



**IN THE MATTER OF THE MORTGAGE BROKERS ACT
R.S.B.C. 1996 C. 313**

-AND-

JAY KANTH CHAUDHARY

CEASE AND DESIST ORDER

(Pursuant to sections 8(1.4) and 8(2) of the *Mortgage Brokers Act*)

Upon review of the evidence and submissions set out in:

1. The report and evidence submitted by staff of the Registrar of Mortgage Brokers ("Staff");
2. The certified transcript of an interview with registered submortgage broker Shane Ballard ("S.B.");
3. The certified transcript of an interview with [REDACTED] ("M.K.") and [REDACTED] ("R.E."); and
4. The certified transcript of an interview with real estate licensee [REDACTED] ("H.K.").

I MAKE THE FOLLOWING FINDINGS AND ORDER:

Registration History

5. Jay Kanth Chaudhary ("Mr. Chaudhary") was registered as a submortgage broker as follows:
 - a. between April 25, 2007 and December 21, 2007 with GMC Global Mortgage Corp., and

- b. between January 4, 2008 and October 20, 2008 with Finder Financial Services Ltd.
6. Mr. Chaudhary is not currently registered as a mortgage broker or a submortgage broker and he has not been registered since October 20, 2008.
7. On October 16, 2008, Mr. Chaudhary was suspended by the then Acting Registrar of Mortgage Brokers for one hundred and twenty (120) days, pursuant to section 8(2) of the *Mortgage Brokers Act* (the "Act"), for conducting business in a manner that was prejudicial to the public interest in breach of the Act by failing to conduct any due diligence or "know your client" procedures and by knowingly submitting false information to lenders for them to act upon as if that information was genuine.
8. Mr. Chaudhary did not renew his registration at the completion of his suspension.

The Investigation

9. The Office of the Registrar of Mortgage Brokers ("Office of the Registrar") received specific complaints from two sources regarding Mr. Chaudhary. Between July 2017 and October 2017, an individual identified as [REDACTED] ("A.J.") sent several emails to Staff alleging Mr. Chaudhary was carrying on unregistered mortgage broker activities. On March 13, 2018, [REDACTED] with BlueShore Financial ("BlueShore") sent a formal written complaint against a registered submortgage broker. The complaint alleged that an internal audit of mortgage files submitted to BlueShore by the broker raised a suspicion that some of the files included falsified documents.

A.J. Complaints

10. The complaints by A.J. are summarized as follows:
 - a. In July 2017, Staff received email communications from A.J. alleging Mr. Chaudhary was conducting unregistered mortgage broker activity and that Mr. Chaudhary used registered mortgage brokers to submit his mortgage applications to lenders which included falsified supporting documents;
 - b. On September 27, 2017, A.J. sent Staff a further email, repeating the July 2017 allegations and stating that Mr. Chaudhary worked with mortgage brokers as well as a group of real estate licensees who cooperated with him in arranging mortgage applications based on falsified documentation;
 - c. On October 3, 2017, A.J. sent Staff an email with a pdf attachment he alleged represented examples of the transactions involving falsified information and documents in which Mr. Chaudhary was involved. The pdf attachment was titled "DEALS" and included 14 Multiple Listing Service (MLS) listings for recently sold properties. Staff conducted title searches on each of the properties and determined that three of the properties had mortgages funded by CMLS and one

had a mortgage funded by MCAP. In this email, A.J. alleged that Mr. Chaudhary was also known as "Mike".

11. Staff contacted the lenders, CMLS and MCAP, and requested the files related to the four addresses. On October 13, 2017, Staff received a copy of the three files funded by CMLS and determined they were all submitted by S.B., a registered submortgage broker.
12. On December 18, 2017, after a further request, Staff received copies of 26 additional mortgage files submitted to CMLS by S.B. between August 2016 and November 2017, of which 23 resulted in mortgages being funded by CMLS.
13. Staff reviewed the 26 mortgage files provided by CMLS and noted as follows:
 - a. 25 of the 26 mortgage applications submitted by S.B. to CMLS included CRA tax documents provided to the lender as income verification. A review of these documents indicated they were altered;
 - b. The files that contained altered documents were referred to S.B. by Mr. Chaudhary.

