



IN THE MATTER OF THE MORTGAGE BROKERS ACT
R.S.B.C. 1996, C. 313
AND
DENNIS PERCIVAL REGO, SHANK CAPITAL SYSTEMS INC.
and ARVIND SHANKAR

DECISION ON PENALTY AND COSTS

Appearances: Andrea Glen Patrick J. Sullivan
 for the Staff of the Registrar for Arvind Shankar

No one appearing for Dennis Percival Rego

By written submissions.

Before the Registrar's Appointee: Cheryl Vickers

INTRODUCTION

On August 25, 2017, I issued a Decision on Merits finding that the Respondents, Dennis Percival Rego (Mr. Rego) and Shank Capital Systems Inc. (Shank Capital), conducted business in a manner that is prejudicial to the public interest contrary to section 8(1)(i) of the *Mortgage Brokers Act* (the *Act*), and finding that the Respondent, Arvind Shankar (Mr. Shankar), conducted business as a submortgage broker in British Columbia without being registered to do so contrary to section 8(1.4) of the *Act*. The issue is now to determine the appropriate sanction against each of the Respondents and liability for costs.

Registrar of Mortgage Brokers

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Staff of the Registrar of Mortgage Brokers (Staff) seek an order that Mr. Rego, jointly and severally with Shank Capital, pay a \$50,000 administrative penalty, pursuant to section 8(1.1) of the *Act*, and partial investigation costs of \$6,771.50, pursuant to section 6(9) of the *Act*. Staff seek an order that Mr. Shankar pay a \$50,000 administrative penalty, pursuant to section 8(1.4) of the *Act*, partial investigation costs of \$6,771.50 and hearing costs, pursuant to section 6(9) of the *Act*. The \$50,000 administrative penalty sought against both Mr. Rego and Mr. Shankar is the maximum administrative penalty permitted under the *Act*.

Staff does not seek a penalty directly against Shank Capital, but wants to be able to pursue remedies against Shank Capital, for any monies owed by Mr. Rego.

Mr. Shankar was the only one of the three Respondents to attend the hearing on the merits and the only Respondent to make submissions on the issues of penalty and costs. Mr. Shankar submits the maximum administrative penalty is not warranted, but that an administrative penalty of \$5,000 would be appropriate in all of the circumstances. He submits that as not all of the allegations against Mr. Shankar set out in the Notice of Hearing had been made out, each party should bear their own costs.

ISSUES

The issues are to determine the appropriate administrative penalty to be made against each of Mr. Rego and Mr. Shankar, whether either or both of Mr. Rego and Mr. Shankar should pay a portion of the investigation costs, and whether there should be an award of costs against Mr. Shankar. If an order for the payment of money is made against Mr. Rego, there is an issue as to whether I should order Shank Capital to be jointly and severally liable for money owed by Mr. Rego.

SANCTIONING PRINCIPLES AND CONSIDERATIONS

The purpose of administrative sanctions in the regulatory context is to promote compliance with legislation in the public interest. Sanctions have been described as protective and preventative, not punitive (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37; *Re Capital Alternative Inc.*, 2007 ABASC 482). Specifically, in the context of the regulation of mortgage brokers and mortgage brokering in British Columbia, the *Act's* role is the protection of the public and maintenance of public confidence in the mortgage industry (*Cooper v. Hobart*, 2001 SCC 79). The purpose of sanctioning orders is fundamentally to ensure the protection of the public by promoting compliance with the *Act*, 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.

In assessing the appropriate sanction, I may rely on principles of specific deterrence (detering the person whose conduct is at issue) and general deterrence (detering those who might be inclined to engage in similar conduct). General deterrence is an appropriate factor in formulating a penalty in the public interest. It is both prospective and preventative in orientation (*Re Cartaway Resources Corp.*, 2004 SCC 26).

In assessing the appropriate sanction against each of the Respondents in this case, I must be mindful of the specific circumstances individual to each case. I may consider various factors including the nature and gravity of the conduct proven, whether the respondent has a prior discipline record, the advantage gained or to be gained from the respondent, and the range of penalties imposed in similar cases.

