

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *MORTGAGE BROKERS ACT*
RSBC 1996, c. 313 as amended**

AND

IN THE MATTER OF

**JUSTIN PHU PHAM
(140553)**

AND

**JP ELITE MORTGAGE
(X030119)**

Decision on Penalty and Costs

[This Decision has been redacted before publication.]

Date of Hearing: Written Submissions

Counsel for BCFSA: Amandeep Sandhu
Meredith MacGregor

Counsel for the Respondents: Randip Hundal

Hearing Officer: Andrew Pendray

Introduction

1. On November 29, 2019, a Notice of Hearing was issued alleging that Justin Phu Pham had carried on mortgage business as a mortgage broker or submortgage broker without being registered to do so, contrary to section 8(1.4) of the *Mortgage Brokers Act* (the “MBA”), and continued to do so contrary to a December 22, 2017 cease and desist order (the “Cease and Desist Order”) from the Registrar of Mortgage Brokers (the “Registrar”).
2. The Notice of Hearing further alleged that JP Elite Mortgage (“JP Elite”) had carried on business as a mortgage broker without being registered to do so, contrary to section 8(1.4) of the MBA, by permitting Mr. Pham to hold himself out as a mortgage broker with JP Elite while neither were registered under the MBA.
3. The allegations set out in the Notice of Hearing relate to mortgage transactions that occurred in 2017 through 2019.

4. On April 13, 2023, Mr. Pham and JP Elite¹ entered into an Agreed Statement of Facts and Liability (the “ASF”) with the BC Financial Services Authority (“BCFSA”), admitting to the allegations set out in the Notice of Hearing.
5. This decision relates to the appropriate orders to be issued against the Respondents in respect of those admissions.
6. BCFSA seeks an order that the Respondents pay an administrative penalty of \$50,000 pursuant to section 8(1.4) of the MBA. BCFSA further seeks an order that the Respondents pay partial costs of the investigation and hearing, in the amount of \$13,300.49, pursuant to section 6(9) of the MBA.
7. The Respondents take the position that the administrative penalty sought by BCFSA is too high, and submit that an administrative penalty in the amount of \$25,000 would be appropriate.

Issues

8. The issue is the appropriate orders to be issued in respect of the Respondents’ conduct, as provided for by section 8(1.4) of the MBA.
9. Additionally, there is the question of whether the Respondents should be required to pay investigative and hearing costs pursuant to section 6(9) of the MBA.

Jurisdiction and Procedure

10. BCFSA Hearing Officers are appointed to act for the Registrar in respect of orders under sections 8 and 6(9) of the MBA, pursuant to a May 16, 2023 Acting Capacity Instrument.
11. This matter proceeded both by way of an oral hearing, as well as written submissions. The Respondents were not represented by legal counsel at the oral hearing, but were represented for the written submission portion of the hearing.

Notice of Hearing

12. The Notice of Hearing set out the following allegations against Mr. Pham:
 1. Contrary to section 8(1.4) of the Act, JUSTIN PHU PHAM (“Mr. Pham”), having been formerly registered, carried on business as a mortgage broker or submortgage broker without being registered to do so as required by section 21(1)(a) of the MBA, and without being exempt from registration pursuant to section 11 of the MBA by:
 - a. Directing the course of mortgage applications on behalf of borrowers including giving instructions or directions to [Broker 1] (“[Broker 1]”), a Registrant, as to the financial information, qualifications, and personal information of one or more of the borrowers and mortgage applications set out in Schedule “A” of the Notice of Hearing;
 - b. Conducting one or more of the following activities on behalf of any one or more of the borrowers listed in Schedule “A” to the Notice of Hearing:

¹ This decision will refer to Mr. Pham and JP Elite, collectively, as the Respondents.

- i. accepted the personal information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - ii. obtained documents and information from borrowers to support their mortgage applications;
 - iii. collected personal information of borrowers and forwarding that information to [Broker 1];
 - iv. acted as a liaison between the borrowers and [Broker 1] and referred borrowers to [Broker 1]; and,
 - v. receiving remuneration in excess of \$1,000 during any one year for arranging mortgages.
2. Contrary to section 8(1.4) of the Act, Mr. Pham, having been formerly registered under the MBA and having been ordered by the Registrar to cease all mortgage broker activities by way of a Cease and Desist Order dated December 22, 2017, continued to carry on business as a mortgage broker or submortgage broker by:
- a. Directing the course of mortgage applications on behalf of borrowers including giving instructions or directions to [Broker 2] (“[Broker 2]”), a Registrant, as to the financial information, qualifications, and personal information of one or more of the borrowers and mortgage applications set out in Schedule “B” to the Notice of Hearing.
 - b. Conducting one or more of the following activities on behalf of any one or each of the borrowers in Schedule “B” of the Notice of Hearing:
 - i. Accepted the personal information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - ii. Obtained documents and information from borrowers to support their mortgage applications;
 - iii. Collected personal information of borrowers and forwarding that information to [Broker 2];
 - iv. Acted as a liaison between the borrowers and [Broker 2];
 - v. Referred borrowers to [Broker 2];
 - vi. Received remuneration in excess of \$1,000 in any one year for arranging mortgages; and,
 - vii. Held himself out to the public as a submortgage broker and JP Elite as a mortgage broker to a notary in respect of the [Borrower 14] transaction.

13. The allegations set out in the Notice of Hearing relating to JP Elite were as follows:

3. Contrary to section 8(1.4) of the MBA, JP Elite carried on business as a mortgage broker in British Columbia without being registered to do so as required by section 21(1)(a) of the MBA, and without being exempted from registration pursuant to section 11 of the MBA by permitting Mr. Pham to hold himself out as a mortgage broker with JP Elite while neither were registered under the MBA.
14. The Schedules referenced in the Notice of Hearing referred to a number of mortgage applications which will be reviewed subsequently in this decision.

Background

15. The evidence and information before me includes the information set out in the ASF, the affidavit evidence of [Investigator 1], BCFSA investigator, the evidence of Mr. Pham, as well as the evidence and information set out in the Book of Documents referred to in the ASF.
16. I have reviewed and considered all of the evidence and information before me. The following background summary, which is largely taken from the ASF, is intended to provide context for my reasons.