BlueShore Complaint

14. In its March 13, 2018 complaint, BlueShore advised Staff as follows:
 - a. Between December 2017 and January 2018, BlueShore received three mortgage applications from S.B. where the authenticity of the income documentation was questioned;
 - b. In January 2018, BlueShore conducted an internal audit of mortgage files submitted by S.B. including contacting the accountant of record on the Canada Revenue Agency (CRA) T1 General Income Tax and Benefit Return forms (T1 General) and the T2125 Statement of Business or Professional Activities forms (T2125) submitted as income verification on S.B.'s mortgage files;
 - c. This audit showed that of the 48 files S.B. submitted to BlueShore between 2012 and 2017, 15 files had discrepancies in the financial records provided. These files were funded by BlueShore and seven of the 15 were insured by either Canada Mortgage and Housing Corporation (CMHC) or Genworth.
15. Based on the A.J. allegations, the review of the CMLS mortgage applications and the information provided by BlueShore, Staff concluded Mr. Chaudhary referred the borrowers to S.B. and that Mr. Chaudhary had conducted mortgage broker activities on the files referred to S.B.

Order to Enter S.B.'s residence

16. On August 8, 2018, the Acting Registrar of Mortgage Brokers ("Acting Registrar") signed an Order under section 6(7.1) of the Act to enter the premises of S.B. On August 9, 2018, a Form 8 Order to Enter was endorsed by a Judicial Justice of the Peace to be

executed on August 16, 2018. Staff attended S.B.'s home on that day and executed the Order.

17. On August 16, 2018, Staff interviewed S.B. who stated the following:
 - a. He was aware that CMLS had issues with documentation submitted with his files;
 - b. A registrant, [REDACTED] ("K.C."), [REDACTED] raised issues with files that S.B. submitted to Verico;
 - c. Most of his files now go to TD or Scotiabank;
 - d. He was aware that he had been removed from both MCAP's and CMLS' approved mortgage list;
 - e. He identified his phone number as XXXXXX4602 and fax as XXXXXX1515.
18. Staff seized several items from the premises including two laptops, a MacBook Air, an iPhone 7 and 75 mortgage files. The electronic devices were provided [REDACTED] ("EF") to conduct a forensic examination of the devices.
19. EF's examination of S.B.'s iPhone 7 uncovered the following:
 - a. 1068 SMS text messages between S.B.'s phone and a cellular number associated with Mr. Chaudhary between December 12, 2017 and June 11, 2018. These texts related to mortgage broker activities such as discussing mortgage broker applications, mortgage application status updates and sharing of mortgage documents;
 - b. An email dated June 11, 2018, in which Mr. Chaudhary advised S.B. that he was changing his number to XXXXXX8733 which was the same contact number in S.B.'s phone for a "Mike Kumar";
 - c. A contact for an individual named Jay Michaels with an email address of jmfinancing@hotmail.com, which was later identified by Staff as an email used by Mr. Chaudhary. These emails from Jay Michaels referenced income, pay statements and job letters of different borrowers;
 - d. A message S.B. sent to K.C. in which S.B. advised K.C. that "Mike Kumar" was one of his referral sources and "Mike is an accountant with a vast network".

Order to Enter Mr. Chaudhary's residences

20. On January 30, 2019, the Acting Registrar signed two applications for an Order to Enter under section 6(7.1) of the Act relating to Mr. Chaudhary's known premises including [REDACTED] and [REDACTED]. On February 1, 2019, a Judicial Justice of the Peace endorsed the two Form 8 Order to Enter authorizations to be executed on February 12, 2019.

- [REDACTED]
21. On February 12, 2019, Staff attended [REDACTED] with uniformed Vancouver Police Department ("VPD") officers. Individuals at the premises identified themselves and one individual indicated that she called Mr. Chaudhary "Jay", but his business name was "Mike".
 22. Staff located and removed correspondence addressed to Mr. Chaudhary as well as several items including four phones, a MacBook Air, and a Sentry safe along with numerous documents.
 23. The electronic devices were provided to EF to conduct a forensic examination of the devices.

