financial liabilities, and that his failure to disclose those financial liabilities to the lender constituted conducting mortgage business in a manner prejudicial to the public interest.

Sanctions - Applicable Law and Legal Principles

33. Section 8 of the *MBA* addresses the orders that the Registrar may make in respect of registration and compliance with the Act. Specifically, section 8(1) provides that:

> **8** (1) After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:
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> (a) suspend the person's registration;
> (b) cancel the person's registration;
> (c) order the person to cease a specified activity;
> (d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
>
> if, in the opinion of the registrar, any of the following paragraphs apply:
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> …
>
> (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
>
> …

34. Section 8(1.1) further provides that after giving a person registered under the *MBA*, the opportunity to be heard, the registrar may order the person to pay an administrative penalty of not more than $50,000, if, in the opinion of the registrar, any of the paragraphs (f) to (i) of section 8(1) apply.

35. As the Supreme Court of Canada indicated in *Cooper v. Hobart*, 2001 SCC 79, the regulatory scheme governing mortgage brokers provides a general framework to ensure the efficient operation of the mortgage marketplace (para. 49). This efficient operation of the mortgage marketplace requires the Registrar to balance a number of interests, including the instillation of public confidence in the mortgage system.

36. The issuing of sanctions in the professional regulatory context is done with a view to achieving the overarching goal of protecting the public. Previous decisions of the Registrar have contemplated this purpose and concluded that:

> The purpose of sanctioning orders is fundamentally to ensure protection of the public by promoting compliance with the MBA, thereby protecting the public from mortgage brokering activity that is non-compliant, not in the public interest, and that may result in loss of public confidence in the mortgage industry.[1]

37. Sanctions may serve multiple purposes, including:

- denouncing misconduct, and the harms caused by misconduct;
- preventing future misconduct by rehabilitating specific respondents through corrective measures;
- preventing and discouraging future misconduct by specific respondents through punitive measures (i.e. specific deterrence);
- preventing and discouraging future misconduct by other registrants (i.e. general deterrence);
- educating registrants, other professionals, and the public about rules and standards; and
- maintaining public confidence in the industry.

38. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

> **Nature, gravity and consequences of conduct**
>
> [20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
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> **Character and professional conduct record of the respondent**
>
> [21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

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[1] *Allan (Re), Decision on Penalty and Costs*, May 11, 2020 (BCFSA)

Acknowledgement of the misconduct and remedial action

> [22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

Public confidence in the legal profession including public confidence in the disciplinary process

> [23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

39. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

40. I find that an administrative penalty of $50,000 is warranted in the circumstances of this case. My reasons for having reached that conclusion follow.

<u>The Misconduct</u>

41. BCFSA submits that Mr. Anderson's misconduct in the transactions in this case go to the heart of the role of a mortgage broker in real estate transactions. Specifically, BCFSA describes the role of the mortgage broker as that of an intermediary who brings borrowers and lenders together, with the mortgage broker required to bring the relevant information to the lender to secure a mortgage for the borrower.

42. In BCFSA's submission, the misconduct Mr. Anderson has been found to have engaged in is of the most fundamental and important aspects of being a mortgage broker. BCFSA submits that the mortgage broker who fails to disclose financial liabilities to a lender, or who fails to confirm the accuracy of financial information provided by applicants, creates a danger of:

> …being able to whitewash incorrect or fraudulent mortgage applications to secure financing given the reliance that lenders place on the mortgage broker, as the intermediary to have verified the accuracy of the information that they are submitting in the mortgage application.

43. I find this submission to be compelling.

44. In my view, the protection of the public includes not only the protection of individual members of the public, but also the lenders who form part of the mortgage system. That

protection requires that the Registrar take steps to ensure that mortgage brokers are engaging in business with prospective lenders in a manner that is to the benefit of the public as a whole, not solely for the clients of the mortgage broker.

45. While the role of the mortgage broker must be to promote the interests of their clients, the promotion of that interest cannot be allowed to take place at the detriment of the public as a whole.