Registration History and Expiry

17. Mr. Pham was originally registered as a submortgage broker under the MBA in October 2004. Mr. Pham continued to be registered until October 4, 2016, when his registration expired.
18. Prior to the expiry of his registration, Mr. Pham was sent a registration renewal reminder on August 5, 2016. On October 3, 2016, Mr. Pham was informed of deficiencies in his registration renewal application. FICOM (BCFSA's predecessor) subsequently wrote to Mr. Pham again on October 4, 2016 regarding those application deficiencies, and noted in particular a court case involving Mr. Pham that it required further information on. Further requests for information were sent to Mr. Pham by FICOM on October 11, October 18, October 25 and November 1, 2016.
19. At the time his registration expired, Mr. Pham was registered to work at the mortgage brokerage known as Verico JP Elite Mortgage Inc., doing business as JP Elite Mortgage.
20. Verico JP Elite Mortgage Inc. was incorporated in October 2010. Mr. Pham was an officer and director of that corporation until its dissolution on September 17, 2018.
21. JP Elite was a registered sole proprietorship of Verico JP Elite Mortgage Inc. JP Elite was first registered as a mortgage broker under the MBA on December 20, 2010. On October 27, 2011 Mr. Pham became the designated individual for JP Elite.
22. Mr. Pham wrote to FICOM on December 12, 2016. In that email he indicated that there had previously been two owners of JP Elite. Mr. Pham explained that the other former owner had engaged in a number of "underhanded tactics" to profit from the resources and assets that JP Elite had paid for, and that as a result Mr. Pham had brought a claim against that former owner.
23. In a December 14, 2016 reply, FICOM noted that it was seeking information regarding another court case, in which Mr. Pham was listed as the defendant.
24. Mr. Pham replied to FICOM on February 7, 2017. In that email he indicated that he had not been served in respect of the case where he was named as a defendant, but that he had now contacted the plaintiff and had agreed to pay \$1,000 to the plaintiff.
25. FICOM requested, in a February 28, 2017 email, verification that the judgment had been resolved.
26. On that same date, Mr. Pham replied that he had not paid the \$1,000 in respect of the court case in which he was named as a defendant due to the fact that he did not have enough money to make that payment. Mr. Pham indicated that he had hoped his license renewal would have

been completed in order that he could complete some mortgage deals and be able to make the payment.

27. FICOM then requested a copy of the agreement between Mr. Pham and the plaintiff indicating that he would pay her the \$1,000. Mr. Pham replied, by email on March 2, 2017, that the agreement was verbal. FICOM indicated, in a March 3, 2017 email, that it would not renew Mr. Pham's registration based only on a verbal agreement. FICOM requested a written agreement or verification that the judgment had been paid. In that email FICOM noted that:

Please be advised that as we do not have a renewal application, fees for your company JP Elite Mortgage, you are not permitted to conduct any mortgage broker activity.

28. On March 14, 2017, Mr. Pham provided FICOM with a signed agreement letter and bank draft indicating he had paid the judgment in question. Mr. Pham also provided a cheque to FICOM for the renewal fee for JP Elite.
29. Of note, JP Elite's registration had expired on December 19, 2016, shortly after Mr. Pham's registration had expired. Prior to the expiry of its registration, JP Elite was sent a registration renewal reminder on October 20, 2016. On February 28, 2017 FICOM emailed Mr. Pham and noted that it had not received an application from JP Elite for renewal of its registration, and that as JP Elite's registration had expired, neither JP Elite, nor any sub-mortgage brokers could conduct any mortgage broker activities.
30. FICOM wrote to Mr. Pham on May 5, 2017 and informed him that the March 14, 2017 cheque he had provided for JP Elite's renewal fee had bounced. FICOM also noted that Mr. Pham needed to ensure that VERICO was removed from JP Elite's corporate name and advertising. FICOM noted that:

Until these are complete, we will not be proceeding with your renewal or the company renewal. Be advised that until you and the company have been renewed, you are prohibited from conducting any Mortgage Broker Activity.

31. FICOM received three complaints regarding Mr. Pham subsequent to the expiration of his registration in October 2016. In his affidavit, [Investigator 1] indicated that those complaints were received on November 4, 2016, August 3, 2017, and August 23, 2017.
32. [Investigator 1] indicated that he had investigated those complaints and that he had, on August 24, 2017, issued a summons under section 6(3) of the MBA to [Company 1], which owned and operated Filogix. [Investigator 1] indicated that in that summons he was seeking information regarding Mr. Pham's Filogix account. [Investigator 1] indicated that a review of that information showed that since the expiration of Mr. Pham's registration on October 6, 2016, his Filogix account had been used to create 47 mortgage applications and to submit a total of 15 mortgage applications to lenders.
33. On September 11, 2017, FICOM emailed Mr. Pham and informed him that as the required information and payment had not been received, JP Elite's application for registration was being withdrawn by the Registrar. FICOM reiterated that as neither JP Elite nor Mr. Pham were registered, they were not permitted to conduct any mortgage broker activity. FICOM further noted that should Mr. Pham wish to reapply for JP Elite's registration, he would need to submit all forms and fees again.
34. Mr. Pham replied on September 12, 2017 and requested a further three weeks to provide all required information and payment.
35. [Investigator 1] conducted an interview with Mr. Pham on October 18, 2017. In his affidavit, [Investigator 1] indicated that at that interview he had informed Mr. Pham that he could not provide mortgage broker services while he was unregistered.
36. Subsequently, on December 22, 2017, the acting Registrar issued an order directing the Respondents to cease and desist carrying on business as a submortgage broker or mortgage

broker, from acting as or holding out as a mortgage broker or submortgage broker, and from conducting any unregistered mortgage broker activity in B.C.

37. On January 15, 2018, the Registrar published an industry alert to all registered mortgage brokers and submortgage brokers advising of the Cease and Desist Order issued in respect of the Respondents. [Broker 1] received and read that industry alert.
38. Despite not being registered, Mr. Pham admits that he continued to hold himself out as a mortgage broker with JP Elite through 2017, 2018, and 2019.