PENALTY - MR. REGO

The Findings against Mr. Rego

I found that Mr. Rego conducted business in his capacity as a submortgage broker in a manner that was prejudicial to the public interest. Specifically, I found that Mr. Rego:

- continued to seek financing on behalf of JV using a contract of purchase and sale in support of her mortgage application when he knew or ought to have known the contract was not genuine;
- submitted two different contracts of purchase and sale in support of JV's mortgage application which he knew or ought to have known were not genuine;
- submitted an appraisal which he knew had been rescinded to three different lenders in support of JV's mortgage application;
- submitted a mortgage application for the purchase of a property on behalf of VS which he knew was misleading;
- submitted mortgage applications on behalf of VS to seven different lenders for the refinancing of a property which he knew or ought to have known were misleading and which contained varying and unverified information with respect to the applicant's employment, income and assets;
- facilitated unregistered mortgage broker activities of Mr. Shankar; and
- made false statements to Staff during an interview.

Mr. Rego engaged in conduct that was dishonest and fraudulent. He submitted contracts of sale to prospective lenders that he knew were fraudulent. He submitted numerous mortgage applications to lenders that he knew were misleading and that contained unverified information. He knew Mr. Shankar was not registered under the *Act*, yet fronted for him in mortgage brokering activities and took direction from him in submitting mortgage applications.

What is the appropriate administrative penalty to be ordered against Mr. Rego?

The findings against Mr. Rego constitute serious misconduct that jeopardizes public confidence in the mortgage industry. Any penalty must have the effect of not only

detering Mr. Rego from engaging in similar conduct in the future but also send a message to other mortgage brokers that such conduct will not be tolerated.

Mr. Rego had previous experience as a mortgage broker and was aware of his responsibilities under the *Act*. In facilitating Mr. Shankar's unregistered activity, and in knowingly and repeatedly submitting false and misleading documentation and information in support of mortgage applications, Mr. Rego abdicated his responsibilities as a registered submortgage broker and as the designated individual of Shank Capital.

Mr. Rego has not been disciplined previously by the Registrar.

Mr. Rego stood to gain from his mortgage broker business and the specific conduct in issue. The evidence disclosed that Mr. Rego and Mr. Shankar split commissions received by Shank Capital. The evidence before me indicated that Mr. Rego received in excess of \$52,000 in commissions from Shank Capital in 2013, 2014, and 2015.¹ Shank Capital stood to receive a broker fee of \$28,000 in respect of JV's mortgage application in which Mr. Rego would have shared a portion, had that deal completed. Mr. Rego admitted to having received a commission in respect of the VS mortgage transaction. The evidence before me suggested that commission was \$4,000.

Counsel for Staff refers me to two penalty decisions of the Registrar of Mortgage Brokers and two consent orders imposing administrative penalties that considered similar conduct to that proven against Mr. Rego.

In *In the matter of the Mortgage Brokers Act and Danh Nguyen and Express Mortgages Ltd.*, Decision on Penalty dated December 13, 2004 (*Nguyen*), the Registrar found the respondent had knowingly submitted false documents to lenders, failed to provide certain disclosure statements, knowingly arranged second mortgages through unregistered companies and employed unregistered submortgage brokers. The Registrar ordered the maximum administrative penalty of \$50,000 and further sanctions including an exclusion order for 10 years.

In *Nguyen*, some of the respondents' breaches were minor in nature and a considerable number were very serious, leading the Registrar to conclude that the respondents showed complete contempt for the regulatory framework in place to protect the public and acted as if the rules did not apply to them. While the scope and extent of the activity proven in *Nguyen* was greater in terms of the number of non-compliant transactions, and the conduct arguably more egregious than this case, Mr. Rego's conduct also demonstrates a willingness to flaunt the legislation by facilitating the unregistered activity of Mr. Shankar, knowing full-well that the regulatory scheme is being flaunted.

¹ Exhibit C-2, "Statement of Deals Closed 2013 – Banks – for Shank Capital"; Exhibit C-2, "Statement of Deals Closed 2014 – Fee Agreements – Shank Capital"; Exhibit C-2, "Statement of Deals Closed – Fee Agreements – Shank Capital."

While Mr. Rego's opportunity for profit was significantly less than in *Nguyen*, the proven conduct is just as serious placing both the public and maintenance of public confidence in the mortgage industry at risk.