46. As discussed in *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia)*:

> Submortgage brokers and mortgage brokers are regulated by the Act and the Regulations and are subject to the orders and directions issued in the public interest by the Registrar. They must conduct reasonable due diligence with respect to information they provide to lenders…
>
> A submortgage broker's failure to disclose known material facts or knowingly misrepresenting facts to a lender undermines public confidence, places borrowers at risk of being placed in mortgages that they cannot afford, and places lenders at risk of making loans that they would not otherwise have made.
>
> *Kia*, page 30

47. I consider that Mr. Anderson's actions created a significant risk of adverse outcomes on both the applicants (who may not have in fact been able to afford a mortgage approved based on incorrect financial information) and for lenders who may have funded mortgages based on that incorrect financial information.

48. In my view, conduct such as Mr. Anderson's, and the potential adverse outcomes that such conduct creates, requires both specific and general deterrence.

49. In reaching this conclusion, I note that in his interview with the BCFSA investigators on August 22, 2022, Mr. Anderson repeatedly took the position that his failure to provide financial liability information to lenders would not have affected the applications in question.

50. Specifically, I note in respect of the [Property 2] applications, Mr. Anderson informed the BCFSA investigators that the fact that he had failed to disclose the financial liability the applicant's had recently become party to, in the form of a committed mortgage at [Property 4], was due to the fact that the mortgage had not been issued yet, and that, in any event, in Mr. Anderson's view the [property 4] mortgage "wouldn't have affected anything anyway…" and that "It wouldn't matter."

51. Mr. Anderson took the same position with respect to the failure to disclose [Borrower 5]'s ownership of other properties that had mortgages to the prospective lender, [Lender 3], in respect of [Borrower 5]'s application for refinancing. Once again, Mr. Anderson informed the BCFSA investigators that, in his opinion, "financially, it didn't matter."

52. I acknowledge, in the case of the [Borrower 5] application, Mr. Anderson suggested that the failure to disclose those additional properties with mortgages on the refinancing application

was due to [Borrower 5] having forgotten to mention those properties, rather than Mr. Anderson specifically concluding that it was not relevant financial information. However, as I concluded in *Anderson (Re)*, Mr. Anderson's attempt to place the failure to disclose those additional financial liabilities at the feet of [Borrower 5] did not correspond with the expectation that Mr. Anderson, as a registered mortgage broker, would have conducted due diligence on his client's financial liabilities. Regardless, Mr. Anderson maintained the view that the additional financial liabilities "did not matter".

53. Similarly, with respect to the ownership of [Property 1], Mr. Anderson maintained at his interview with the BCFSA investigators that it had not been incorrect for him to identify [Borrower 2] as the owner of and having equity in that property, despite the fact that he was made aware, by the prospective lender, that [Borrower 2] was not in fact on title as an owner of the property.

54. Having consideration to the above, I find the totality of the evidence to demonstrate a pattern which indicates that Mr. Anderson was of the view that it was open to him to conclude what financial liability information he was required to provide to a prospective lender, what financial liability information could be left out, and even (in the case of [Property 1]) for him to determine whether a client in fact had financial funding despite the fact that they may not have legal entitlement to that funding.

55. I find Mr. Anderson's apparent views in this regard to be incorrect on their face, and to be contrary to the overarching goal of the mortgage regulatory system, that being the protection of the public. In my view, it is clear that specific deterrence is required in order to ensure that Mr. Anderson's views in this regard be put to rest.

56. I further consider that general deterrence is required in this case, in order to demonstrate to the mortgage broker industry in general that the failure to disclose client financial liabilities, and the failure to conduct due diligence as to a client's financial claims, are not actions that can be tolerated under the *MBA*. General deterrence is further required to maintain public confidence that registrants under the *MBA* will not be able to ignore their professional responsibilities without facing proportionate consequences.