[Broker 1] Transactions

39. In or around June 2017, Mr. Pham began working with [Broker 1] to submit mortgage applications on behalf of borrowers. At that time, Mr. Pham was in a personal relationship with [Broker 1], and cohabited with her.
40. From November 2, 2012 until November 23, 2016, [Broker 1] was registered as a submortgage broker with JP Elite. Subsequently, from March 28, 2017 to November 28, 2017, [Broker 1] was registered as a submortgage broker with [Brokerage 1] doing business as [Brokerage 1], and between December 22, 2017 and July 9, 2020, [Broker 1] was registered as a submortgage broker with [Brokerage 2].
41. [Broker 1] was travelling outside of Canada from approximately June 28, 2017 to July 19, 2017, and from September 23, 2017 to October 5, 2017. Prior to leaving the country in June 2017, [Broker 1] provided Mr. Pham with her identification credentials and password for the Filogix electronic platform, which is used by submortgage brokers to input personal information of borrowers and submit mortgage applications and supporting documents to lenders. [Broker 1] was not aware, at that time, that Mr. Pham was no longer registered as a submortgage broker.
42. Mr. Pham used [Broker 1]'s Filogix credentials to input borrower information into mortgage applications for borrowers, and to arrange and submit six mortgage applications (the "2017 Mortgage Applications"):
 - A July 6, 2017 mortgage application for [Borrower 1] in respect of the purchase of [Property 1], Coquitlam;
 - A September 4, 2017 mortgage application for [Borrower 2] in respect of the purchase of [Property 2], Vancouver;
 - A September 4, 2017 mortgage application for [Borrower 3] in respect of the purchase of [Property 3], Maple Ridge;
 - A November 7, 2017 mortgage application for [Borrower 4] in respect of the purchase of [Property 4], Surrey;
 - A November 13, 2017 mortgage application for [Borrower 5] in respect of the purchase of [Property 5], Maple Ridge; and
 - A November 17, 2017 mortgage application for [Borrower 5] in respect of the purchase of [Property 5], Maple Ridge.
43. Mr. Pham had direct contact with the borrowers in respect of each of the 2017 Mortgage Applications. He did not consult with [Broker 1], or discuss the details of those applications prior to submitting them through her Filogix account. [Broker 1] did not review or verify the accuracy or authenticity of any of the information and documentation collected by Mr. Pham in respect of the 2017 Mortgage Applications, nor did she have any contact with any of those borrowers.
44. Mr. Pham also admitted that for each of the 2017 Mortgage Applications he:

- obtained the personal information of the borrowers for the purposes of obtaining mortgage financing;
 - determined what personal information and documents were required from borrowers and lenders with respect to the 2017 Mortgage Applications;
 - obtained documents from borrowers to support the 2017 Mortgage Applications;
 - inputted personal information that he obtained from the borrowers in Filogix using [Broker 1]'s login credentials;
 - submitted the 2017 Mortgage Applications and supporting documents using [Broker 1]'s Filogix login credentials without consulting [Broker 1] on any of the 2017 Mortgage Applications;
 - reviewed and explained disclosure documents with borrowers;
 - affixed [Broker 1]'s signature on documents in relation to the 2017 Mortgage Applications, including Form 10 - Conflict of Interest Disclosure Statements, Fixed Credit Disclosure Statement and Open Credit Disclosure Statements;
 - provided mortgage advice or information to borrowers, including advice or information relating to mortgage rates, terms, conditions, fees and qualification; and,
 - provided lenders with the borrowers' financial information and personal documentation.
45. [Broker 1] received approximately \$15,000 in commissions for the mortgages she facilitated through her Filogix account for Mr. Pham, and she paid Mr. Pham a referral fee of between \$700 and \$1,000 for each of those mortgages.

[Borrower 1] Application

46. In respect of the [Borrower 1] application, Mr. Pham admitted to having met [Borrower 1] in person at least one time regarding her mortgage application, and that he had informed [Borrower 1] that he was a mortgage broker, and that [Borrower 1] had one of his business cards which indicated that Mr. Pham was a mortgage broker.
47. Mr. Pham admitted further that [Borrower 1] had never communicated with [Broker 1], and that [Borrower 1] was not at any time aware of [Broker 1] having involvement in her mortgage applications.
48. Mr. Pham admitted that he had received from [Borrower 1] approximately \$200 to \$300 in cash at the conclusion of the mortgage transaction as "thank you money".

[Borrower 4] Application

49. Mr. Pham admitted to having informed [Borrower 4] that he could assist her with her mortgage, to having met with her at least three times in person regarding her mortgage application, and to having told [Borrower 4] what documents to provide for that application. Mr. Pham did not tell [Borrower 4] that he was not a registered submortgage broker, or that his registration was pending.
50. Mr. Pham admitted that he had negotiated a commission with [Borrower 4], and she paid a "broker fee" of \$3,750 to JP Elite at the closing of her financing.
51. [Borrower 4] did not communicate with [Broker 1] and was not aware of [Broker 1] having involvement in her mortgage applications.

[Borrower 5] Applications

52. On September 18, 2017, [Individual 1], a property owner in Maple Ridge, entered into a contract to sell her property to [Borrower 5].
53. [Borrower 5] sought financing from Mr. Pham, who was not registered as a submortgage broker at that time. Although [Borrower 5's] application was initially approved, it was subsequently declined by the lender due to concerns regarding the authenticity of the documents that had been submitted in the application. Despite being granted several extensions, [Borrower 5] [was] unable to complete the purchase of the MacLeod property.
54. As a result, [Borrower 5] lost their deposit on the [Individual 1] property, in the amount of \$10,000.
55. [Individual 1] was also forced to obtain a bridge loan to complete the purchase of a property for which she had entered into a contract, and as a result incurred additional fees of \$3,200.
56. During the transaction process, Mr. Pham sent an email to [Individual 1]'s realtor. Mr. Pham's email signature on that email indicates that he was with JP Elite, and his title was that of a "Mortgage Consultant Partner".
57. [Individual 1]'s submortgage broker, [Broker 3], had requested that [Borrower 5] provide a copy of their mortgage application, in order that [Broker 3] could verify that they could qualify for a mortgage. [Broker 3] reviewed those documents and, upon making enquiries, determined that Mr. Pham was not a registered mortgage broker. [Broker 3] made a complaint to FICOM regarding Mr. Pham's unregistered activity on December 4, 2017.
58. Of note, [Broker 3] had attempted to submit [Borrower 5's] mortgage application to a lender, but the lender had rejected it on the basis that the T4 documents submitted with that application were fraudulent.

[Broker 2] Transactions

59. [Broker 2] was first registered as a submortgage broker in June 2004. From December 22, 2016 until February 8, 2017, [Broker 2] was registered as a submortgage broker with JP Elite.
60. Subsequently, [Broker 2] was registered from February 8, 2017 to December 21, 2018, and from December 22, 2018 to December 21, 2020 with [Brokerage 3].
61. Mr. Pham and [Broker 2] are former spouses who share two children.
62. In or around December 2017, Mr. Pham explained to [Broker 2] that because of issues regarding transfer or registration of licensing, he was no longer a practicing mortgage broker. Mr. Pham did not advise [Broker 2] of the Cease and Desist Order. Mr. Pham also advised [Broker 2] at that time that he would be unable to provide her with child support given his registration difficulties. Mr. Pham informed [Broker 2] that, instead, he would provide her with referrals and assist her.
63. As a result, [Broker 2] began to work with Mr. Pham in December 2017 to submit mortgage applications on behalf of borrowers. [Broker 2] accepted referrals from Mr. Pham in respect of nine mortgage applications (the "2018 Mortgage Applications"):
 - December 16, 2017 mortgage application for [Borrower 6] for the refinance of [Property 6], Surrey, BC;
 - January 9, 2018 mortgage application for [Borrower A], [Borrower B], and [Borrower C] [Collectively: Borrower 7] for the refinance of [Property 7], Surrey, BC;
 - February 20, 2018 mortgage application for [Borrower D], [Borrower E], and [Borrower F] [Collectively: Borrower 8] for the refinance of [Property 8], Abbotsford, BC;
 - March 10, 2018 mortgage application for [Borrower 9] for the purchase of [Property 9] Surrey, BC;
 - May 20, 2018 mortgage application for [Borrower 10] (the "[Borrower 10]") for the refinance of [Property 10], Burnaby, BC;