In *In the matter of the Mortgage Brokers Act and GET Acceptance Corporation, et al*, Decision on Penalty dated February 18, 2008 (*GET Acceptance*), the Registrar imposed a \$20,000 administrative penalty on GET Acceptance Corporation for employing an unregistered submortgage broker. In that case, the unregistered mortgage broker was qualified and registered to another company, but not to GET Acceptance Corporation. While the unregistered broker and the company to which he was registered were found to have made false and misleading statements on an investor/lender information statement, there were no allegations of fraudulent activity on the part of his employer, GET Acceptance Corporation.

In *In the matter of the Mortgage Brokers Act and Margaret Schulz and W.I. Mortgage Pros Ltd. dba Dominion Lending Centres Mortgage Pros*, Consent Order dated May 22, 2015 (*Schultz*), a registrant agreed to a consent order finding she had provided various types of inaccurate information to lenders over several mortgage applications, including concurrent applications in which the client's income varied on applications to different lenders, similar to the varying information provided to different lenders in support of the applications on behalf of VS in this case. The registrant in *Schultz* was the sole director of her mortgage company, also a co-respondent in the investigation and subsequent consent order. In addition to providing inaccurate information to lenders, the registrant was also found to have misstated facts to Staff. There were no allegations of unregistered activity. In *Shultz*, the registrant was ordered to pay an administrative penalty of \$37,500 plus costs.

In *In the Matter of the Mortgage Brokers Act and Absolute Rate Mortgage Inc. and Donald Raymond Estrada*, Consent Order dated January 28, 2009 (*Estrada*), the maximum administrative penalty of \$50,000 was jointly imposed by consent on a company registered under the Act and the company's director, for employing a person not registered under the Act, the inadvertent omission to disclose a conflict of interest in a mortgage transaction to borrowers, and failing to sufficiently verify income of certain borrowers seeking to procure mortgages.

The findings against Mr. Rego demonstrate that he knowingly and deliberately pursued mortgage financing in respect of a transaction which he knew not to be genuine. It demonstrates his willingness to take direction in the operation of his mortgage broker business from an unregistered person, something which he knew was contrary to the Act. His conduct demonstrates a flagrant disregard for the regulatory scheme and for fostering public confidence in the mortgage business. I am satisfied that the public interest requires a significant sanction against Mr. Rego.

Considering all of the factors of this case, and the range of penalties imposed in other cases, I find that a \$50,000 administrative penalty against Mr. Rego is not unreasonable.

Joint and Several Liability of Shank Capital

Staff does not seek sanctions specifically against Shank Capital but asks that I make Shank Capital jointly and severally liable for any monetary order against Mr. Rego so that the Registrar may execute against Shank Capital if it has any assets.

Staff rely on the joint and several order in *Schulz* as precedent. In *Schultz*, the joint and several obligation was imposed by consent. Consent for such an order has not been given in this case.

An order that Shank Capital is jointly and severally liable for the administrative penalty imposed against Mr. Rego would, in effect impose a sanction on Shank Capital. While I made findings against Shank Capital in the Merits Decision, Staff indicated then, as it has now, that it was not seeking sanctions against Shank Capital. In my view it would not be appropriate in the circumstances to impose sanctions indirectly on Shank Capital by making it jointly and severally liable for Mr. Rego's fine.

PENALTY - MR. SHANKAR

The Findings against Mr. Shankar

I found Mr. Shankar conducted business as a mortgage broker in British Columbia without being registered to do so by arranging one or more mortgages on behalf of JV and VS. With respect to the JV mortgage, I found Mr. Shankar met with, advised and collected documents from JV or her husband, met with a lender, reviewed documents sent to him by Mr. Rego, and submitted documents to a lender. With respect to the VS mortgage, I found Mr. Shankar discussed the application with JV's husband on behalf of VS and received documents from JV's husband with respect to the application. I found Mr. Shankar provided advice to Mr. Rego, and reviewed documents and email from Mr. Rego before Mr. Rego submitted them to lenders.

I found Mr. Shankar received compensation in excess of \$1,000 for arranging a mortgage on behalf of VS.

