

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *MORTGAGE BROKERS ACT*

RSBC 1996, c 313 as amended

AND

IN THE MATTER OF

MICHAEL RANDALL ESLER

AND

ESLER RESORT CONSULTING LTD.

AND

0798552 B.C. LTD. dba OFF-PISTE CAPITAL

CONSENT ORDER

(Pursuant to section 8 (1.4) of the *Mortgage Brokers Act*)

[This Order has been redacted before publication.]

WHEREAS, Michael Randall Esler (“Mr. Esler”) and Esler Resort Consulting Ltd. have not been registered as a mortgage broker or submortgage broker under the *Mortgage Brokers Act*, RSBC 1996, c 313 (“MBA”) since July 2016;

AND WHEREAS 0798552 BC Ltd. dba Off-Piste Capital has never been registered as a mortgage broker or submortgage broker under the MBA.

AND WHEREAS the Registrar of Mortgage Brokers (the “Registrar”) issued a Notice of Hearing pursuant to sections 8 and 8(1.4) to the Parties, on September 23, 2022 (“Notice of Hearing”);

AND WHEREAS the following agreement has been reached between Mr. Esler, Esler Resort Consulting Ltd., and 0798552 BC Ltd. dba Off-Piste Capital and the staff of the Registrar (“Staff”);

AND WHEREAS the Registrar agrees to the following terms of a consent order:

A. FINDINGS

The Registrar makes the following findings against Mr. Esler, and Mr. Esler accepts the following findings made against him:

1. Contrary to section 8 (1.4) of the MBA, you carried on business as a submortgage or mortgage broker without being registered to do so as required by the MBA, and without being exempted from registration pursuant to section 11 of the MBA following the expiry of your registration in July 2016 and thereafter by any or all of the following,
 - a. Accepting the information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - b. Obtaining documents and information from borrowers and providing to lenders to support mortgage applications;
 - c. Arranging mortgages for borrowers and/or lenders; and
 - d. Receiving remuneration in excess of \$1,000 for arranging mortgages between July 2016 to 2021.
2. Contrary to section 17.1 of the MBA, you failed to provide investors with Investor/Lender Information Statement – Form 9 disclosure (“Form 9”) on mortgages between 2019 and 2021.
3. Contrary to section 17.3(2)(a) and section 17.4(a) of the MBA, you failed to provide borrowers and lenders with Conflict of Interest Disclosure Statement – Form 10 (“Form 10”) between July 2016 and 2021.

The Registrar makes the following findings against Esler Resort Consulting Ltd. and/or its sole director, Mr. Esler, and Esler Resort Consulting Ltd. and/or Mr. Esler accept the following findings against them:

4. Contrary to section 8 (1.4) of the MBA, you carried on business as a mortgage broker without being registered to do so as required by the MBA, and without being exempted from registration pursuant to section 11 of the MBA following the expiry of your registration in July 2016 and thereafter by any or all of the following,
 - a. Accepting the information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - b. Obtaining documents and information from borrowers and providing to lenders to support mortgage applications;
 - c. Arranging mortgages for borrowers and/or lenders;
 - d. Holding yourself out, or by advertisement, notice or sign as a mortgage broker registered in British Columbia, and in good standing from July 2016 to December 2021; and

- e. Receiving remuneration in excess of \$1,000 for arranging a mortgage in 2016.
5. Contrary to section 17.3(2)(a) and section 17.4(a) of the MBA, you failed to provide borrowers and a lender with a Form 10 for one (1) mortgage in 2016.

The Registrar makes the following findings against 0798552 B.C. Ltd. dba Off Piste Capital and/or its sole director Mr. Esler, and 0798552 B.C. Ltd. dba Off Piste Capital and/or Mr. Esler accept the following findings against them:

6. Contrary to section 8 (1.4) of the MBA, you carried on business as a mortgage broker without being registered to do so as required by the MBA, and without being exempted from registration pursuant to section 11 of the MBA by any or all of the following,
 - a. Accepting the information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - b. Obtaining documents and information from borrowers and providing to lenders to support mortgage applications;
 - c. Arranging mortgages for borrowers and/or lenders; and
 - d. Receiving remuneration in excess of \$1,000 for arranging mortgages between 2017 and 2021.
7. Contrary to section 17.1 of the MBA, you failed to provide investors with Form 9 on up to ten (10) mortgages between 2019 to 2021.
8. Contrary to section 17.3(2)(a) and section 17.4(a) of the MBA, you failed to provide borrowers and lenders with Form 10 on up to 27 mortgages from 2019 to 2021.