- [REDACTED]
24. On February 12, 2019, Staff attended [REDACTED] with uniformed VPD officers. Staff was provided with access to the premises by the building manager.
 25. The premises was unoccupied. Staff observed that one of the bedrooms was set up as an office with a desk, computers and printer/fax machines. Staff indicated that the premises did not appear to be used as a residence.
 26. On the desk, sitting on top of a mortgage file, was a [REDACTED] dated January 28, 2019 that appeared to belong to Mr. Chaudhary. Above the desk, there were numerous yellow sticky notes on the upper cabinet which included a note referencing "Jay's" phone numbers, both business and personal, which included the phone number XXXXXX8733, but that number was crossed out and a number was inserted below. Another sticky note was labeled "Jay previous numbers" one of which, XXXXXX8701, was the same number that S.B. used to communicate with Mr. Chaudhary.
 27. Numerous electronic devices and documents were located and removed by Staff from this premises. The electronics devices were delivered to EF for analysis and further examination. The analysis and examination of the electronic devices is ongoing.
 28. On February 25, 2019, a Summons to Produce was served on the rental agent for the [REDACTED] premises. On February 26, 2019, Staff received a Rental Application Form dated November 6, 2017; a Residential Tenancy Agreement dated November 10, 2017; and a Parking Space Licence dated November 14, 2017. Each of these documents indicated the parties to the agreements were the rental agent for the property and Jay Chaudhary.

S.B. mortgage applications

29. As part of the investigation into Mr. Chaudhary, Staff reviewed mortgage applications S.B. submitted to various lenders between 2016 and 2018. Those files included:

██████████ ("P.V.") mortgage and CMLS

30. S.B. submitted a mortgage application on behalf of a borrower, P.V. to a lender and that mortgage was funded on November 14, 2016. P.V. advised Staff that his father, ██████████ ("L.V."), was buying the property and funding the down payment with the intention to assign the contract to his son.
31. L.V. advised Staff that Mr. Chaudhary was recommended to him as a mortgage broker during the purchase of a property for his daughter, ██████████ ("N.L."), some 15 months previously. P.V. and L.V. met with Mr. Chaudhary at a coffee shop to review the documents. L.V. communicated with Mr. Chaudhary through an email address, 3rinvestments@gmail.com, which Staff determined was linked to a company, J3R Financials & Trading Services ("J3R Financials"), operating as a sole proprietorship registered in the name of Mr. Chaudhary with an address of a property Mr. Chaudhary owned since August 30, 2016.
32. ██████████ ("R.H."), the real estate licensee acting in the transaction, advised she did not know "Jay" but sent the Contract of Purchase and Sale to "Jay" at the same email address L.V. used to communicate with Mr. Chaudhary.
33. L.V. produced a returned cheque paid to J3R Financials in the sum of \$4,829 as the fee for arranging the P.V. mortgage which was calculated as 1% of the mortgage principal.
34. A commission statement located on S.B.'s MacBook Air, supported by an email from S.B. indicated S.B. paid "Mike" a \$1,250 referral fee for P.V.'s mortgage.
35. Mr. Chaudhary provided the income verification documents of P.V. to S.B. including T1 Generals for 2014 and 2015 which S.B. submitted to the lender in support of P.V.'s mortgage application.
36. An accounting firm, ██████████ ("N&A") was identified on the T1 Generals used to support that mortgage application. Staff interviewed ██████████ ("D.N."), a principal of the accounting firm, and confirmed that P.V. was not a client of the firm and N&A had not prepared the returns. D.N. also noted discrepancies in the documents not consistent with how N&A prepares T1 Generals.
37. S.B. submitted the P.V. mortgage application with the altered tax documents on behalf of Mr. Chaudhary to CMLS which funded the mortgage. S.B. never met, communicated, or obtained information from P.V. or L.V. and S.B. paid Mr. Chaudhary the sum of \$1,250.00 for the referral.
38. L.V. advised Staff that Mr. Chaudhary had also arranged the mortgage financing for his daughter, N.L. and her husband ██████████ (D.L.) in December 2016 in relation to a Maple Ridge property. The mortgage broker who submitted the mortgage application to the lender on Mr. Chaudhary's behalf was a registrant, ██████████ ("A.E."). L.V. produced a copy of his returned check dated December 19, 2016 written to Mr. Chaudhary in the sum of \$8,500. L.V. stated that this was paid to Mr. Chaudhary as a 1% mortgage fee for arranging his daughter's mortgage.