- August 20, 2018 mortgage application for [Borrower 11] for the purchase of [Property 11], Vancouver, BC;
 - September 25, 2018 mortgage application for [Borrower 12] for the refinance of [Property 12], Abbotsford, BC;
 - September 17, 2018 mortgage application for [Borrower 13] for the refinance of [Property 13], Powell River, BC; and,
 - December 23, 2018 mortgage application for [Borrower 14] for the refinance of [Property 14], Port Coquitlam, BC.
64. [Broker 2] received a commission for each of those mortgages, totaling at least \$33,916.32.
65. Mr. Pham claimed that as a result of the referrals he provided to [Broker 2], he obtained a reduction of \$500 in the amount of child support he owed her, per application referral. Mr. Pham further admitted that he received at least \$1,000 in income for the 2018 Mortgage Applications, including \$3,000 in cash from the [Borrower 7] borrowers, a \$3,100 broker fee to JP Elite for the [Borrower 6] application, and a \$5,000 broker fee on the closing of the [Borrower 14] application on January 16, 2019.
66. In early 2018, [Broker 2] provided Mr. Pham with her Filogix ID and password. Mr. Pham utilized those credentials to input information into Filogix mortgage applications for the borrowers.
67. Mr. Pham admits to having had direct contact with the borrowers in the 2018 Mortgage Applications, and to having:
- accepted the personal information of the borrowers for the purposes of obtaining mortgage financing;
 - determined what documents were required from borrowers in respect of the 2018 Mortgage Applications;
 - obtained documents and information from borrowers to support their mortgage applications;
 - collected personal information of borrowers and forwarded that information to [Broker 2] and inputted that information into Filogix using [Broker 2]'s login credentials;
 - provided [Broker 2] with directions or instructions as to the financial information, qualifications, and personal information of the borrowers for submission to lenders; and, using [Broker 2]'s Filogix login credentials, Mr. Pham submitted mortgage applications for the borrowers and supporting documents to lenders; and
 - provided mortgage advice or information to the borrowers regarding mortgage approval information from the lenders such as rates and terms, conditions, fees and qualification.
68. Mr. Pham admitted that he had met with the borrowers in the 2018 Mortgage Applications to execute required closing documents, and that he knew, in 2018, that his conduct in respect of those applications was mortgage broker activity that was prohibited by the Cease and Desist Order.

[Borrower 6] Application

69. [Borrower 6] met Mr. Pham outside of a bank where Mr. Pham was soliciting business. Mr. Pham informed [Borrower 6] that he could assist him with mortgage financing, and provided [Borrower 6] a business card which indicated that he was a mortgage broker.

70. Mr. Pham met with [Borrower 6] at least twice in person, and provided mortgage advice or information relating to mortgage rates, terms, conditions, fees and qualification, as well as informing [Borrower 6] what documents were required for the application.
71. Mr. Pham did not tell [Borrower 6] that he was not registered under the MBA, nor that his mortgage broker registration was pending. Nor did Mr. Pham tell [Borrower 6] about [Broker 2] having any involvement in his mortgage.
72. [Borrower 6] signed a Letter of Direction directing payment of a brokerage fee to JP Elite Mortgage at the close of his refinancing, and a brokerage fee of \$3,100 was paid to JP Elite Mortgage Inc. from the closing proceeds. [Borrower 6] was not aware that he was required to pay an additional fee to Mr. Pham until he met with his lawyer to execute closing documents.

[Borrower 9] Application

73. Mr. Pham informed [Borrower 9] that he could assist her with her mortgage, and informed her as to what documents she had to provide him. Mr. Pham met with [Borrower 9] in person on at least one occasion, and did not tell her that he was an assistant, or that his mortgage broker registration was pending.

[Borrower 10] Application

74. Mr. Pham was referred to [Borrower 10] as a mortgage broker. [Borrower 10] and their daughter, [Individual 2], met with Mr. Pham, and he advised them what documents were required for the application. Mr. Pham subsequently met with [Individual 2] on at least two occasions, as well as spoke via telephone.
75. [Borrower 10] believed Mr. Pham to be a mortgage broker, and Mr. Pham did not tell her that his registration was pending.
76. Mr. Pham provided mortgage advice and information to [Borrower 10] and discussed the mortgage and their needs and provided advice knowing that they had pre-approval.

[Borrower 7] Application

77. [Borrower A] was referred to Mr. Pham through a family friend. [Borrower A] believed Mr. Pham to be a mortgage broker, and was aware of the JP Elite website. Mr. Pham met with [Borrower A] in person on at least one occasion, and he told [Borrower A] that he could assist with the mortgage and advised her as to what documents were required. Mr. Pham at no time informed [Borrower A] that he was not registered, or that he was an assistant.
78. [Borrower A] paid Mr. Pham an upfront fee of \$3,000 cash for his services in respect of the mortgage application.
79. During the mortgage application process, Mr. Pham at one point advised [Borrower A] to forfeit her down payment due to the fact that she was unable to secure timely financing. [Borrower A] subsequently obtained a high interest loan in order to complete the property purchase and, as a result, incurred unexpected costs.
80. On Mr. Pham's advice, [Borrower A] subsequently broke the high interest mortgage after two to three months, and was able to obtain mortgage financing with [Lender 1], with Mr. Pham's assistance. Mr. Pham informed [Borrower A] that he would pay the fees related to breaking the high interest mortgage, which fees totaled approximately \$39,000. He further informed [Borrower A] that [Broker 2]'s name would be on the [Lender 1] mortgage as the mortgage broker.
81. Although Mr. Pham issued a cheque to [Borrower A] in that amount, the cheque was returned as non-sufficient funds.
82. [Borrower A] contacted [Broker 2] when Mr. Pham ceased responding to her. She informed [Broker 2] that she would report both [Broker 2] and Mr. Pham unless she received the money she was owed. Mr. Pham subsequently transferred \$500 to [Borrower A].

[Borrower 8] Application

83. Mr. Pham attended [Borrower D]'s house, and [Borrower D] gave his application information, including financial information and personal documentation, to Mr. Pham. Mr. Pham provided that information to [Broker 2], who did not verify it.