In making the findings above, I accepted that the evidence supported three of six alleged instances of unregistered mortgage brokering activity. I found that the evidence did not support three alleged instances of unregistered activity, namely that Mr. Shankar actually solicited mortgage business, that he negotiated fees with borrowers, or that he discussed mortgage commitments with borrowers.

Mr. Shankar submits that in focusing on the specific circumstances of the case against him, I must ensure he is not punished for offences that were not made out or not advanced. He submits that evaluating the circumstances starts with the Notice of Hearing and that the allegations against him in the Notice of Hearing are quite different

from those against Mr. Rego. He submits that Staff, in its submissions on penalty, now seek to punish Mr. Shankar for conduct that was not alleged in the Notice of Hearing, specifically that:

- Mr. Shankar's conduct was dishonest;
- The nature of Mr. Shankar's business with Shank Capital was dishonest in how he dealt with the VS mortgage application;
- Mr. Shankar handled documents that were not genuine and contained grossly inflated purchase prices; and
- Mr. Shankar's conduct was dishonest, egregious, and reckless.

Mr. Shankar submits it is a fundamental violation of the principles of natural justice if at the sanctions stage of the process, Staff is able to rely on allegations that were not in the Notice of Hearing, thus splitting its case and allowing Staff to punish for conduct that was never alleged and for which notice was not provided. He submits his right to counsel will have been undermined as counsel prepares for the hearing and conducts the case on the basis of the conduct alleged in the Notice of Hearing.

Staff submit the allegations against Mr. Shankar set out in the Notice of Hearing may be read in the context of other paragraphs of the Notice of Hearing and that any defect in the Notice of Hearing was cured by full disclosure. Staff submit Mr. Shankar had full notice of the case against him.

I accept that in the occupational disciplinary context, a failure to provide details in the notice of hearing can be cured by full disclosure of the evidence to be filed at the hearing (Sara Blake, *Administrative Law in Canada* 6th ed., para. 2.121). In this case, Staff made full disclosure of all of the evidence. To the extent there is any defect in the Notice of Hearing, that defect is cured by the full disclosure of all of the evidence to be relied on.

Further, despite that paragraph 14 of the Notice of Hearing containing the specific allegations against Mr. Shankar does not allege dishonest conduct, there can be no doubt, when the Notice of Hearing is read as a whole, and in the context of all of the disclosure provided by Staff to Mr. Shankar, that he was fully aware of the nature and extent of the allegations against him including that the specific mortgage brokering activities alleged in connection with the JV and VS mortgages, and ultimately found to have been made out, involved alleged dishonest conduct.

For example, paragraph 12(b) of the Notice of Hearing alleges that Mr. Rego, collectively with Mr. Shankar, submitted three different contracts of purchase and sale in support of the JV mortgage application. Paragraph 12(d)(i) alleges Mr. Rego submitted a mortgage application on behalf of VS which he knew was misleading because of, among other things, the contract alleged to have been sent to him by Mr. Shankar. At paragraph 12(f) Mr. Rego is alleged to have facilitated the unregistered broker activities of Mr. Shankar with respect to both JV and VS mortgage applications, applications which were alleged to be knowingly misleading, including that he took instructions from Mr. Shankar with respect to these applications.

The allegations against Mr. Shankar at paragraph 14 of the Notice of Hearing that he conducted business as a mortgage broker without being registered specifically allege involvement by Mr. Shankar in mortgage applications on behalf of JV and VS. These allegations, when read in the context of the Notice of Hearing as a whole and in light of the complete disclosure by Staff of all of the evidence to be tendered at the hearing in support of the allegations, provided Mr. Shankar notice that he was alleged not only to have been conducting business as a mortgage broker while not registered, but that he was implicated in arranging mortgages that were alleged to have been based on false or knowingly misleading information.

Staff disclosed printed copies of emails between Mr. Rego and Mr. Shankar that showed Mr. Shankar had sent and received purchase contracts that were alleged by Staff to be false and that he reviewed and approved mortgage applications containing widely varying information about VS's income and assets. Staff disclosed copies of documents retrieved from Mr. Rego's computer that showed commissions earned by Mr. Shankar from his unregistered mortgage brokering activity. I have no doubt that Mr. Shankar was fully aware of the nature of the case against him and that his defence was conducted with full understanding of the nature of the case against him.