M.K. / A.K. mortgage and MCAP

39. On November 27, 2017, Staff received a copy of a mortgage file from Verico. The file contained an October 2017 application for a mortgage from S.B. on behalf of M.K. and her father, [REDACTED] ("A.K.").
40. On July 10, 2018, Staff received a copy of a mortgage application from MCAP. This application had been submitted by S.B. in October 2017 on behalf of M.K. and A.K. This application was declined by MCAP due to concerns regarding the income and tax documents submitted in support of the application.
41. The tax documents of both M.K. and A.K. indicated they were prepared by the accounting firm, [REDACTED], ("A.F.T.G.") at an address on Lincoln Avenue, Coquitlam.
42. On September 17, 2018, Staff attended at the address provided on the tax documents, which was the address of [REDACTED] ("A.F.G."). Staff interviewed [REDACTED] ("A.M."), [REDACTED], and confirmed A.F.G. did not prepare M.K. or A.K.'s income tax returns for 2015 and 2016 nor were they clients of the firm. He also pointed out that the name of the firm was not as stated in the returns Staff obtained from MCAP.
43. Staff reviewed S.B.'s electronic mortgage files and located an E-File folder containing the mortgage documents S.B. sent to MCAP in October 2017 on behalf of M.K. and A.K.
44. On November 19, 2018, Staff interviewed M.K. and her husband, R.E. who stated as follows:
 - a. M.K. and her father A.K. were on the mortgage application as R.E. was unemployed and on disability;
 - b. M.K.'s real estate agent, [REDACTED] ("A.D.") referred her to a mortgage broker "Mike" who she subsequently learned was Mr. Chaudhary. They met with "Mike" on one occasion in a coffee shop to sign the mortgage papers but were unable to do so as "Mike" had brought the wrong documents;
 - c. They provided their income support documents to A.D.'s assistant who they believed forwarded the documents to "Mike";
 - d. "Mike" had many phone numbers, but he did not answer the number M.K. had for him. A.D. had a number that "Mike" would answer, and they once had a conference call with "Mike" at A.D.'s office;
 - e. M.K. paid "Mike" with a cheque for \$6,300 made out to a business name, 3rinvestments which was 1% of the value of the mortgage;

- f. Initially A.D. told them they had a mortgage approval although they could not remember signing documents except with a notary. Later the notary informed them the mortgage funding collapsed but A.D. and "Mike" would find them other financing;
 - g. They understood that other lenders were approached. A.D. told them "Mike" arranged a BMO mortgage. They met with the BMO representative, who had a statement showing they had a bank balance of [REDACTED]. This was not true;
 - h. M.K. was a customer with RBC. RBC Head Office informed her that a mortgage application had been made to CIBC on her behalf. CIBC called RBC to confirm the information in the application. The information was not correct.
45. Staff reviewed the documents that S.B. submitted to lenders on M.K.'s behalf with M.K. M.K. stated:
- a. Neither she nor her father were self employed as indicated in the documents;
 - b. The 2015 and 2016 NOAs/T1Generals were not the documents she provided to A.D. and did not accurately reflect her correct employment or income;
 - c. The RBC bank account statement was not from her account and did not accurately reflect her balance or banking history;
 - d. She never altered or changed any of the documents she provided to A.D. or her assistant.
46. Between September and November 2017, M.K. had several email communications with "Mike" at 3rinvestments@gmail.com in which she provided income and employment information to "Mike".
47. M.K.'s mortgage file was located at Mr. Chaudhary's residence at [REDACTED]. The file was labelled M.K.P. and referenced the first name of A.D. The file contained:
- a. Five mortgage applications and supporting documents for M.K. and A.K.;
 - b. Emails between S.B. and Jay Michaels, which Staff believe to be an alias of Mr. Chaudhary, in which S.B. was asking for income information and documents to support M.K.'s mortgage applications;
 - c. Of the five applications, including both typed and handwritten versions, each application contained different information with varying amounts for the down payments and stated income, including two applications showing down payments of \$150,000 and \$180,000, which was contrary to M.K.'s statement to Staff;
 - d. A.K.'s 2016 Tax Return Summary of T5007 Statement of Benefits indicating a total income of [REDACTED]. The version submitted to MCAP by S.B. stated an income of [REDACTED].