[Borrower 14] Application

84. Mr. Pham received payment of a \$5,000 brokerage fee, payable to JP Elite Mortgage, directly from [Borrower 14] for the refinance of [Borrower 14]'s property.
85. In email correspondence with [Borrower 14]'s notary, Mr. Pham's signature referenced JP Elite Mortgage and that he was a "Mortgage Consultant Partner".

Mr. Pham's Evidence

86. In his evidence at the hearing of this matter Mr. Pham indicated that he recognised that his actions were not consistent with the requirements of the MBA. He indicated that there were a number of things happening with the business of JP Elite around the time of 2017, and that although he had completed his renewal applications, he was simply unable to complete the process. He noted that he had had difficulty with a previous business partner of JP Elite. Mr. Pham noted that it was that partner who had maintained JP Elite's website and social media, and he indicated that he had not known how to remove the corporate name Verico from JP Elite's business.
87. Mr. Pham described having felt that the renewal of both his and JP Elite's licences was really just a matter of when they would be renewed, not if. As a result, his actions throughout the 2017 period were in line with that thinking.
88. Mr. Pham suggested that the mortgage applications had been commenced prior to the issuing of the Cease and Desist Order in December 2017, and that he simply felt that he was continuing on to complete those applications. In saying that, Mr. Pham subsequently admitted that some of the applications were referred to him after the Cease and Desist Order was issued.
89. Mr. Pham also described dealing with personal issues around the times at issue. He noted in respect of his relationship with [Broker 2] that he was behind on child support payments and that he felt a lot of pressure to make that up, and it was on that basis that he came up with the plan to refer mortgage applications to her.
90. In general terms, Mr. Pham described the situation as one in which he was under a lot of pressure, and where he had simply made some poor decisions. Mr. Pham noted that he had been in the industry for a lengthy period of time, and stated that he had simply been trying to maintain the corporation he had worked so hard to build.
91. I note that although Mr. Pham admitted in the ASF that he had not discussed the 2017 Mortgage Applications with [Broker 1], he indicated in his evidence that due to their living in the same home, they would talk "all the time about deals". When asked whether he could remember discussing any deals specifically, Mr. Pham indicated that he could not.
92. Mr. Pham also, in cross-examination, denied that [Broker 1] had paid him between \$700 and \$1,000 in relation to each of the 2017 Mortgage Applications, but rather that [Broker 1] would just put money towards their household expenses on his behalf. He explained that while he had agreed with the ASF as a whole, there were some specifics he didn't agree to. Mr. Pham indicated that he did not recall where the \$700 to \$1,000 amount came from. Mr. Pham went on, however, to acknowledge that he had received a \$3,750 payment in respect of the [Borrower 4] Application, as well as remuneration from other mortgage applications. Mr. Pham indicated, however, that [Borrower 14] had previously owed him \$5,000 and suggested that the payment of the "brokerage fee" in that transaction was related to that previous amount owing.
93. Mr. Pham further agreed that he knew the activities he was completing in 2017 were mortgage broker services, and that he had intended to continue to provide those services by using [Broker 1]'s name and credentials on the applications. He denied having done so to avoid

detection by the regulator, however, stating that he simply did not have any other way of completing the work that had been started on applications for his clients.

94. In his closing submissions, Mr. Pham provided further clarity regarding the business difficulties he described having with JP Elite. Mr. Pham explained that in or about January 2015 his business partner, [Individual 3], had transferred possession, title, or control of various assets of JP Elite to his personal name without Mr. Pham's knowledge or consent. Mr. Pham further explained that JP Elite and Mr. Pham were unable to continue the normal course of business due to [Individual 3]'s actions, and that, when Mr. Pham's registration expired in 2016, he had been unable to renew due to various administrative roadblocks including the fact that [Individual 3] was in possession of all passwords, account information, banking information and social media accounts.

Discussion

Findings On Liability

95. Section 21(1) of the MBA sets out that:
- 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 the registered name of the mortgage broker;
 - (d) employ as a submortgage broker any person not registered under this Act.
96. Section 1 of the MBA defines "mortgage broker" as meaning 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;
97. Submortgage Broker is also defined under section 1 of the MBA as follows:

"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;

98. As set out above, Mr. Pham has admitted to each of the allegations set out at items 1 and 2 of the Notice of Hearing, as well as admitted the allegation at item 3 of the Notice of Hearing on behalf of JP Elite.
99. I accept that the Respondents' admissions and actions, as described in the background portion of this decision, constitute the carrying on of business as a submortgage broker and mortgage broker, respectively, contrary to section 8(1.4) of the MBA.
100. I note specifically, in reaching that conclusion, that I consider it to be clear from the admissions made by Mr. Pham in the ASF that the Respondents were engaged in activities such as promoting services as a mortgage broker, whether in person, through the use of business cards or a website; engaged in direct communications with clients providing advice and explaining mortgages; engaged in taking mortgage applications and submitting those applications; and engaged in obtaining supportive documents for mortgage applications.
101. In my view all of those activities have been identified in previous decisions as being of the type that constitute holding oneself out as someone who can broker mortgages and as conduct that constitutes the arranging of mortgages, as contemplated by subparagraphs (b) and (d) in the definition of mortgage broker.
102. Having considered the above principles, along with the Respondents' admissions, I find that:
 - Contrary to section 8(1.4) of the MBA, Mr. Pham carried on business as submortgage broker without being registered to do so as required by section 21(1)(a) of the MBA, and without being exempted from registration pursuant to section 11 of the MBA by:
 - a. directing the course of mortgage applications on behalf of borrowers including giving instructions or directions to [Broker 1], a Registrant, as to the financial information, qualifications, and personal information for each the borrowers and mortgage applications set out in Schedule "A" of the Notice of Hearing;
 - b. conducting one or more of the following activities on behalf of each of the borrowers in Schedule "A":
 - i. accepted the personal information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - ii. obtained documents and information from borrowers to support their mortgage applications;
 - iii. collected personal information of borrowers and forwarding that information to [Broker 1];
 - iv. acted as a liaison between the borrowers and [Broker 1] and referred borrowers to [Broker 1]; and,
 - v. receiving remuneration in excess of \$1,000 in 2017 for arranging mortgages.
 - Contrary to section 8(1.4) of the MBA, Mr. Pham, having been ordered by the Registrar to cease all mortgage broker activities by way of a Cease and Desist

Order dated December 22, 2017, continued to carry on business as a mortgage broker or submortgage broker by:

- a. Directing the course of mortgage applications on behalf of borrowers including giving instructions or directions to [Broker 2], as to the financial information, qualifications, and personal information for each of the borrowers and mortgage applications set out in Schedule "B" to the Notice of Hearing.
- b. Conducting one or more of the following activities on behalf of any one or each of the borrowers in Schedule "B" of the Notice of Hearing:
 - i. Accepted the personal information of borrowers for the purposes of obtaining mortgage financing on their behalf;
 - ii. Obtained documents and information from borrowers to support their mortgage applications;
 - iii. Collected personal information of borrowers and forwarding that information to [Broker 2];
 - iv. Acted as a liaison between the borrowers and [Broker 2];
 - v. Referred borrowers to [Broker 2];
 - vi. Receiving remuneration in excess of \$1,000 during 2018 and 2019 for arranging mortgages; and,
 - vii. Holding himself out to the public as a submortgage broker and JP Elite as a mortgage broker to a notary in respect of the [Borrower 14] transaction.