<u>Penalty Amount</u>

57. As set out above, in determining the appropriate penalty, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.

58. In its submissions, BCFSA has referenced five previous consent orders as providing some instruction as to the appropriate penalty in this case, all relating to registrants who admitted to having conducted business in a manner prejudicial to the public interest. The administrative penalties in those cases range from $25,000 to $45,000. In one of the cases, the registrant's registration was cancelled and he was not eligible to reapply for 10 years.

59. In *Cook (Re)*, Consent Order, May 10, 2012 (Registrar of Mortgage Brokers), the respondent submortgage broker (Cook) admitted to having engaged in conduct prejudicial to the public

interest contrary to section 8(1)(i) of the *MBA* when he submitted several mortgage applications without disclosing that his clients were seeking concurrent financing to purchase other properties; failed to disclose on those mortgage applications that his clients owned other properties that Cook ought to have been aware of; submitted mortgage applications indicating that homes would be owner-occupied when he knew they would not be; submitted a mortgage application indicating that a client had moved to a location when he knew that the client would not be moving for another seven weeks; failed to amend a disclosure statement given to a lender to disclose a personal conflict of interest; failed to disclose to lenders the existence of possible conflict of interest when the vendor and borrower's employer were controlled by the same person and/or where the borrower and the employer who verified income were related; failed to meet or speak to a client to verify information found on a mortgage application provided to Cook by a third party; completed mortgage applications concurrently when the client's income varied on equity and stated income and loan applications. Cook consented to pay a $25,000 administrative penalty, as well as $10,000 in investigative costs.

60. In *Amirmoazami (Re)*, Orders Under Section 8 and 6 of the Mortgage Brokers Act, October 24, 2013, the respondent submortgage broker admitted having submitted eight mortgage applications to lenders which included financial and other information, including documents that were improperly altered, that she knew or ought to have known to be false. The respondent further admitted to failing to conduct reasonable due diligence into the financial circumstances of her clients by not confirming financial information which, on its face, was unusual or suspect in the circumstances. Amirmoazami, consented to pay an administrative penalty of $45,000.

61. In *Schultz (Re)*, Consent Order, May 22, 2015 (Registrar of Mortgage Brokers), the respondent admitted to having failed to provide proper disclosure and information to an unsophisticated client. The respondent further admitted to having submitted several mortgage applications to lenders without disclosing that the client was concurrently seeking financing to purchase other properties, and without disclosing that the client owned other properties, the existence of which the respondent knew or ought to have been aware of. The respondent also admitted to having submitted mortgage applications to lenders on behalf of borrowers on the basis that the properties would be owner occupied when she ought to have known that they would not. Finally, the respondent completed concurrent mortgage applications where the client's income varied on the applications to different lenders. The respondent consented to pay a $37,500 penalty, investigative costs of $5,000, and to not be eligible to apply for registration under the *MBA* for a period of five years.

62. In *Singh (Re)*, Consent Order, September 28, 2018 (Registrar of Mortgage Brokers), the respondent admitted to having submitted misleading information to lenders, including altered CRA documents, in at least 17 mortgage applications. The mortgage applications submitted by Singh overstated applicant income, tax documents that he ought to have known were altered, and accepted tax documents from a third party rather than the borrower. Singh also admitted to having failed to conduct due diligence on income information related to several of the borrowers. Singh agreed to cancellation of his registration, with no eligibility to reapply for 10 years, as well as to pay investigative costs of $3,000.

63. In *Young (Re)*, Consent Order, July 13, 2023 (Registrar of Mortgage Brokers), the respondent admitted to allowing another registrant to access his Filogix credentials to create and submit mortgage applications, and to failing to verify the veracity of those applications submitted by the other registrant. Young admitted that the mortgages submitted under his Filogix credentials included failure to disclose that the applicants were seeking concurrent financing on other properties, failed to disclose a property for which the applicants had previously sough financing, and included different monthly rental income amounts for the same suite. Young agreed to pay an administrative penalty of $30,000 and to pay investigation costs of $3,560.