██████████ ("H.K.") mortgage and Scotiabank

48. During the execution of the Order to Enter S.B.'s residence on August 16, 2018, Staff examined S.B.'s MacBook Air, located an electronic mortgage file and viewed the following transaction:
- a. A mortgage application submitted by S.B. on behalf of H.K. to Scotiabank which funded a mortgage for H.K. secured by a property on Barnet Road ("Barnet");
 - b. The file included the T1 Generals for 2015 and 2016 indicating H.K.'s income tax returns were prepared by ██████████ ("P.A. Ltd.").
49. On August 29, 2018, Staff interviewed ██████████ ("R.H."), ██████████ ██████████ of P.A. Ltd. who confirmed H.K. was a client and P.A. Ltd. prepared H.K.'s income tax returns.
50. R.H. reviewed the tax documents found in S.B.'s file which were submitted to Scotiabank by S.B. and confirmed P.A. Ltd. did not create those particular documents, and that they were not accurate.
51. On September 11, 2018, P.A. Ltd. was served with a Summons to produce the 2015 and 2016 T1 Generals prepared for H.K. The original documents produced by P.A. Ltd. differ from the documents contained in the S.B. mortgage file as follows:
- a. The original tax documents for 2015 show a total income of ██████████ whereas the S.B. documents show an annual income of ██████████;
 - b. The original tax documents for 2016 show a total income of ██████████0 whereas the S.B. documents show a total income of ██████████.
52. On October 17, 2018, H.K., responding to a September 12, 2018 Summons to Attend and Produce Records, was interviewed by Staff and advised as follows:
- a. H.K. lived in the Barnet property;
 - b. He used the services of a mortgage broker named ██████████ ("G.D."), although he was not sure of the spelling of the last name;
 - c. He provided Staff with G.D.'s phone number;
 - d. He provided G.D. with two years of T1 Generals, NOAs and three months of bank statements. G.D. filled out the mortgage applications by hand;
 - e. He used G.D. to obtain financing for the purchase of a property on Suffolk as well as the Barnet property;
 - f. All meetings with G.D. were in person;

- g. The documents in S.B.'s mortgage file which showed that H.K. had [REDACTED] in savings at the time of the purchase of the Barnet property were not accurate as he had approximately [REDACTED] in savings from the sale of another property at that time;
 - h. Some of the documents had his genuine signature, and other documents did not;
 - i. P.A. Ltd. did his tax returns and accounting and the tax documents located in S.B.'s file for him were not his and were not the documents he had provided to G.D.
53. Staff reviewed S.B.'s email account which included email communication between S.B. and Mr. Chaudhary. In April and May 2018 there were communications specifically relating to the H.K. mortgage application including a pdf of H.K.'s tax information sent from Mr. Chaudhary to S.B. One email indicated S.B. paid "Mike" a referral fee of \$3,700.00 for H.K.'s file.
 54. Two files relating to H.K. were located at Mr. Chaudhary's [REDACTED] premises. One was labelled H.K. "Refinance" and one was labeled H.K. "Purchase". Each file had different versions of H.K.'s tax information.
 55. Staff reviewed text messages from 2017 between S.B. and K.C., obtained from S.B.'s iPhone as a result the execution of the Order to Enter S.B.'s residence on August 16, 2018. In these messages, S.B. referenced G.D. as a financial advisor who S.B. had met that spring and referred "a couple" of files to S.B.
 56. On October 16, 2017, S.B. sent K.C. a photocopy of a business card for G.D. indicating G.D. worked for Vancouver Financing Solution Services with an address on Homer Street and a phone number.
 57. K.C. provided Staff with the names of borrowers referred by G.D. to S.B. with mortgages funded through Verico. Staff reviewed S.B.'s mortgage files and confirmed the borrowers identified by K.C. as referrals from G.D. were borrowers Mr. Chaudhary referred to S.B.

[REDACTED] ("S.R.") / [REDACTED] ("H.R.") mortgage and RMG mortgages ("RMG")

58. During the February 12, 2019 execution of the Order to Enter the [REDACTED] premises, a mortgage file relating a mortgage application to RMG on behalf of S.R. and H.R. was found on the desk in a room that appeared to be used as an office, along with the [REDACTED] belonging to Mr. Chaudhary.
59. The file contained both the application to RMG as well as an RMG mortgage commitment dated February 8, 2019 signed by the borrowers. Staff observed there were three different versions of the mortgage application. One version consisted of two pages, one for S.R. and one for H.R., both pages were marked at the top "ATT; Mike". S.R.'s application indicated that S.R.'s annual salary was [REDACTED] but this number was crossed out and "[REDACTED]" written above. Another version just had the borrower's information and some handwritten notes.