103. I further find that, contrary to section 8(1.4) of the MBA, JP Elite carried on business as a mortgage broker in British Columbia without being registered to do so as required by section 21(1)(a) of the MBA and without being exempted from registration pursuant to section 11 of the MBA by permitting Mr. Pham to hold himself out as a mortgage broker with JP Elite while neither was registered under the MBA.

Findings on Sanctions

Applicable Law and Legal Principles

104. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.

105. Section 8(1.4) provides that, after giving a person an opportunity to be heard, 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 by the MBA, the Registrar may:

- (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,

106. Having reviewed the applicable legislation, I turn to the general principles to be considered when applying sanctions in the regulatory context.
107. 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, with a view to the protection of the public as a whole.
108. 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.²

109. Sanctions may serve multiple purposes, including:
- (a) denouncing misconduct, and the harms caused by misconduct;
 - (b) preventing future misconduct by rehabilitating specific respondents through corrective measures;
 - (c) preventing and discouraging future misconduct by specific respondents through punitive measures (i.e. specific deterrence);
 - (d) preventing and discouraging future misconduct by other registrants (i.e. general deterrence);
 - (e) educating registrants, other professionals, and the public about rules and standards; and
 - (f) maintaining public confidence in the industry.
110. 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:

(a) 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?

(b) 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?

(c) Acknowledgement of the misconduct and remedial action

² *Allan (Re), Decision on Penalty and Costs*, May 11, 2020 (BCFSA)

[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?

(d) 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?

111. 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

The Misconduct

112. In my view, there can be no question that the nature of the Respondents' misconduct in this case is serious in nature.
113. The Respondents were experienced, and were well aware of the need to be registered. Despite that fact, the Respondents continued to engage in business as a submortgage broker and mortgage broker for a period of more than two years after the expiration of their respective registrations, to hold themselves out as registered mortgage brokers, and to receive remuneration for that unregistered business.
114. Mr. Pham specifically engaged in mortgage broker business directly, not only by meeting with clients while holding himself out as a submortgage broker, but by using the Filogix accounts of other registered submortgage brokers with whom he held personal relationships to complete and submit mortgage applications on behalf of clients.
115. Finally, Mr. Pham specifically defied the Cease and Desist Order issued in December 2017. Rather than taking that order seriously, Mr. Pham began to work with [Broker 2], without making her aware of the Cease and Desist Order, and continued to engage in business as a submortgage broker from December 2017 into 2019.
116. Mr. Pham, and by extension JP Elite, simply chose to, essentially, ignore the requirements of the regulatory regime for more than two years. Over the course of that period of time, his unregistered activities involved at least 15 transactions (which he has admitted to in this hearing), and 22 borrowers.
117. The borrowers in this case were not unaffected. While Mr. Pham engaged in submortgage or mortgage broker business while not being registered, a number of the clients for whom he provided that unregistered service suffered financial losses.
118. [Borrower 5] lost a \$10,000 deposit, and the seller in that transaction incurred additional costs of \$3,200. [Borrower A] and her family incurred \$39,000 in fees as a result of breaking a private mortgage on Mr. Pham's advice, and despite indicating that he would reimburse that amount, Mr. Pham instead wrote the [Borrower 7] clients a cheque for an account that had insufficient funds.
119. Further, despite the above, Mr. Pham profited from his unregistered mortgage broker business:
- He received payments from the commissions [Broker 1] received from lenders in respect of a number of the 2017 Mortgage Applications;
 - He received a broker fee of \$3,750 in relation to the [Borrower 4] Application;

- He received payment in kind in the form of child support debt reduction from [Broker 2];
 - He received an upfront fee of \$3,000 cash in relation to the [Borrower 7] Application;
 - He received a \$3,100 “broker fee” in relation to the [Borrower 6] Application; and
 - He received a \$5,000 “broker fee” in relation to the [Borrower 14] Application.
120. I pause in my description of the nature of Mr. Pham’s misconduct to note that I give little weight to Mr. Pham’s evidence that the fees he collected from [Borrower 6] and [Borrower 14] were the return of loan amounts owed to Mr. Pham. Mr. Pham provided no documentary evidence to support that claim, and it is contrary to the admissions Mr. Pham made in the ASF. Further, the documentary evidence before me includes Letters of Direction in both of those transactions which clearly reference a “brokerage fee”. Finally, I consider the fact that Mr. Pham collected fees in other transactions as set out above, including in the [Borrower 4] Application and the [Borrower 7] Application, suggests that it is more likely than not that Mr. Pham was seeking to collect fees for his mortgage broker activities wherever possible.
121. In my view, the severity of Mr. Pham and JP Elite’s misconduct, as set out, above is patent.
122. I agree with the submissions of BCFSa that Mr. Pham’s intentional carrying on of business while unregistered, even after the issuing of the Cease and Desist Order, demonstrates a lack of governability. I note further that well before the Cease and Desist Order was issued, Mr. Pham had received clear instruction from FICOM that he was not permitted to conduct any mortgage broker activity, dating to at least March 2017.
123. In my view, Mr. Pham’s flagrant disregard of clear directions from the regulator to cease engaging in business as a submortgage broker and mortgage broker, is the type of behaviour that requires specific deterrence.
124. Further, I consider that the circumstances of this case require general deterrence, in order to demonstrate to the mortgage broker industry that the actions engaged in by Mr. Pham are not of the type that can be tolerated under the MBA. General deterrence is further required in order to maintain public confidence that registrants under the MBA will not be able to ignore the regulator, and engage in unregulated mortgage business activity that creates risk and causes harm to the public, without facing proportionate consequences.