B. ORDERS AND PENALTY

Mr. Esler, Esler Resort Consulting Ltd., and 0798552 B.C. Ltd. dba Off Piste Capital hereby consent to, and the Registrar hereby makes the following orders:

1. Mr. Esler, Esler Resort Consulting Ltd., and 0798552 B.C. Ltd. dba Off Piste Capital must cease providing mortgage brokering services until they are registered;
2. Pursuant to section 8(1.4) of the MBA, Mr. Esler, Esler Resort Consulting Ltd., and 0798552 B.C. Ltd. dba Off Piste Capital shall jointly and severally pay an administrative penalty of \$40,000;
3. Pursuant to section 6(9) of the MBA, Mr. Esler, Esler Resort Consulting Ltd., and 0798552 B.C. Ltd. dba Off Piste Capital shall jointly and severally pay investigation costs in the amount of \$7,937.32; and
4. All amounts are immediately due and payable, and all payments must be made by cheque, bank draft, or money order, payable to the BC Financial Services Authority. This order may be filed with the court pursuant to the MBA, and steps to enforce this order may be taken if payment is not made in full within thirty (30) calendar days.

C. AGREED FACTS

As a basis for this Consent Order, Mr. Esler, Esler Resort Consulting Ltd., and 0798552 B.C. Ltd. dba Off Piste Capital acknowledges the following facts as correct and make the following admissions:

Background

1. Mr. Esler and Esler Resort Consulting Ltd. were previously registered under the MBA from June 10, 2008, to July 9, 2016, with registration expiring on July 9, 2016.
2. Mr. Esler has been registered in Alberta under the Real Estate Council of Alberta from June 28, 2002, to present.
3. Mr. Esler was the sole submortgage broker and the sole director of Esler Resort Consulting Ltd. during the period it was registered. Mr. Esler continues to be the sole director of Esler Resort Consulting Ltd. up to the present.
4. Esler Resort Consulting Ltd. is a company registered in B.C. with a registered records office of [Address Redacted], Vancouver, B.C.
5. At all material times Mr. Esler was the sole director of 0798852 B.C. Ltd. dba Off-Piste Capital, which has never been registered under the MBA.
6. 0798852 B.C. Ltd. dba Off-Piste Capital is a company registered in B.C. with a registered records office of [Address Redacted], Vancouver, B.C.
7. On February 26, 2021, Mr. Esler self-reported to the Registrar that he conducted mortgage brokering activity since the expiry of his registration with BC Financial Services Authority ("BCFSA") on July 9, 2016.
8. Mr. Esler states that he did not renew his or Esler Resort Consulting Ltd.'s registration in B.C. because the regulator did not remind him, so he had forgotten.
9. Mr. Esler acknowledges that it is his fault for overlooking the registration requirement.
10. On April 1, 2021, Staff of BCFSA requested Mr. Esler to provide a list of all mortgages financed in B.C. including dates of mortgages advanced, the value of the mortgages, names of borrower and lenders, and whether the mortgages were residential or commercial (the "Request").
11. On April 6, 2022, Mr. Esler complied with the Request.

Mortgages services and Fees

12. Staff of BCFSA conducted an examination covering mortgage files from July 9, 2016, to October 13, 2021. Five mortgage files were selected for review and found the following:
 - a. Mr. Esler arranged commercial mortgages through his company, under the name of Off-Piste Capital.

- b. Mr. Esler arranged mortgages for an unregistered lender, [Lender 1].
 - c. 0798552 B.C. Ltd. dba Off-Piste Capital received more than \$1,000 annually in placement and processing fees for arranging commercial mortgages.
 - d. Mr. Esler referred to Esler Resort Consulting Ltd. on his website as licensed in B.C. and in good standing to conduct mortgage brokering.
 - e. Mr. Esler did not provide form 9 and form 10 disclosure as required under the MBA.
13. Examinations referred the file to investigations for further review of the contraventions of the MBA on or about November 2021.
14. Mr. Esler acknowledges that he provided mortgage broker services through Esler Resort Consulting Ltd. and 0798852 B.C. Ltd. dba Off-Piste Capital (the "Entities") between July 9, 2016, and December 2021, including arranging financing, assessing deals, gathering all required documents, negotiating with lenders and presenting to borrowers.
15. In response to Staff's further request for details of transactions completed between July 2016 and December 2021, Mr. Esler provided the following information of all mortgages financed in B.C.:
- a. He received \$804,579 in fees from October 2016 to December 2021:
 - i. 2016 - \$19,750 received under Esler Resort Consulting Ltd.
 - ii. 2017 - \$0
 - iii. 2018 - \$0
 - iv. 2019 - \$160,745 received under 0798852 B.C. Ltd. dba Off-Piste Capital
 - v. 2020 - \$359,175 received under 0798852 B.C. Ltd. dba Off-Piste Capital
 - vi. 2021 - \$264,909 received under 0798852 B.C. Ltd. dba Off-Piste Capital
 - b. He funded 28 mortgages totaling \$157,281,130 that involved properties in B.C.:
 - i. 2016 – one (1) transaction
 - ii. 2017 – no transactions
 - iii. 2018 – no transactions
 - iv. 2019 – six (6) transactions
 - v. 2020 – 13 transactions
 - vi. 2021 – eight (8) transactions
 - c. [Lender 1] was the lender on 10 transactions.