In the Merits Decision, I accepted that emails to and from Mr. Shankar's Email were received and sent respectively by him. I referenced various emails in evidence including emails attaching false contracts of purchase and sale in support of the JV mortgage application, and found that Mr. Rego and Mr. Shankar were working together to try and arrange financing for JV and that Mr. Rego took direction from Mr. Shankar. I found that Mr. Shankar communicated directly with a lender with respect to the JV mortgage application and that Mr. Shankar likely communicated directly with JV's husband with respect to this mortgage application. I found that Mr. Rego, collectively with Mr. Shankar, submitted two contracts of purchase and sale that were not genuine and that Mr. Shankar forwarded false contracts to lenders.

With respect to the VS Mortgage applications, I referenced the emails between Mr. Rego and Mr. Shankar and others including the various applications containing widely varying information respecting VS's income and assets, and I found that Mr. Rego was "fronting" for Mr. Shankar to obtain financing for VS. I found that neither Mr. Rego nor Mr. Shankar had dealt directly with VS, but that Mr. Shankar had likely dealt with JV's husband with respect to these mortgage applications. I found that Mr. Shankar had instructed Mr. Rego with respect to the various applications for VS and approved mortgage applications containing varying information about VS's income and assets before Mr. Rego submitted them to lenders.

The Merits Decision found Mr. Shankar to be actively involved in arranging mortgages for JV and VS that were based on false information.

I found on the basis of documents detailing commissions paid retrieved from Mr. Rego's computer supported by evidence from both Mr. Rego and Mr. Shankar's interviews that

Mr. Shankar received compensation from Shank Capital for arranging mortgages. The documentation indicated Mr. Shankar had received in excess of \$172,000 in commissions from Shank Capital in 2014 and 2015 inclusive of \$24,500 in commissions on deals for VS.

I found Mr. Shankar was involved in the mortgage brokering business of Shank Capital, that most of the business of Shank Capital came from referrals from him, and that he received the bulk of the commissions and contributed to half of the expenses.

What is the appropriate administrative penalty to be ordered against Mr. Shankar?

Mr. Shankar submits the maximum penalty of \$50,000 is not warranted as it would be inconsistent with other cases involving unregistered mortgage brokering. He submits the findings on commissions earned in relation to the specific findings does not support the maximum penalty. He submits maximum penalties are only warranted where a lesser sanction provides inadequate protection and deterrence of a recurrence of the particular misconduct to have been found in this case.

Mr. Shankar submits, with reference to nine decisions of the Registrar of Mortgage Brokers, that fines are not generally sought for unregistered brokerage activity. He submits these decisions, the vast majority of which are cease and desist orders issued pursuant to section 8(2) of the *Act*, inform industry expectations and are relevant to general deterrence. He submits that, in circumstances where fines are rarely given, jumping to the maximum fine to sanction the findings of unregistered mortgage brokering for two individuals, would reduce respect for the process and diminish the deterrent effect of the penalty. He submits it is premature to conclude that the public interest requires a move to the maximum administrative penalty in the context of a finding that Mr. Shankar arranged mortgages for two individuals.

In response, Staff submit that cease and desist orders issued under section 8(2) should not be considered for the purpose of determining the range of penalties because they serve a different purpose than orders following a hearing by addressing on an urgent *ex parte* basis ongoing conduct posing a risk to the public. Staff submit they should not be considered as though an administrative penalty of \$0 was ordered.

Section 8(2) of the *Act* provides that the Registrar may make certain orders without a hearing, including that a person cease and desist from mortgage brokering activity, if the length of time required to give a person the opportunity to be heard would be prejudicial to the public interest. These orders are urgent *ex parte* orders to ensure a particular activity stops immediately in order to protect the public. The Registrar does not have the authority to order an administrative penalty under section 8(2); an administrative penalty may only be ordered following a hearing. As the Registrar cannot give consideration to an administrative penalty when exercising authority under section 8(2), the section 8(2) orders cannot be compared to orders following a hearing for determining an appropriate administrative penalty, and should not be construed as orders for payment of \$0.