64. As set out above, BCFSA seeks an order for an administrative penalty in the amount of $50,000.

65. In seeking that order BCFSA submits that there are a variety of aggravating circumstances present in this case which warrant the imposition of the maximum penalty, including what it describes as Mr. Anderson's failure at "the most basic level" to complete his due diligence and to provide necessary information to the lenders, and that this failure was "in some ways" more serious than the conduct in *Young (Re)*, as Mr. Anderson was directly involved in the application process, whereas Mr. Young had not been. BCFSA further submitted that Mr. Anderson's failure in this respect was exacerbated by his "cavalier" attitude toward the information he ought to have known was required to be provided to the lenders, and noted my comments from paragraph 91 of *Anderson (Re)*:

> I do not consider that Mr. Anderson's apparent conclusion that, as long as an applicant can "afford" the mortgage they are seeking, the failure to disclose all material facts, including properties the applicant may own which have mortgage on them, is a "non-issue".

66. As I have set out above, I largely agree with the submission from BCFSA that Mr. Anderson appears to have concluded that it was open to him to determine what financial liability he was required to provide to a prospective lender, and what financial liability information could be left out.

67. That conclusion is not one that is conducive to the efficient operation of the mortgage marketplace, nor is it one that, if allowed to continue in the industry, will allow for the protection of the public as a whole. While it is true that there was not, in this case, any significant harm or financial loss to the public, the risk of such a loss occurring is, in my view, readily apparent if such an attitude on the part of a registrant were allowed to stand unchecked by the regulator.

68. As a result, I have no difficulty concluding that a significant administrative penalty is warranted.

69. I further agree that the fact that Mr. Anderson played a direct role in submitting the applications distinguishes his case from that of *Young (Re)*, and increases the gravity of the misconduct as compared to that of Mr. Young.

70. While it is a mitigating circumstance that Mr. Anderson does not have any prior discipline history, I consider that mitigating factor to be dampened by what I have concluded was Mr. Anderson's attitude as to his responsibility to provide complete information and to conduct all necessary due diligence prior to submitting a mortgage application to a lender. I note that I do not consider Mr. Anderson's indications in his interviews with BCFSA that he was simply relying on the information provided to him by his clients to be a mitigating circumstance in this case. As I found in *Anderson (Re)*, had Mr. Anderson conducted the due diligence expected of him, he would have been aware that the information he says he was provided by his clients was inaccurate.

71. Having considered the previous cases, as well as the nature of the misconduct in this case, as well as the need for both specific and general deterrence, I am satisfied that an administrative penalty at the maximum end of the scale would be appropriate.

72. In reaching that conclusion I note that BCFSA has not sought cancellation of registration, or any period of time in which Mr. Anderson would not be eligible to apply for registration.

73. I further find compelling the fact that the penalties that were issued in the cases cited by BCFSA involving the conduct of mortgage business in a manner prejudicial to the public interest involved administrative penalties near the maximum end of the scale more than 10 years ago. In my view, this suggests that the issuing of a penalty at the maximum end of the scale would not be inconsistent with the public's expectation for the imposition of an administrative penalty in similar circumstances today.

74. I am satisfied that an administrative penalty in the amount of $50,000 is appropriate.

Costs

75. BCFSA has submitted a Bill of Costs in the amount of $18,137.05. That Bill of Costs includes both investigative and legal costs, as well as the costs of disbursements related to various services of summons, transcriptions of audio recordings, and hearing costs.

76. BCFSA submits that as it has been substantially successful in respect of the allegations set out in the Notice of Hearing issued to Mr. Anderson, an order of costs is appropriate.

77. Section 6(9) of the *MBA* provides that if an inquiry discloses a contravention of the *MBA* or the regulations, or orders or directions of the Registrar, the Registrar may order the costs of the inquiry to be paid by the person.