16. [Lender 1] has been unregistered at all material times. There is no evidence to suggest that [Lender 1] is exempt from registration under the MBA or meets the definition of a sophisticated person under the MBA.
17. Mr. Esler and the Entities acknowledge they had dealings including arranging mortgages with an unregistered lender, [Lender 1].
18. Mr. Esler and the Entities were not aware that [Lender 1] was an unregistered lender or that they were required to be registered.
19. Mr. Esler and Esler Resort Consulting Ltd. acknowledge that Esler Resort Consulting Ltd. received remuneration in excess of \$1,000 for arranging a mortgage in 2016.
20. Mr. Esler and 0798552 B.C. Ltd. dba Off Piste Capital acknowledge that 0798552 B.C. Ltd. dba Off Piste Capital received remuneration in excess of \$1,000 per year for arranging mortgages from 2017 to 2021.

Disclosure Requirements

21. Mr. Esler and the Entities acknowledge they did not provide form 9 and 10 disclosure to clients as follows:
 - a. Mr. Esler and Esler Resort Consulting Ltd:
 - i. Failure to provide form 10 disclosure to borrowers and lender on one (1) mortgage in 2016.
 - b. Mr. Esler and 0798552 B.C. Ltd. dba Off-Piste Capital
 - i. Failure to provide form 9 disclosure to investors on ten (10) mortgages between 2019 and 2021.
 - ii. Failure to provide form 10 disclosure to borrowers and lenders on 27 mortgages between 2019 and 2021.
22. Mr. Esler and the Entities misunderstood that engagement letters would provide the same information required in a form 10.

Advertising

23. Mr. Esler established the website www.off-pistecapital.com in 2016 (the "Website"). Mr. Esler has not updated the website since its launch in 2016.
24. At the time of the Website's creation, Esler Resort Consulting Ltd. was in good standing with BCFSA and was registered.
25. As of November 25, 2021, the Website continued to refer to Esler Resort Consulting Ltd. as licensed in B.C. and in good standing to conduct mortgage business.

26. Mr. Esler and Esler Resort Consulting Ltd. acknowledge that Esler Resort Consulting Ltd. held itself out by advertisement as a mortgage broker registered in British Columbia and in good standing from July 2016 to December 2021.

Other Factors

- 27. Mr. Esler and Esler Resort Consulting Ltd. have no prior discipline history with BCFSB.
- 28. Mr. Esler and the Entities have cooperated with the investigation and have provided all requested documents.
- 29. Mr. Esler and the Entities have dealt exclusively in commercial deals from 2016 to 2021, with minimal risk to the residential consumer.
- 30. Mr. Esler and the Entities missed three (3) renewal periods in British Columbia, while maintaining registration in Alberta.

D. WAIVER

Mr. Esler, Esler Resort Consulting Ltd., and 0798552 BC Ltd. dba Off-Piste Capital waive their right to a hearing under ss 4 and 8 of the MBA and waive their right to appeal under s 9 of the MBA.

Approved as to form and content by:

“MICHAEL ESLER”

_____ this 29th day of September, 2022.

Michael Randall Esler on behalf of himself
and on behalf of Esler Resort Consulting Ltd.,
and an behalf of 0798552 BC Ltd. dba Off-Piste Capital

“MELANIE BOOTH”

_____ this 29th day of September, 2022.

Melanie Booth

Senior Legal Counsel for the Staff of the
Registrar of Mortgage Brokers

Issued this 21st day of October, 2022 at Victoria, British Columbia.

“JONATHAN VANDALL”

Jonathan Vandall

Acting Registrar of Mortgage Brokers
Province of British Columbia