It appears that the only occasion in which the Registrar has imposed an administrative penalty on a person alleged to have been engaged in the business of mortgage brokering without being registered is the case of *In the matter of the Registrar of Mortgage Brokers v. Alham Amirmoazami aka Ellie Amirmoazami*, Consent Order dated October 24, 2013 (*Amirmoazami*). In that case, the respondent agreed to a consent order finding she had arranged four mortgages while unregistered, and received compensation for doing so, and that she had engaged in conduct prejudicial to the public interest by submitting misleading information and documents to lenders in several instances. The respondent consented to an order that she pay an administrative penalty of \$45,000 plus costs.

Mr. Shankar submits that settlements are of less precedential value because they represent the culmination of a negotiated process in which a variety of known and unknown considerations may play a part. I agree a consent penalty may have less precedential value than an order following a hearing, but a settlement is also likely to reflect a compromise on the part of the Registrar such that the agreed penalty will be lower than what would have been advocated for, and potentially ordered, following a hearing.

I have not been referred to any cases where a person found to have been conducting mortgage brokering activities without being registered was sanctioned with an administrative penalty following a hearing. It appears that the Registrar typically exercises the public interest authority granted by section 8(2) to order unregistered mortgage brokering activity to cease without providing the person engaged in unregistered mortgage brokering activity with the opportunity to be heard. That the Registrar has this legislative authority reinforces the legislative intent of protecting the public by requiring mortgage brokers to be registered, and signals that unregistered activity will not be allowed to continue.

Regardless of the nature of the mortgage brokering activities that Mr. Shankar was found to be involved in, the fact that he was conducting business as a mortgage broker without being registered over more than a two year period is, in and of itself, serious conduct that demonstrates complete disregard for the regulatory scheme. As with other regulated industries, registration is a cornerstone of the regulatory scheme and essential to public confidence in the industry (*Re Roberta Merlin McIntosh*, 2015 BCSECCOM 69).

Mr. Shankar knew that he should have been registered to engage in the mortgage brokering business of Shank Capital but did not take steps to become compliant with the *Act*. Instead, he had Mr. Rego, a registered mortgage broker, “front” the business from which he earned the bulk of commissions from mortgage brokering activities. Mr. Shankar’s conduct was egregious and posed a significant threat to the public interest and the public’s confidence in the mortgage industry.

In his submission, Mr. Shankar concedes that the unregistered activity is serious conduct but submits that arranging mortgages for two clients is not as serious as the dishonest conduct of Mr. Rego, the misleading conduct admitted in the *Amirmoazami* case or the fraudulent conduct in the *Nguyen* case. He submits the only “offending” behaviour alleged and found is that he arranged mortgages in respect of two clients. This submission minimizes the seriousness of both the allegations and findings against Mr. Shankar.

I found that Mr. Shankar did participate in arranging mortgages on behalf of two clients without being registered under the *Act*. That, in and of itself, is serious “offending” behaviour that flagrantly disrespects the regulatory scheme. I also found that his unregistered mortgage brokering activity in connection with those two borrowers included forwarding false contracts to lenders, reviewing and approving multiple applications containing unverified and widely varying information, and instructing Mr. Rego with respect to these applications. He was not “just arranging mortgages for two clients”. He was arranging mortgages for two clients – something that he was not entitled to do in the first place – that were supported by false and misleading information.

Mr. Shankar submits that in considering the advantage gained, I should only focus on the allegation and finding that he received compensation in excess of \$1,000 in respect of one individual. On the basis of documents detailing commissions paid retrieved from Mr. Rego’s computer indicating that in excess of \$172,000 in Shank Capital Commissions had been distributed to Mr. Shankar in 2014 and 2015, and the evidence from both Mr. Rego and Mr. Shankar’s interviews, I found that Mr. Shankar received compensation from Shank Capital for arranging mortgages. This evidence had been fully disclosed to Mr. Shankar in advance of the hearing.

I found that Mr. Shankar was involved in the business of Shank Capital and was working as a submortgage broker although not registered. I found that most of Shank Capital’s business came from referrals from Mr. Shankar, and that Mr. Shankar received the bulk of the commissions from that business and contributed to half of the expenses.