60. The third version was a mortgage application dated February 7, 2019 to DLC Elite Lending indicating the broker was a registrant, [REDACTED] ("K.E.M."). On this application, S.R.'s annual income was [REDACTED] and it showed that S.R. had previously been employed in an auto shop with an income of [REDACTED]. However, S.R.'s tax documents on file showed that in 2016, S.R. earned [REDACTED] from the auto shop.
61. Staff subsequently contacted RMG and made RMG aware the application may contain altered documents. RMG cancelled the application on February 20, 2019. However, Staff determined this transaction closed based on a mortgage funded by another lender, Westminster Savings, supported by the same altered documents stating an inflated income.
62. On March 27, 2019, a Summons was issued to Westminster Savings to obtain this file and Staff determined the file was referred to Westminster Savings by [REDACTED] ("Sa.B.") at BMO.

General

63. Staff reviewed S.B.'s mortgage files between 2015 and 2018 and determined that Mr. Chaudhary's referrals to S.B. resulted in 165 mortgages funded resulting in compensation to Mr. Chaudhary as follows:

Year	Number of mortgages	Commission	Total Mortgage Funding
2015	35	\$57,100.00	\$21,670,000.00
2016	49	\$83,900.00	\$32,970,000.00
2017	57	\$97,900.00	\$35,733,000.00
2018	24	\$44,000.00	\$17,625,000.00

64. Based on a review of those files and related investigations, Mr. Chaudhary used a number of pseudonyms, had several email addresses, and frequently changed phone numbers to communicate with mortgage brokers and submortgage brokers to conduct his unregistered mortgage broker activities.
65. Staff's review of the files located at [REDACTED] and [REDACTED] as well as the transactions which were part of the S.B. investigation indicate Mr. Chaudhary had a large network of registered submortgage brokers in addition to S.B. as well as real estate licensees that he used to facilitate his unregistered mortgage broker activities.
66. Staff reviewed an excel spread sheet which was retrieved from an external memory device found in the [REDACTED] premises. This spread sheet summarized Mr. Chaudhary's unregistered mortgage activities since 2009. There are references to multiple transactions per year and identified at least 20 submortgage brokers and real estate licensees in addition to S.B. as referral sources for the transactions.

67. According to that document, from 2009 to mid 2018, Mr. Chaudhary worked on 875 files, generated \$5,283,347 in client fees and \$642,344 referral fees paid by the registered submortgage brokers who submitted the applications to lenders on his behalf, and arranged \$511,558,206 in mortgage loans.

Applicable Legislation

68. The applicable sections of the Act are as follows:

A. Section 1:

"mortgage" includes every instrument by which

(a) land in British Columbia, or

(b) for the purposes only of paragraphs (c) and (f) of the definition of "mortgage broker", sections 14.1 and 17.4 and Division 3 of Part 2, land, whether or not in British Columbia, is, in any manner, conveyed, assigned, pledged or charged as security for the payment of money or money's worth to be reconveyed, reassigned or released on satisfaction of the debt, but does not include an agreement for sale of or a right to purchase land or an interest in land;

"mortgage broker" means a person who does any of the following:

(a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;

(b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;

(c) carries on a business of buying and selling mortgages or agreements for sale;

(d) in any one year, receives an amount of \$1 000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;

(e) during any one year, lends money on the security of 10 or more mortgages;

(f) carries on a business of collecting money secured by mortgages;

"submortgage broker" means any person who, in British Columbia, actively engages in any of the things referred to in the definition of mortgage broker and is employed, either generally or in a particular case, by, or is a director or a partner of, a mortgage broker;

- B. Section 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:

(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:
 - (e) the person would be disentitled to registration if the person were an applicant under section 4;
 - (f) the person is in breach of this Act, the regulations or a condition of registration;
 - (g) the person is a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;
 - (h) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading;
 - (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
 - (j) the person is in breach of a provision of Part 2 or 5 of the Business Practices and Consumer Protection Act prescribed under section 9.1 (2).
- C. Section 8(1.4)** After giving a person an opportunity to be heard, the registrar may do one or more of the following:
- (a) order the person to cease a specified activity;
 - (b) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
 - (c) order the person to pay an administrative penalty of not more than \$50,000, if, in the opinion of the registrar, the person was or is carrying on business as a mortgage broker or submortgage broker without being registered as required by this Act.
- D. Section 8(2)** If the length of time that would be required to give the person an opportunity to be heard under subsection (1) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may suspend registration without giving the person an opportunity to be heard.
- E. Section 11(1)** The registration provisions of this Act do not apply to any of the following while acting as mortgage brokers or submortgage brokers under their proper names:
- (a) insurance companies;

(b) savings institutions;

(c) a member of the Law Society of British Columbia entitled to practise as a solicitor in British Columbia if the loan transaction is made in the course of and as part of the member's practice;

(d) any person acting for the government or for an agency of the government;

(e) a liquidator, receiver, trustee in bankruptcy or a person acting under the authority of any court or an executor or trustee acting under the terms of a will or marriage settlement.