78. The Registrar of Mortgage Brokers does not have its own tariff of costs.

79. I consider that, in the circumstances, it is appropriate to assess legal costs using Rule 14-1 of the BC Supreme Court Civil Rules. Importing the BC Supreme Court Rules method of assessing costs into the administrative tribunal context has been endorsed by the BC Court of Appeal in *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149, where the court held, at paragraph 56, that:

> …where the provisions for costs in the constituent statute, or Rules properly passed pursuant to the statute, do not indicate otherwise, the provisions of Rule 57 [now Rule 14-1] will govern the tribunal's award of costs. In those cases, Rule 57 will define the nature of the costs available, including special costs.[2]

80. Previous decisions of the Registrar have also considered orders for costs. In *Allan (Re)*, Decision on Penalty and Costs, August 19, 2020 (BC Financial Services Authority), the designate of the Registrar noted that:

> Costs are typically awarded to the litigant who has been substantially successful, unless there is some reason why that party ought to be deprived of costs (*Fotheringham v. Fotheringham*, 2001 BCSC 1321). While a costs award is discretionary, the burden of displacing the usual rule that costs follow the event falls on the person who seeks to displace that rule (*Giles v. Westminster Savings Credit Union*, 2010 BCCA 282).
>
> In addition to indemnification of the successful litigant, the courts have identified a number of objectives of a costs award including: deterring frivolous actions or defences; encouraging conduct that reduces the duration and expense of litigation and discouraging conduct that has the opposite effect; encouraging litigants to settle whenever possible; and to have a winnowing function in the litigation by requiring litigants to carefully assess the strength or weakness of their respective case at the start of and throughout the litigation (*Giles*, supra).

81. I accept that BCFSA has achieved substantial success in this matter. Mr. Anderson did not provide any submission as to why BCFSA should be deprived of their costs.

82. With respect to the Investigative Costs, BCFSA has used the rate of $95 per hour. BCFSA submits that a rate of $100 per hour is consistent with past practice of the Registrar and is within the limits set out in the regulations of other regulatory legislation. BCFSA makes specific reference to the *Real Estate Services Regulation*, section 4.4, which sets out that the superintendent of real estate may order a licensee to pay $100 per hour for investigation expenses.

83. While, as I have indicated above, BCFSA achieved substantial success in this matter, given that I concluded in *Anderson (Re)* that the allegations in respect of the [Property 4] Application, which occurred on July 30, 2020, had not been made out. Given that finding, I am of the view it would not be appropriate for BCFSA to be awarded the entirety of its claimed investigative costs.

84. As there were five mortgage applications that were the subject of the investigation, and I found that the allegations relating to only four of those applications were made out, I am of the view that BCFSA's claim for investigative costs should be reduced by 20%. Further, I note that a number of the investigative disbursements were related to matters which were not brought forward in the notice of hearing[3], I consider those disbursements should also not

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[2] Rule 57 is now Rule 14-1.

[3] Notably a services of summons to [Witness 1], a service of summons to [Witness 2], a service of summons to [Witness 3], and an audio transcription of an interview of [Witness 2].

be reimbursed. Recognizing that an award of costs is discretionary, and having reviewed the Bill of Costs provided by BCFSA, I find that a reduction in the amount of $2,150 appropriately quantifies the proportion of the investigation related to matters not related to the notice of hearing or for which BCFSA was not substantially successful.

85. As a result, I would reduce BCFSA's claimed Bill of Costs to $15,987.05, and order that Mr. Anderson should pay that amount for legal and investigative costs.

Orders

86. I make the following orders:

- Pursuant to section 8(1.1) of the *Mortgage Brokers Act*, John Hawkins Anderson is ordered to pay to BCFSA an administrative penalty of $50,000, within 30 days of the date of this order;

- Pursuant to section 6(9) of the *Mortgage Brokers Act*, John Hawkins Anderson is ordered to pay to BCFSA $15,987.05 in legal and investigative costs associated with this proceeding, within 30 days of the date of this order.

87. Pursuant to section 9 of the *MBA*, Mr. Anderson may appeal the above orders to the Financial Services Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 23th day of October, 2023.

"Original signed by Andrew Pendray"

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Andrew Pendray
Hearing Officer