I find that the principles of specific and general deterrence require a significant administrative penalty to send the message to both Mr. Shankar and to others that engaging in the practice of mortgage brokering in British Columbia without being registered will not be tolerated. *Amirozami* is the only other case imposing an administrative penalty on a person engaged in the business of mortgage brokering without being registered. Although a consent order, the penalty of \$45,000 signals that unregistered activity will attract significant sanctions. Considering *Amirozami* as well as *Nguyen*, *Schultz*, and *Estrada*, discussed earlier in considering the penalty against Mr. Rego, and considering all of the circumstances of this case, I find the maximum administrative penalty of \$50,000 is neither premature nor unreasonable. I am not satisfied that a lesser sanction would send the appropriate message to Mr. Shankar and others who may consider engaging in unregistered mortgage brokering activities in the

future, or that a lessor sanction would serve the public interest and promote confidence in the regulatory scheme or the mortgage industry.

COSTS

Mr. Shankar submits that as three of the six allegations against him set out in the Notice of Hearing were not made out, that success was divided and that each party should bear its own costs. I reject this submission. Mr. Shankar was alleged to have breached the *Act* by conducting business as a submortgage broker while unregistered by engaging in various activities. While I found that some of the specific activities alleged to have been engaged in were not supported by the evidence, I found the allegation that he had breached the *Act* by conducting business as a submortgage broker while unregistered was made out. The alleged breach of the *Act* was made out.

Section 6(9) of the *Act* provides that if an inquiry discloses a contravention of the *Act*, the Registrar may order costs to be paid. The investigation in this matter disclosed contraventions of the *Act*, and I found both Mr. Rego and Mr. Shankar to have contravened the *Act*.

Investigative Costs

The Certificate of Costs, marked as Exhibit 6 in these proceedings indicated total investigative costs of \$20,314.50. Staff submit that Mr. Rego and Mr. Shankar should each be required to pay one-third, or \$6,771.50. That submission is reasonable and I will so order.

Legal Costs

Mr. Shankar is the only respondent who exercised his right to a hearing and Staff only seek legal costs against him.

As the Office of the Registrar of Mortgage Brokers does not have its own rules respecting costs, costs are to be awarded and assessed in accordance with the British Columbia Supreme Court Civil Rules (*Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149).

Staff ask that costs be awarded against Mr. Shankar at Scale C. Staff submit that this hearing dealt with matters of more than ordinary difficulty because of the issues raised with respect to electronic evidence collection and the preservation of metadata. Staff rely on *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2014 BCSC 1907 in support of the proposition that higher than normal costs may be ordered where a court is called upon to decide a question for the first time, the outcome of which may have significance beyond the interests of the parties. Mr.

Shankar disagrees that the issues were of more than ordinary difficulty or that the increased costs are warranted.

While this hearing did involve a novel issue with respect to whether the duty of fairness necessitated forensically sound collection of electronic evidence, I am nevertheless not inclined to exercise my discretion with respect to costs to require that costs be paid at Scale C. This is an administrative proceeding, not complex civil litigation. Costs should be paid at Scale B.

As suggested by both parties, counsel may attempt to reach an agreement on the amount of legal costs to be paid by Mr. Shankar, failing which I remain seized of this matter to make a final determination.

ORDER

Dennis Percival Rego must pay a \$50,000 administrative penalty, pursuant to section 8(1.1) of the *Act*.

Dennis Percival Rego must pay investigation costs of \$6,771.50, pursuant to section 6(9) of the *Act*.

Arvind Shankar must pay a \$50,000 administrative penalty, pursuant to section 8(1.4) of the *Act*.

Arvind Shankar must pay investigation costs of \$6,771.50, pursuant to section 6(9) of the *Act*.

Arvind Shankar must pay hearing costs assessed at Scale B, pursuant to section 6(9) of the *Act*. I remain seized of this matter to make a final determination of hearing costs to be paid in the event the parties are unable to agree.

All payments must be made by cheque, bank draft or money order payable to the Minister of Finance and all amounts outstanding 30 days following execution of this Order will represent a debt owing and be subject to interest pursuant to the *Financial Administration Act*, RSBC 1996, c. 138.

Dated at Vancouver this 15th day of January, 2018.



Cheryl Vickers
Registrar's Appointee