(2) The registration provisions of this Act do not apply to any of the following:

(a) an employee, or director, of a person exempted from registration under subsection (1) (a) or (b) or paragraph (b) of this subsection;

(b) a person lending money, directly or indirectly, on the security of land to provide housing for the person's employees;

(c) any other person or class of persons exempted from registration by the registrar.

F. Section 21(1) Unless exempted under section 11, a person must not do any of the following:

(a) carry on business as a mortgage broker or submortgage broker unless the person is registered under this Act;

(b) carry on business as a mortgage broker otherwise than in the person's registered name or elsewhere than at or from the person's registered address;

(c) advertise or in any other way indicate that the person is a mortgage broker or submortgage broker other than under then registered name of the mortgage broker;

(d) employ as a submortgage broker any person not registered under this Act.

Analysis

69. The regulatory framework set out in the Act is designed to ensure that the public is protected from misconduct. Only those individuals suitable for registration are entitled to be registered under the Act, and once registered they are subject to the provisions of the Act.

70. Section 21 of the Act prohibits a person from carrying on business as a mortgage broker or submortgage broker without being registered under the Act. Both "mortgage broker" and "submortgage broker" are defined terms as set out above and includes holding out as a mortgage broker and collecting more than \$1,000 in fees in any one year as remuneration.

71. The Commercial Appeals Commission (the predecessor to the Financial Services Tribunal) has considered the definition of “arranging mortgages” for the purpose of determining whether certain activities fell within the definition of submortgage broker in the Act.
72. In *Horizon Financial Services Ltd. v. British Columbia (Registrar of Mortgage Brokers)*, [1990] B.C.C.O. No 4 (“Horizon”), the Commission found that the intent of the Act is to license every person and company involved in an essential way in the process of arranging mortgages.
73. *Legge (c.o.b. Mortgageline) v. British Columbia (Registrar of Mortgage Brokers)*, [1995] B.C.C.O. No 13 and *Horizon* considered indicia of arranging mortgages (and in turn holding out as a mortgage broker who arranges mortgages) which included promoting services, direct communication with clients explaining mortgages, mortgage products, mortgage documents and/or disclosure statements, taking mortgage applications, and obtaining supportive documentation.
74. Staff provided clear evidence that Mr. Chaudhary was carrying on business as a mortgage broker or submortgage broker and holding himself out as a mortgage broker or submortgage broker even though he was not registered as a mortgage broker or submortgage broker. The investigation shows Mr. Chaudhary was carrying on a business of “arranging mortgages” as follows:
 - a. Mr. Chaudhary conducted unregistered mortgage broker activity since 2012;
 - b. Mr. Chaudhary leased, maintained and operated a separate office space in a residential building where he conducted mortgage broker activity;
 - c. Mr. Chaudhary used registered submortgage brokers to facilitate his unregistered mortgage broker activities by having them submit mortgage applications on Mr. Chaudhary’s behalf to lenders. Mr. Chaudhary’s referrals to S.B. resulted in 165 mortgages funded between 2015 and 2018 for which S.B. paid Mr. Chaudhary \$282,900;
 - d. Mr. Chaudhary’s mortgage files show that the information he arranged to be submitted to lenders included false tax documents and bank statements that inflated the borrowers’ income and savings as well as false employment information;
 - e. Mr. Chaudhary was paid referral fees by the submortgage brokers who submitted his mortgage applications to lenders and the borrowers paid him a fee directly for arranging their mortgages. Borrowers did not meet with the submortgage brokers used by Mr. Chaudhary and, in most cases, appear not to have known of this arrangement;

f. Mr. Chaudhary was actively carrying on business as a mortgage broker at the time of the execution of the Order to Enter on February 12, 2019 in that there was a mortgage application dated February 8, 2019 which had been submitted to a lender, RMG, on behalf of S.R. and H.R. by another registered submortgage broker, K.E.M., on a desk in Mr. Chaudhary's residence. The lender issued a mortgage commitment on the same date.