Other Relevant Factors

125. Mr. Pham, and JP Elite, had no discipline history prior to the expiration of their registrations in 2016. I note, however, that upon the expiration of those registrations, Mr. Pham engaged in a clear pattern of misconduct for a period of more than two years.
126. While I accept that Mr. Pham may have convinced himself, at least initially, that he was simply helping his clients who he had already begun to provide mortgage services to prior to the registration expirations, the reality is that he continued to solicit mortgage business well after the expirations of his registrations. Further, he sought out people with whom he had a personal relationship, who worked in the mortgage industry and would be able to provide him with the access he needed to continue to carry on submortgage or mortgage broker work.
127. In my view, the fact that Mr. Pham did not have a pattern of misconduct prior to 2017, is a neutral factor. When taken in comparison to Mr. Pham’s actions subsequent to the expiry of his registrations, I do not consider Mr. Pham’s lack of disciplinary history to be a mitigating factor that would be entitled to any significant weight.
128. Mr. Pham did ultimately admit his misconduct in this case. While I consider that an admission of liability can be considered to be a mitigating factor, the context in which that admission occurs must be weighed. In my view, unless a registrant under the MBA self-reports and either admits to misconduct at the outset of an investigation, or provides all necessary information to support a finding of misconduct, the Registrar will be required to investigate and determine whether a disciplinary proceeding is required. I consider that in such a situation, such as here, an admission of liability after an investigation has been completed, is a limited mitigating factor.

129. In this case, I consider that the significance of the mitigating nature of Mr. Pham's ultimate admission of misconduct is further limited due to the fact that Mr. Pham only admitted his misconduct years after he ignored warnings from the regulator, and after ignoring a cease and desist order. I consider that, given the manner in which Mr. Pham continuously and repeatedly flouted the law, for a period of approximately two years, his admission of misconduct is entitled to little, if any, weight as a mitigating factor.
130. I note, in this regard, that I reject Mr. Pham's claim that he felt that it was only a matter of time before his registration would be reinstated as a mitigating factor.
131. Even if Mr. Pham did hold the belief that his registration would be reinstated, it would not excuse the fact that he continued to engage in submortgage and mortgage broker business after having been specifically provided direction to not do so in March and May 2017, and after receiving the Cease and Desist Order in December 2017. Any belief that his registration would be reinstated, in the face of all of the above warnings, cannot, in my view, be said to have been a reasonable one such that it could be considered a mitigating factor. This is not a case in which Mr. Pham conducted unregistered mortgage broker business inadvertently. Rather, I consider that Mr. Pham was acutely aware that he was not to be engaged in such mortgage broker business, but he simply chose to do so regardless of what the regulator said.
132. I accept that Mr. Pham was experiencing financial difficulties around and subsequent to the time of the expiration of the registrations. While I am sympathetic to that fact, I do not consider that this situation of financial hardship can be accepted as a mitigating factor of any significance. I do not consider the public interest would be served by concluding that in any circumstance of financial hardship, it would be acceptable, or at least more acceptable, for a registrant to ignore the regulator and the law due to that financial hardship.
133. To reach such a conclusion would be contrary to the goal of the regulatory scheme which, again, is to ensure the efficient operation of the mortgage marketplace. In my view, there could be no efficient operation of the mortgage marketplace if, in all circumstances of financial hardship, mortgage brokers were simply able to ignore the law and the regulator.
134. I turn to Mr. Pham's submission that the industry alert that was issued regarding the Respondents subsequent to the issuing of the Cease and Desist Order was detrimental to Mr. Pham's employment opportunities. I take Mr. Pham to be indicating that the impact of the industry alert should be considered to be a mitigating factor.
135. I do not agree.
136. The difficulty that the Cease and Desist Order may have caused in respect of Mr. Pham's ability to obtain future employment is a difficulty that is of his own creation. Mr. Pham knew that he had to be registered. He knew that he was not registered. He had received multiple warnings from the regulator that he could not engage in mortgage broker or submortgage broker business. Despite all of the above, Mr. Pham chose to continue to engage in mortgage broker business while unregistered. This continued misconduct eventually led to the issuing of the Cease and Desist Order and the industry alert. I do not consider that Mr. Pham can now reasonably say that the effects of his own misconduct on his career should attract much weight as a mitigating factor when determining the appropriate sanction: see *Law Society of BC v. Faminoff*, 2017 LSBC 4, para. 104.
137. Finally, while I accept that Mr. Pham is now remorseful and apologetic for his actions, as noted above, I do not consider such remorse, expressed a significant number of years after the misconduct, is entitled to much weight as a mitigating factor.

Previous Sanctions Decisions and Consent Orders

138. As set out above, in determining the appropriate sanction, 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 in which the public will have confidence.

139. I note, in reference to consent orders, I consider that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty that is imposed subsequent to a discipline hearing, given that there are a myriad of reasons for a respondent to agree to a consent order which may not be apparent from a review of that consent order.

140. BCFSA has referred to a number of previous decisions and consent orders in its submissions. I have reviewed them all:

- *In the Matter of the Mortgage Brokers Act and Kambiz Parvizi (consent order dated March 29, 2023) [Parvizi]:*
\$50,000 penalty consented to where the respondent failed to comply with a summons issued by the regulator and unilaterally terminated an interview with the regulator.
- *In the Matter of the Mortgage Brokers Act and Michael Randall Esler, Esler Resort Consulting Ltd., 0798552 BC Ltd. dba Off-Piste Capital (consent order dated September 29, 2022) [Esler]:*
\$40,000 penalty consented to where the respondents carried on business as a submortgage broker after registration expired and without being registered to do so in respect of approximately 28 mortgages over a period of approximately five years, and failed to provide borrowers and lenders with conflict of interest statements as required by the MBA.

Of note, Esler self-reported to the regulator that he had been conducting mortgage brokering since the expiry of his registration. Esler further indicated that he had simply forgotten to renew his registration in BC and that the regulator had not reminded him, though he acknowledged that it was his fault for not renewing. There was no evidence of harm in this case.
- *In the Matter of the Mortgage Brokers Act and Frederick Johnathon Nielsen (consent order issued March 2, 2023 [Nielsen]):*
\$45,000 penalty consented to where an unregistered person, Nielsen, carried out mortgage broker activity in relation to 8 mortgage applications where the income documents were false and not genuine.
- *In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v. Dean Frank James Walford and Loan Depot Canada, decision dated December 22, 2021 (no appearance by Walford) [Walford]:*
\$50,000 penalty issued. The respondents had never been registered, and in 2011, the regulator issued an order that they cease engaging in unregistered mortgage broker activity. Despite that, the respondents continued to engage in the business of a mortgage broker into 2018, on more than 114 applications. A lender suffered a financial loss of \$146,000.
- *In the Matter of the Mortgage Brokers Act and Vinita Devi Lal (consent order dated November 16, 2021) [Lal]:*
\$45,000 penalty consented to where Lal was involved in directing the course of 27 mortgage applications while unregistered, and where Lal provided information and documents that she knew were false in at least one application. Lal also admitted to having provided information and documents that she knew or ought to have known were false in at least 29 further mortgage applications. There was no evidence of harm to the public.
- *In the Matter of Mortgage Brokers Act and Anil Sagar (consent order dated April 21, 2020) [Sagar]:*
\$45,000 penalty consented to where Sagar, who had never been registered as a submortgage broker, admitted to having arranged mortgages for 7 borrowers and 16 mortgage applications which were facilitated by a registrant. Sagar admitted to having

provided the registrant with information he knew or ought to have known to be false in five mortgage applications. There was no evidence of harm to the public.