75. Staff provided evidence that Mr. Chaudhary continues to be engaged in unregistered mortgage broker activity despite the actions taken by the Office of the Registrar. While RMG, once advised of the actions of the Office of the Registrar, withdrew its funding commitment, the evidence shows the transaction closed based on a mortgage funded by another lender, Westminster Savings, supported by the same falsified documents. Mr. Chaudhary continues to be the subject of an ongoing Office of the Registrar investigation.

Conclusion

76. The evidence is clear Mr. Chaudhary engaged in ongoing unregistered mortgage broker activity which puts the public and lenders at risk.

77. Therefore, I find that Mr. Chaudhary was carrying on business as a mortgage broker or submortgage broker, while not registered to do so in contravention of section 21 of the Act. As such, his conduct may be subject to the remedies set out in section 8(1.4) of the Act. There is no evidence that Mr. Chaudhary would be exempt from the registration requirements under section 11 of the Act.

78. The size and scale of Mr. Chaudhary's unregistered mortgage broker activities, supported by a network of regulated individuals, represents a significant risk to the integrity of the real estate and financial services marketplace.

79. Mr. Chaudhary led borrowers into thinking he was a mortgage broker dealing directly with lenders when, in fact, he had a network of registered mortgage brokers who arranged the mortgages with lenders on Mr. Chaudhary's behalf. Mr. Chaudhary produced altered documents to support inflated financial information in mortgage applications and provided them to registered submortgage brokers to submit to lenders. In doing so, he placed borrowers at risk of being placed into mortgages they cannot afford and lenders at risk of making loans they might not otherwise have made.

80. In addition, Mr. Chaudhary, as a former registrant from 2006 to 2008, ought to understand the importance of registration as a cornerstone of a regulated industry. He was previously suspended for one hundred and twenty days for conducting business in breach of the Act in a manner that was prejudicial to the public interest by failing to conduct any due diligence or "know your client" procedures and by knowingly submitting false information to lenders for them to act upon as if that information was genuine. He has continued in these activities while unregistered.

81. Mr. Chaudhary has deliberately attempted to avoid detection in his unregistered mortgage broker activities by using pseudonyms, multiple phone numbers, different email addresses and companies as well as a network of registered submortgage brokers to facilitate his unregistered activity by submitting mortgage applications to lenders on his behalf.
82. I agree with Staff that a hearing into Mr. Chaudhary's conduct would require approximately 25 witnesses and at least 15 days to complete, which could not be realistically scheduled for at least nine months. Given the length of time required to hold a hearing, this delay would likely result in further non-compliance with the Act, which would harm the reputation of the mortgage broker industry, expose lenders to the risk of making loan decisions based on false information and would be detrimental to the public interest. This supports an order to be made pursuant to section 8(2) of the Act.

I AM THEREFORE OF THE OPINION THAT the length of time that would be required to hold a hearing and make orders under section 8(1.4) of the Act would likely result in further non-compliance with the provisions of the Act and therefore be prejudicial to the public interest.

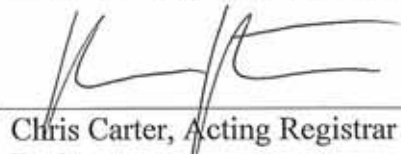
AND I AM THEREFORE OF THE OPINION it is in the public interest to make a summary order under section 8(1.4)(a) and 8(2) of the MBA so the public is protected against further non-compliance with the Act.

I HEREBY ORDER, pursuant to section 8(1.4)(a) and 8(2) of the Act that Jay Kanth Chaudhary to immediately:

CEASE AND DESIST from carrying on business as a mortgage broker or submortgage broker, from acting as or holding out as a mortgage broker or submortgage broker in British Columbia and from conducting any unregistered mortgage broker activity in the Province of British Columbia in any capacity, effective immediately, unless and until he becomes registered to do so under the provisions of the Act.

TAKE NOTICE THAT Jay Kanth Chaudhary may, under section 9 of the Act, appeal this Order to the Financial Services Tribunal.

Issued this 23 day of May 2019
At Vancouver, British Columbia


Chris Carter, Acting Registrar of Mortgage
Brokers

Notice to: Jay Kanth Chaudhary

[Redacted address block]

Financial Services Tribunal