- *In the Matter of Mortgage Brokers Act [RSBC 1996] c. 313 and Michael Alexander Campagna, (decision dated March 18, 2019, no appearance by Campagna):*
\$20,000 penalty issued, along with a two-year ban from re-applying for registration. The respondent was found to have continued to hold himself out as a mortgage broker following the expiration of his registration, and attempted to arrange mortgages on behalf of three borrowers. The respondent also presented at least one borrower with a false document, made false representations to borrowers regarding his status as a submortgage broker, and provided borrowers with assurances that mortgage financing was or would be arranged when it was not. Borrowers experienced harm, including loss of a \$10,000 deposit and additional fees in the amount of \$13,800.
- *In the matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v. Dennis Percival Rego, Shank Capital Systems Inc., and Arvind Shankar, (decision dated January 15, 2018) [Shankar]:*
\$50,000 penalty issued. The respondent was found to have engaged in at least three instances of unregistered mortgage broker activity, in respect of two borrowers regarding three properties. The respondent was found to have handled and submitted documents containing false or misleading information, including non-genuine documents as well as applications containing widely varying information regarding a borrower's income and assets. The respondent received commissions in excess of \$172,000 for arranging mortgages from the registered brokerage over two years.

Decision on Sanction

141. Penalties in the regulatory context must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.
142. As the court in *Thow* noted, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.
143. I am of the view that, having regard to the number of transactions at issue in this case, as well as the severe nature of the misconduct engaged in, a significant sanction is warranted. While I acknowledge that a significant sanction will impose a heavy burden on Mr. Pham, I consider the protection of the public to require the imposition of such a burden in this case.
144. BCFSa seeks the imposition of the maximum penalty allowed by the MBA, while Mr. Pham submits that a penalty of \$25,000 would be more appropriate in the circumstances.
145. In my view, a penalty at the maximum end of the administrative penalty scale is generally only warranted in circumstances where the respondent has demonstrated repeated disregard or contempt for the regulatory framework and/or their professional responsibilities; in circumstances where the sheer volume of the misconduct makes a maximum penalty necessary in order to impose sufficient specific and general deterrence; or in circumstances where the consequences or seriousness of the misconduct are so significant as to warrant a maximum administrative penalty.
146. Having considered the previous cases, 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 is appropriate. Such a penalty will provide both a specific deterrent effect on Mr. Pham, and will also ensure that the public is made aware of the fact that activities which deliberately flaunt the law and ignore the regulator will be met with a penalty of significance.

147. Mr. Pham continued to solicit business and held himself out as a registered submortgage broker, and JP Elite as a mortgage broker, from 2017 through to January 2019, while he knew that he and JP Elite were not in fact registered. While unregistered, Mr. Pham met with clients, provided them with advice on their mortgage applications, and completed the mortgage application for those clients on at least 15 occasions while he was not registered, all while using the passwords and identification credentials of other submortgage brokers.
148. Of particular note in this case is the fact that in addition to showing disregard for the regulator, Mr. Pham's actions in fact caused real harm to his clients, leading to losses in excess of \$40,000, while at the same time earning remuneration for himself.
149. Finally, as I have set out above, Mr. Pham repeatedly ignored warnings from the regulator, and then ignored the Cease and Desist Order.
150. In my view, the penalties that were issued in similar cases, such as the \$45,000 penalty issued in *Sagar*, provide a clear indication that the conduct of unregistered mortgage business, even in cases where harm to the public is not present, will warrant the imposition of a penalty near the maximum end of the scale.
151. As a result, I am of the view that the issuing of a \$50,000 penalty in the circumstances of this case would not be inconsistent with the public's expectation when compared with similar cases.
152. I consider that in light of Mr. Pham's extensive unregistered activity, the harm that his activities caused to members of the public, and his flagrant disregard for the regulatory regime over a period of approximately two years, an administrative penalty lower than the maximum amount would not be sufficient to maintain the integrity of, and public confidence in, the mortgage broker industry. I therefore find that a penalty of \$50,000 is appropriate in this case.

Costs

153. 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.
154. The Registrar does not have its own tariff of costs.
155. 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.³
156. 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

³ Rule 57 is now Rule 14-1.

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).

157. BCFSA has submitted a Certificate of Costs in the amount of \$22,615.19 in respect of investigative expenses and disbursements associated with that investigation. BCFSA has also provided a Bill of Costs, as per the *Supreme Court Civil Rules*, related to legal costs for preparation of the hearing, as well as disbursements related to the investigation and the hearing, totalling \$9,431.68.
158. BCFSA has indicated in its submissions that, in light of Mr. Pham entering into the ASF and the delay in proceeding, it is prepared to waive costs of the investigation and the hearing, but not for disbursements which BCFSA says total \$13,300.49.
159. I accept that BCFSA has achieved substantial success in this matter. Mr. Pham did not make any submissions as to why BCFSA should be deprived of the costs they have claimed in the circumstances.
160. I would therefore order that the Respondents should pay \$13,300.49 for costs of the inquiry.

Conclusion and Orders

161. Having found, at paragraphs 102 and 103, that the Respondents carried on business as submortgage broker and mortgage broker, without being registered to do so as required by section 21(1)(a) of the MBA, and without being exempted from registration pursuant to section 11 of the MBA, as described at items 1, 2, and 3 of the Notice of Hearing I make the following orders:
 - Pursuant to section 8(1.4) of the *Mortgage Brokers Act*, Justin Phu Pham and JP Elite Mortgage, jointly and severally, are ordered to pay to BCFSA an administrative penalty of \$50,000, within 60 days of the date of this order; and
 - Pursuant to section 6(9) of the *Mortgage Brokers Act*, Justin Phu Pham is ordered to pay to BCFSA \$13,300.49 for investigative costs of this proceeding, within 60 days of the date of this order.
162. Pursuant to section 9 of the *Mortgage Brokers Act*, Justin Phu Pham and JP Elite Mortgage 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 3rd day of January, 2024.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer