

Citation: Hui (Re), 2025 BCRMB 2

Date: 2025-01-30

File # INV19.228.48172;

INV24.016.41333

**BC FINANCIAL SERVICES AUTHORITY
IN THE MATTER OF THE MORTGAGE BROKERS ACT**

RSBC 1996, c 313 as amended

AND

IN THE MATTER OF

**KA CHAI HUI also known as ELVIS HUI
(REGISTRATION NO. 500477)**

AND

**GUARANTI MORTGAGES CORP.
(REGISTRATION NO. X300397)**

REASONS FOR DECISION REGARDING LIABILITY

[These Reasons have been redacted before publication.]

Date of Hearing: July 5, 8, & 9, September 5, 6, 19 & 20, 2024, and
written submissions received September 24, October 11, & 25, 2024.

Counsel for BCFSFA: Simon Adams and Michael Jones

Counsel for the Respondent: Nerissa Yan and Jamie Gray

Hearing Officer: Thelma O'Grady

Introduction

1. On July 28, 2021, the BC Financial Services Authority ("BCFSFA") issued, pursuant to sections 8 and 8(1) of the Mortgage Brokers Act a Notice of Hearing. An Amended Notice of Hearing was issued on April 22, 2024 (the "Amended Notice").
2. In general terms, the Amended Notice alleged that between December 4, 2018 and April 23, 2019, Mr. Hui submitted mortgage applications for four borrowers when he knew or ought to have known that the mortgage applications did not contain truthful information, and that he concealed documents that were unfavourable to the mortgage applications.
3. The Amended Notice further alleged that Mr. Hui attempted to mislead staff of the Registrar of Mortgage Brokers (the "Registrar") by removing records before providing his mortgage files to the staff of the Registrar, and that he obstructed, or attempted to obstruct, an investigation by the

Registrar by counselling his client, [Client 1], to not cooperate with summonses, provide fraudulent documents to the Registrar, and to delete evidence of communications.

4. The Amended Notice alleged that Mr. Hui and the mortgage brokerage Guaranti Mortgage Corp. ("Guaranti") failed to retain copies of the borrower's documents in the mortgage files, and failed to make proper disclosure to a lender that Mr. Hui and Guaranti were being compensated by the borrower.
5. This decision relates to whether the allegations set out in the Amended Notice have been proven by BCFSa.
6. The hearing of this matter proceeded by way of an oral hearing and written submissions. BCFSa was represented by legal counsel. Mr. Hui and Guaranti were represented by legal counsel.

Notice of Hearing

7. The Amended Notice sets out the following allegations against Mr. Hui and Guaranti:
 1. In his capacity as a submortgage broker, Mr. Hui conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1) of the MBA in that he, in respect of one or more of the mortgage applications involving four borrowers as set out in the attached Schedule "A":
 - a. Knew, or ought to have known, that some or all of the bank statements and letters of employment submitted or relied on in support of the respective mortgage applications were not genuine;
 - b. Obtained financing on behalf of one or more borrowers through [Bank 1]'s Non-Resident Mortgage Program when he knew, or ought to have known, that the borrowers did not meet the underwriting criteria for the bank's program;
 - c. Was in possession of two different versions of the same bank statement of the borrower, where the altered version showing a higher balance was saved in the borrower's mortgage file and the genuine version was found elsewhere; and
 - d. Submitted two concurrent mortgage applications to different lenders and failed to disclose to lenders that the borrower was seeking concurrent mortgage financing for the purchase of other properties.
 2. In his capacity as a submortgage broker, Mr. Hui conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA in that he, in relation to the mortgage files of one or more of the borrowers as set out in the attached Schedule "A":
 - a. Attempted to mislead the Staff of the Registrar by removing a copy of a borrower's work permit and a letter from Service Canada confirming the borrower's SIN from the mortgage file, before providing the file to Staff.
 3. While registered as a submortgage broker, Mr. Hui conducted himself in a manner which would make him disentitled to registration if he were an applicant under section 4 of the MBA, contrary to section 8(1)(e) of the MBA, by obstructing, or attempting to obstruct, an ongoing investigation of the Registrar into his conduct by counselling his client, [Client 1], to do one or more of the following:
 - a. To not cooperate with the Registrar's summonses;

- b. To provide fraudulent documents to staff of the Registrar that he provided to [Client 1] for that purpose; and
- c. To delete evidence of their communications, being their WeChat conversation.

...

- 4. Contrary to section 6(a) of the Regulations, Mr. Hui and Guaranti, in respect of one or more of the mortgage applications involving four borrowers as set out in the attached Schedule "A":
 - a. Failed to retain documents relating to the employment of the borrowers in the mortgage files;
 - b. Failed to retain copies of the genuine bank statements of the borrower in the proper mortgage file, with the borrower's mortgage file having an altered version of the bank statement, showing a higher balance than the genuine version; and
- 5. Contrary to section 17.4 of the MBA, failed to make proper disclosure as required under that section when Mr. Hui and Guaranti failed to provide a Form 10 to a lender disclosing that Mr. Hui and Guaranti were being compensated by the borrower.

- 8. Schedule "A" to the Amended Notice provided as follows:

Borrower	Mortgage Application Dates
[Client 1] in respect of the purchase of [Property 1], North Vancouver, BC	December 4, 2018
[Client 2] in respect of the purchase of [Property 2], Surrey, BC	April 23, 2019
[Client 3] in respect of the purchase of [Property 3], Vancouver BC and [Property 4], Vancouver, BC	April 4, 2019 and April 5, 2019
[Client 4] and [Client 5] in respect of the purchase of [Property 5], Richmond, BC	Mortgage application funded March 14, 2019

- 9. Pursuant to an agreement between the parties, an Agreed Statement of Facts was signed by the parties on or about May 12 and 13, 2024 (the "ASF"). The ASF is reproduced as Appendix "A" to these reasons, and was submitted into evidence on Friday, July 5, 2024. In the ASF, Mr. Hui and Guaranti admitted liability to the allegations as set out at 1(a)-(d), 4, and 5 of the Amended Notice.
- 10. BCFSa did not proceed with allegation 2 and therefore the hearing on liability proceeded on allegation 3 in the Amended Notice (the "Obstruction Allegation") only.
- 11. The ASF culminated in an addendum to the original investigation report which resulted in an Amended Notice of Hearing being issued on April 22, 2024 which included the Obstruction Allegation.

Issues

12. The only issue remaining after the ASF is the additional finding of liability for the Obstruction Allegation. Specifically:

Did Mr. Hui seek to obstruct, or attempt to obstruct the investigation by counselling his client, [Client 1], to:

- a. not cooperate with the Registrar's summonses;
 - b. provide fraudulent documents to staff of the Registrar that he provided to [Client 1] for that purpose; and/or
 - c. delete evidence of their communications, being their WeChat conversation.
13. If Mr. Hui is found to have sought to obstruct, or attempt to obstruct the Registrar's investigation, did he conduct himself in a manner which would make him disentitled to registration if he were an applicant under section 4 of the MBA, contrary to section 8(1)(e) of the MBA?

Jurisdiction and Procedure

14. BCFSa Hearing Officers are appointed to act for the Registrar of the Mortgage Brokers in respect of orders under section 8 of the MBA, pursuant to a January 10, 2024 Acting Capacity instrument.
15. BCFSa must prove its case on the balance of probabilities, that is BCFSa must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against the respondent, I must find that the evidence is "sufficiently clear, convincing and cogent" to satisfy that test: *FH v McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41.
16. Evidence is generally considered as a matter of procedure.¹ As an administrative tribunal the Registrar is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles)*, 2019 BCCA 225 (CanLII).
17. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing. There is no provision in the MBA which imports civil or criminal rules of evidence into the administrative proceedings held by the Registrar. The Registrar may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.
18. The Registrar must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges, or interests. This includes a right to be heard. The Registrar affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Registrar must determine facts, and decide issues set out in the Notice of Hearing, based on evidence. The Registrar may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Background and Evidence

19. The evidence and information in front of me included a significant number of documents, as well as evidence of three witnesses. BCFSa called the following witnesses: investigator [Investigator 1] and [Client 1], a client of Mr. Hui's.

¹ *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119, para. 38.

20. Mr. Hui's evidence included a single witness: he testified on his own behalf and included documents in the joint book of documents.
21. I have reviewed and considered all the evidence and information before me. The following is not intended to be a recitation of the entirety of that evidence and information. The following is intended to provide context for my reasons.

Registration History

22. Mr. Hui was initially registered as a submortgage broker on October 19, 2012.
23. In and around November of 2018, Mr. Hui left his previous employer, [Brokerage 1], to start his own company.
24. Mr. Hui is currently registered with Guaranti and was the designated individual for Guaranti until April 13, 2021.

Complaint and Investigation

25. On or about May 1, 2019, staff of the Registrar² began a routine audit on Mr. Hui's mortgage files. In or around August 2019, the case was escalated to the Registrar's investigation team.
26. Of particular interest to staff were four of Mr. Hui's mortgage files in which the buyers obtained mortgage funds based on foreign income. Staff identified documents in those files pertaining to employment in China, credit reports and bank accounts in China that appeared non-genuine.
27. One of these files was a mortgage that Mr. Hui arranged for [Client 1]. The client service agreement is dated November 18, 2018. The file involved a mortgage provided by [Bank 1] in the amount of \$1,050,000, pursuant to the Non-Resident Mortgage Program that at that time provided mortgages for Canadian properties purchased by buyers who did not reside in Canada. [Client 1]'s application also included a contract of purchase and sale dated April 11, 2018 in which [Client 1] provided that he was a resident of Canada, with an address in North Vancouver. His phone number included a Canadian area code, and his email address was from a Canadian university. The mortgage was for the purchase of a presale property with a closing date of February 19, 2019.
28. As part of the investigation, [Company 1] ("[Company 1]") was retained by BCFSa to conduct inquiries into Mr. Hui, including conducting interviews of the mortgage borrowers. [Investigator 2], a senior investigator with [Company 1], conducted the requested investigation and produced an investigation report as part of the assignment dated January 18, 2021.
29. The report prepared by [Investigator 2] outlines his investigation including the attempts he made to contact the various borrowers of interest in the investigation, including [Client 1], beginning in September 2020.
30. In his report, [Investigator 2] also sets out calling [Client 1] and leaving a voicemail for him on September 28, 2020 where he identified the purpose of the inquiry and requested [Client 1] to call him to set up an interview. [Investigator 2] also left a second voicemail and sent an email to [Client 1] on October 20, 2020 again identifying the purpose of the inquiry and requesting [Client 1] to contact him for an interview. [Client 1] did not respond on either occasion.
31. Therefore, [Client 1] was served with a summons dated November 6, 2020. [Investigator 2] then contacted [Client 1] by telephone on November 13, 2020 and advised him that the summons required him to attend an interview and provide documents by the date specified in the summons.

² At the time, the Registrar was housed within the Financial Institutions Commission ("FICOM"). On November 1, 2019, BCFSa replaced the FICOM.

[Client 1] asked [Investigator 2] whether he was under investigation, and he was once again reminded that he was not under investigation. [Client 1] further asked whether the interview was voluntary or whether he was required to attend by law. [Investigator 2] responded that he was required by law to comply with the summons that was served on him. [Client 1] asked what would happen if he chose not to comply with the summons and failed to attend the interview. [Investigator 2] advised [Client 1] that the consequences of failure to comply were clearly outlined on the summons, but briefly re-iterated that failure or refusal to comply could result in contempt of court as if he were in breach of an order or judgement of the court. [Client 1] advised that he did not know if he was going to comply, but agreed to contact [Investigator 2] after fully reviewing the summons.

32. [Client 1] did not contact [Investigator 2] and he did not attend his scheduled interview or provide any documents as requested in the summons.

Investigator's Testimony

33. [Investigator 1] is a Senior Investigator at BCFSA. He has held that role since August 2019, and prior to that he had been an investigator with FICOM since 2008. [Investigator 1] took over the investigation in August 2019. The January 2021 report by [Investigator 2] became part of the investigation conducted by [Investigator 1] who drafted the investigation report dated July 26, 2021.
34. [Investigator 1] provided evidence with respect to the records and information collected during the investigations.
35. Mr. Hui was informed in early 2021 that he was under investigation and was interviewed for the first time by BCFSA on May 28, 2021.
36. On May 4, 2022, [Investigator 1] issued a second summons to [Client 1] requiring him to produce documents by May 20, 2022 and attend an interview on June 2, 2022. Once again, [Client 1] did not provide any documents and failed to appear in response to the summons.
37. On June 6, 2022, two investigators, including [Investigator 1], attended [Client 1]'s home, spoke with him, and confirmed he had received the summons. They reminded him of the documents they were requesting and [Client 1] stated he would provide them the following day.
38. When [Client 1] failed to provide the documents again, [Investigator 1] hired private investigators to place a four-day surveillance on [Client 1] and his family to determine a time when [Client 1] would likely be at home.
39. [Investigator 1] then obtained a court order to enter [Client 1]'s residence. The following items were ordered to be produced, inspected, examined, analyzed and removed:
- a. Desktop and/or laptop computer, tablet, and other electronic devices containing electronic mortgage files, records, documents and correspondence;
 - b. Electronic storage devices, including smartphone(s) and other digital storage medium containing electronic mortgage files, records, documents and correspondence;
 - c. Records relating to [Client 1]'s employment and income;
 - d. [Client 1]'s banking records; and
 - e. Physical and electronic documents, files, records and correspondence related to [Client 1]'s mortgage application.
40. [Investigator 1], with the assistance of three other investigators from BCFSA and two RCMP officers, entered [Client 1]'s home on July 26, 2022. [Investigator 1] then interviewed [Client 1].

41. During this entry, [Client 1]'s laptop was seized. [Client 1] stated that he only purchased the computer two weeks earlier and was very concerned that it may become damaged. [Investigator 1] made the decision to release the computer back to [Client 1] because he felt [Client 1] was cooperating during the interview by providing him electronic copies of the documents that he requested.
42. [Investigator 1] also seized [Client 1]'s cellphone which he did take with him. [Investigator 1] subsequently had [Company 2] ("PWC") perform a forensic investigation on the cellphone which included imaging. It was returned to [Client 1] the day following the forensic investigation.
43. The forensic analysis of the cell phone recovered WeChat files which included WeChat messages, a couple of audio files, some pictures of documents, and some PDFs, although a number of the PDFs presented only as broken images (the "WeChat Files"). PWC subsequently provided the extracted WeChat Files from the seized phone to [Investigator 1] together with forensic examination reports.
44. On October 18, 2022 [Client 1] was interviewed a second time by BCFSA.
45. On November 28, 2022, Mr. Hui was interviewed for a second time by BCFSA. Mr. Hui was informed, for the first time by BCFSA, that it had obtained [Client 1]'s cellular phone records and had extracted the WeChat Files. BCFSA did not provide Mr. Hui with a copy of the WeChat Files at that time.
46. On October 30, 2023, Mr. Hui was interviewed by BCFSA for the third time, and on February 22, 2024 Mr. Hui was interviewed by BCFSA for the fourth time.

The WeChat Conversation

47. The extracted WeChat Files included 107 messages between Mr. Hui and [Client 1] which occurred on and off between October 23, 2020 and June 9, 2022 (the "WeChat Conversation").
48. The Obstruction Allegation is centered on the WeChat Conversation between Mr. Hui and [Client 1]. BCFSA argues that the WeChat Conversation is the proverbial "smoking gun" that proves the Obstruction Allegation. On the other hand, counsel for Mr. Hui argues that there is a legitimate alternative meaning to the WeChat Conversation. Because the WeChat Conversation is central to the Obstruction Allegation, I will describe the conversation in its entirety, with reference to the witnesses' evidence and counsels' arguments as I go through it.

October 23, 2020

49. The WeChat Conversation began on October 23, 2020 – almost two years after [Client 1] signed the client service agreement with Mr. Hui. Approximately three days earlier, [Investigator 2] had contacted [Client 1] for the second time asking for an interview.
50. At this point in time, BCFSA had not yet informed Mr. Hui that he was under investigation.
51. Counsel for the parties have opposing views as to who actually initiated the WeChat Conversation. However, both [Client 1] and Mr. Hui testified that it was [Client 1] who reached out to Mr. Hui and I accept that. It appears that [Client 1] added Mr. Hui as a WeChat contact.
52. Mr. Hui testified he was unsure who had contacted him, so he responded with a message asking the writer if he was [Client 1] and then introduced himself in return. [Client 1] replies "I have sold my property, and the contract is firm" then adds "btw". Then Mr. Hui writes "Yes I understand."
53. Mr. Hui's evidence is that, after receiving the message from [Client 1] that he had sold his property, he believed that [Client 1] may want to invest again. Mr. Hui testified that at this time, he was also

mindful of the fact that he had been made aware that his former employer, [Brokerage 1], had been sending solicitation attempts to his clients upon their mortgage renewal in order to poach his clients (the "Poaching Letters").

54. Mr. Hui testified that the message he sent on October 23, 2020 at 9:03:16 PM, which reads as a broken image, was a photo of one of the Poaching Letters another client had sent him. This testimony is integral to Mr. Hui's explanation of the WeChat Conversation. Based on [Investigator 1]'s evidence, the bubbles with broken images are either images or content that the forensic investigator was unable to recover.
55. Mr. Hui testified that he wanted to give [Client 1] a "heads up" that if he received one of the Poaching Letters, to not respond to [Brokerage 1]. Mr. Hui testified that these letters were being sent over a number of years after he left that job and that these letters were often sent around the time when his clients' mortgages would expire.
56. During redirect examination by his counsel, Mr. Hui produced a single undated letter from a mortgage advisor, [Individual 1], for the [Company 3] operating under the umbrella of [Brokerage 1]. He testified that this letter was forwarded to him by a previous client on March 18, 2019. This letter to poach his client was of such concern to Mr. Hui, that he or one of his employees reported it to FICOM on the very same day he obtained it.
57. BCFSA argued that the broken image was likely not a picture of one of the Poaching Letters, because later on November 13, 2020 there is another letter in the WeChat Conversation that can be read. I do not accept that as conclusive proof. BCFSA also argued in their closing submissions that the broken image does not show up in the same format as other photos sent in the WeChat Conversation because it may be an audio message, not a photograph. However, again I do not accept that as sufficient proof that the image was not a picture of one of the Poaching Letters.
58. The next message in the WeChat Conversation is a reply from [Client 1], but that is also represented by a broken image. We have no evidence or testimony to explain what this image might be. This is followed by a message from Mr. Hui stating, "ok, no worries just give you a heads up.", to which [Client 1] responded with a "[thumb's up]" emoji.

November 13, 2020

59. The next contact between the two occurs approximately three weeks later, on November 13, 2020 - the same day that [Investigator 2] contacted [Client 1] by telephone for the third time and advised him that the summons he received on November 6, 2020 required him to attend an interview and provide documents by the date specified in the summons.
60. On this day, [Client 1] initiated the WeChat Conversation, sending Mr. Hui a copy of the covering letter sent to him by BCFSA (which is legible within the messages), asking [Client 1] for documents in relation to his mortgage application. Mr. Hui responded by writing "Can you call me." [Client 1] asked him for his phone number which Mr. Hui provided. Mr. Hui then asked, "Just one page?", "Any other docs." [Client 1] provided a picture of the summons, which itself is also legible, and Mr. Hui responded by writing "Ok will call you tomorrow." [Client 1] responded by writing "K", "after 12 O'clock", to which Mr. Hui wrote "ok" and they then exchanged a "[salute]" and "[thumbs up]" emoji.
61. There is then an approximately nine-hour pause in the conversation followed by Mr. Hui asking, "Can I call you at 3". Mr. Hui did not get a response from [Client 1] and so again wrote to [Client 1] about two hours later with a "?". [Client 1] finally responded "yes" and provided his phone number.
62. Both Mr. Hui and [Client 1] testified that during the period of the WeChat Conversation there was only a single phone call between them. [Client 1] testified that he did not recall the date of the actual phone call between the two of them. He testified that the only topic they discussed was the letter and summons from BCFSA, and that in that conversation, Mr. Hui assured him that the

investigation was about Mr. Hui, himself, and that [Client 1] did not need to do anything or respond to the summons.

63. Mr. Hui gave evidence that the phone call occurred on November 13, 2020 approximately five and a half minutes before Mr. Hui sent another document to [Client 1]. Mr. Hui's evidence is that the following occurred during this telephone call:
- a. [Client 1] told Mr. Hui that he had concerns about the interview because he had not properly declared his income on his tax returns but relied on foreign income for his mortgage application;
 - b. [Client 1] informed Mr. Hui that he no longer had certain documents he had provided for the mortgage application and to comply with the summons he requested Mr. Hui to send him copies of those documents;
 - c. Mr. Hui determined that he needed to verify [Client 1]'s identity before sending him the documents and, to this end, requested [Client 1] to send him a copy of the [Bank 2] bank statement that [Client 1] had provided for the mortgage application;
 - d. Mr. Hui suggested to [Client 1] that he should make sure that this letter was indeed from the government agency (BCFSA) as stated; and
 - e. Mr. Hui suggested to [Client 1] that he should try to locate the documents himself before requesting Mr. Hui send them to him.
64. Mr. Hui gave evidence that he was not certain that he was speaking with his former client [Client 1], or if he was being scammed by someone else. He said the voice sounded different from what he remembered, and so he asked [Client 1] to send him a copy of a [Bank 2] bank statement in order to verify his identity.
65. Mr. Hui then sent [Client 1] the top portion of a [Bank 2] statement in the name of [Client 1]. Mr. Hui gave evidence that if this person on the WeChat could provide an October [Bank 2] statement containing the name [Client 1] when asked, then he would be satisfied that this person was indeed his former client.
66. Mr. Hui stated that the picture he sent of the bank account was taken by his assistant as the statement was not in his immediate possession. The picture of the portion of the bank statement contains the dates October 1 to October 31, 2018, an account number and a branch transit number. Mr. Hui then sent a message saying, "this period," to which [Client 1] responded "ok" then "I'll send it to you when I get home later", and Mr. Hui responded, "no rush."
67. BCFSA disputes Mr. Hui's version of this phone conversation and claims Mr. Hui's explanation for sending a copy of the top portion of the bank statement does not make sense.

November 16, 2020

68. The next contact is about three days later. Mr. Hui wrote, "Hi [Client 1], do you have time to send me the doc?", to which [Client 1] responded the next day sending him a PDF file, which in the WeChat Conversation shows up labelled "onlineStatement-2.pdf." Mr. Hui responded with a message saying "Thanks!"
69. Mr. Hui then followed up with an audio message saying "I'll look into it first, and I may book an appointment to meet with you next week, OK? We'll see how to reply to him/her." Mr. Hui's evidence is that by saying "look into it", the "it" meant the whole situation, which would include the genuine nature of the summons letter. Mr. Hui testified that he had previously received scam letters

that pretended to be sent from the Canada Revenue Agency (CRA), and he was cautious about letters that appear to be sent from any government bodies.

70. Mr. Hui testified that at this point, he had still not received his own summons or any document from BCFSA indicating that he was under investigation.
71. Mr. Hui's evidence was that it was only after seeing the [Bank 2] bank statement from [Client 1] that he was now finally convinced that he was speaking with his past client. He testified that he did not compare the two bank statements at this time.
72. Of note, the forensic investigator was able to later open the "onlineStatement-2.pdf" file. An investigator compared it to the full statement of the document that Mr. Hui had sent only the top portion of to [Client 1] on November 13, 2020. He found that the two documents had the same account number and branch transit number but contained vastly different transactions and totals. Further, the "onlineStatement-2.pdf" file is in the names of both [Client 1] and his wife, while the document Mr. Hui sent, is only in the name of [Client 1].
73. Approximately an hour later, [Client 1] responded, but again the image is broken, and we cannot read it. We have no evidence or testimony to explain what he sent.
74. Mr. Hui then wrote, "Ok which time you are not that busy"? [Client 1] did not respond and approximately three and a half hours later Mr. Hui wrote, "it won't take long" and then "may be 15 mins". [Client 1] responded "I will try my best and I am pretty booked this week. It is travel time", Mr. Hui responded, "no worries thanks for your assistant" (sic) and "just ignore them before we talk", to which [Client 1] wrote "sure!" Mr. Hui replied with a "[shake]" emoji.
75. When asked at the hearing as to what he meant by "just ignore them before we talk", Mr. Hui testified: "What I meant was that we need to understand the situation first, then deal with it. (...) Because whether this letter was about his tax claim or whether there were issues from his mortgage, I wasn't certain. Even -- it was even for me was the first time seeing something like that, so I wasn't very sure and I wanted to know whether there were situations that he was in led him of the letter." (sic)

November 19, 2020

76. On November 19, 2020, [Client 1] wrote to Mr. Hui, "Tomorrow afternoon" and "is it possible to meet down town?" (sic) "I am at north" (sic). Mr. Hui responded, "Tomorrow what time?", "Or we can do zoom if you can", and "it probably take 15-20 minutes". [Client 1] responded with "OK," "I will be free after 3:30 when I am done with the photoshoot in north Vancouver", "4", "to be safe". Mr. Hui responded "OK meet you at 4", then "Zoom meeting", followed by a "[grin]" emoji. [Client 1] replied with a Chinese character that has not been translated.
77. Approximately 10 hours later Mr. Hui sent [Client 1] information on how to connect to their Zoom meeting saying, "let me know when you are free thanks", and "you can click on the above link for meeting".
78. Approximately 14 minutes later, [Client 1] wrote "Traffic", to which Mr. Hui responded, "No worries." Approximately half an hour later, [Client 1] wrote, "I probably have to use my phone," then "to sign in." Mr. Hui wrote, "cannot hear you."
79. There is some conflicting evidence as to whether the Zoom meeting occurred and for how long. Mr. Hui's evidence during direct examination is that there was no Zoom meeting. He later testified that he and [Client 1] had a very brief Zoom call, which was plagued by technical difficulties. He testified that during this very brief Zoom call, [Client 1] advised him that he was unable to locate his documents for his mortgage application and asked that Mr. Hui send them over.

80. [Client 1] also testified that there was a very brief Zoom call between the two of them.

November 20, 2020

81. Approximately thirteen minutes after Hui wrote, “cannot hear you” - the transcript shows the time is now 12:38:17 AM on November 20, 2020 -- Mr. Hui sent five PDF documents to [Client 1]. We do not see the actual documents, but only their titles:
- [Bank 2] October.pdf
 - Employment letter + pay stub – [Client 1].pdf.
 - [Client 1] credit report.pdf
 - Bank statement – [Client 1].pdf
 - [Client 1] title 2.pdf
82. Mr. Hui then wrote the following list: “1- china bank statement for the payroll proof 2. [Bank 2] – downpayment 3 – income proof 4- china credit report 5 – china living address to confirm property is not under your name but your parents”.
83. Counsel for Mr. Hui argues that Mr. Hui sent [Client 1] the documents that [Client 1] had requested so that [Client 1] could comply with the summons and the scheduled interview, which was set to take place five days later.
84. BCFSa argued that Mr. Hui choose to send only five documents and not the whole mortgage file. BCFSa also queried why one of those documents was the October [Bank 2] bank statement, when [Client 1] had already sent that document to Mr. Hui, so he clearly did not need it.
85. It is worth noting that BCFSa has tendered no evidence as to what these five PDF documents sent from Mr. Hui to [Client 1] are or what they contain. [Investigator 1] testified that the contents of the broken images could not be extracted by the forensic experts.
86. I am asked by BCFSa counsel to draw conclusions about the contents of these documents from their titles or from Mr. Hui’s list. BCFSa argued that I should draw an inference that these documents are the non-genuine documents, described in the ASF, that Mr. Hui submitted to the lenders.
87. Mr. Hui then wrote to [Client 1], “pls save and study a bit then clean that chat history,” then “thanks”. [Client 1] responded “[OK].”
88. BCFSa queries why Mr. Hui would ask [Client 1] to “save and study” the documents other than to counsel [Client 1] on what to say to BCFSa investigators. Mr. Hui’s evidence is that by “study a bit” he meant that [Client 1] should review them.
89. BCFSa further submits that in writing “clear the chat history”, Mr. Hui was instructing [Client 1] to delete the evidence so there would be no record of Mr. Hui asking [Client 1] to provide that specific evidence to BCFSa. Mr. Hui testified that when he told [Client 1] to “clean that chat history” he meant that [Client 1] should delete the documents from the chat history to protect [Client 1]’s privacy and personal information from any government surveillance. Mr. Hui testified that WeChat is owned by a Chinese company, called [Company 4], and it was widely reported that the Chinese government had been using WeChat to place surveillance on its users.
90. Contrary to what BCFSa is alleging, I cannot conclude that Mr. Hui was asking [Client 1] to delete **all** of their WeChat messages. He stated “pls save and study a bit then **clean the chat history**”. (my emphasis added). On the face of it and in the context of the messages, this instruction seems to relate to the five PDF documents - not the whole WeChat Conversation as alleged by BCFSa.

91. About 16 hours later Mr. Hui then wrote to [Client 1] saying, “if you send the above files, pls (sic) rename those files in Chinese name and let me review before you send”. [Client 1] replied, “Thx”, and Mr. Hui sent him a “[salute]” emoji.
92. When asked during the hearing why he wrote “rename those files in Chinese”, Mr. Hui’s evidence was that his assistant sent him the documents and had suggested to him to rename them back to Chinese, as the documents were named in Chinese were when they were originally received.

November 23, 2020

93. A few days passed and on November 23, 2020, Mr. Hui again initiated contact. He sent a broken image which we cannot read. We have no evidence or testimony to explain what it is. [Client 1] responded, “Not yet” to which Mr. Hui responded “Ok.”

November 25, 2020

94. Mr. Hui again reached out to [Client 1] on November 25, 2020. Again, all we can see is a broken image which we cannot read. Approximately an hour later, Mr. Hui then wrote “Thanks” and then “?”. [Client 1] responded approximately an hour later sending a broken image which we cannot read. Approximately an hour after that, Mr. Hui responded with a broken image which we also cannot read. Again, there is no evidence or testimony to explain what these broken images actually are.

December 4 and 5, 2020

95. On December 4, 2020, Mr. Hui sent a series of messages: “Did you hear from them”, and then he wrote just over two hours later asking, “are you free to talk”. On December 5, 2020, Mr. Hui tried to call [Client 1] but that appears to have been unsuccessful because the WeChat Conversation describes what we assume is an audio file as “Duration: 00:00”.

December 29, 2020

96. On December 29, 2020, Mr. Hui wrote two messages: “pls (sic) give me a call thanks”, followed by a phone number.

June 7, 2022

97. The WeChat Conversation then goes cold for approximately one and a half years. On June 7, 2022, more than one month after the second summons was served, and after [Client 1] was requested to attend an interview ([Client 1] did not attend this interview either), [Client 1] sent a message to Mr. Hui in Chinese. An interpreter has since interpreted it in English as: “came to audit again”.
98. BCFSA suggests that because Mr. Hui received a letter in early 2021 from BCFSA advising him that he was being investigated, the WeChat Conversation at this point had to be about the investigation.
99. On the other hand, Mr. Hui testified that on reading [Client 1]’s message, he only paid attention to the Chinese words “came again” and it did not occur to him as to what [Client 1] meant by the word the interpreter translated as “audit.” Mr. Hui testified that he assumed what has been translated from Chinese to the word “audit”, was referring to the [Brokerage 1] solicitation letters. Mr. Hui testified that he sent these messages to [Client 1] believing the [Client 1] had received another [Brokerage 1] letter.
100. Mr. Hui responded to [Client 1]’s message by writing, “Talk over the phone”, and then he made an unsuccessful attempt at an audio call that the WeChat Conversation transcript shows as: “Duration:

00:00." Mr. Hui then sent his phone number, and wrote "Send a letter?", "You can call me", "When are you available", and then "This is very important to me. Hope you understand."

101. On June 9, 2022, Mr. Hui sent one last audio message to [Client 1] as part of the WeChat Conversation, saying "[Client 1], I've never received your reply. Perhaps you're busy as well. So, as for the letter you received, it's also fine you don't deal with it just like last time. There's nothing that needs to be done. If you have any questions, you can contact me. I won't contact you further."
102. Mr. Hui testified that when he said in the voice message: "So, as for the letter you received, it's also fine you don't deal with it just like last time" he was telling [Client 1] that if he did receive a letter from [Brokerage 1] he could, as he did in 2020, not deal with it. In contrast, [Client 1], in his interview during the investigation, claimed that he believed that Mr. Hui was advising him to ignore the BCFSa investigation

[Client 1]'s evidence

103. [Client 1] was clear in his evidence both with the investigators and during the hearing, that the WeChat Conversation was pertaining entirely to the BCFSa investigation and the letters and summons that BCFSa sent to him.
104. [Client 1] was also clear in his evidence that he had not created the documents in his mortgage file that were non-genuine but had only provided Mr. Hui with the documents that he was asked to provide.
105. [Client 1] gave testimony on each of the three parts of the Obstruction Allegation: He testified that:
 - a. Mr. Hui told him on the phone and via WeChat to not respond to the summons by BCFSa. [Client 1] testified that Mr. Hui told him that this matter was about Mr. Hui and not him and that BCFSa would do nothing against [Client 1] if he did not respond.
 - b. Mr. Hui sent documents to him and asked that he give those documents to BCFSa. [Client 1] testified that he did not provide those documents to BCFSa.
 - c. when Mr. Hui asked him to "clean the chat history" that he perceived that as advice to delete the entire WeChat Conversation.
106. However, [Client 1]'s evidence regarding the receipt of these documents changed over time. At an interview he told the investigator that he did not even bother to open the five PDFs because he did not want to be involved, and the matter did not concern him. At the hearing, his evidence changed and on cross-examination [Client 1] acknowledged several times that he did open the documents and looked at them briefly.

Mr. Hui's evidence

107. Mr. Hui denied that he counselled [Client 1] as alleged or at all to obstruct or to attempt to obstruct any ongoing investigation of his conduct under the MBA. Mr. Hui's evidence can be summarized as follows:
 - a. [Client 1] requested that Mr. Hui send him certain documents that he gave to Mr. Hui's office for his mortgage application as he could not locate them;
 - b. Mr. Hui told [Client 1] to try to find them himself first;
 - c. There was a Zoom call, but it was so short that he wouldn't count it as an actual meeting;

- d. During the very brief Zoom call, [Client 1] advised that he couldn't find the documents and requested those documents to be sent to him;
- e. Mr. Hui forwarded some of the documents from [Client 1]'s mortgage file to [Client 1], which were sent to him by his assistant. Mr. Hui was told by the assistant that since the documents were in Chinese when they were received from [Client 1] and were renamed into English for their mortgage filing, it was suggested that [Client 1] should name them back into the original Chinese before sending them to BCFSA. (I do not follow the logic of that request but I cannot with certainty conclude that it was for a nefarious reason.)
- f. Mr. Hui's evidence is that [Client 1] was concerned because he had not properly declared his income on his tax returns.

Credibility

108. The recent decision of the Law Society of British Columbia Tribunal in *Guo (Re)*, 2024 LSBC 17 (CanLII) reviewed the leading cases and tests for assessing credibility and liability, writing at paragraphs 49 and 50:

[49] The leading decision in British Columbia on assessing credibility is *Faryna v. Chorney*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (BCCA), at para. 11, where the court said the following at page 357:

The credibility of interested witness (sic), particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced, and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial suppression of the truth. Again, a witness may testify what he sincerely believes to be true, but he may be quite honestly mistaken. For a trial Judge to say, "I believe him because I judge him to be telling the truth", is to come to a conclusion on consideration of only half the problem. In truth it may easily be self-direction of a dangerous kind.

[50] *Faryna* was referred to in *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186 to 188, where, in addition to referring to general principles regarding credibility, the court discussed the importance of contemporaneous documentary evidence when assessing the credibility of oral testimony:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness

has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para. 128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 1993 CanLII 7140 (AB KB), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

109. Based on *Bradshaw v. Stenner*, paragraph 187 above, the methodology to be applied is as follows:

- I. Consider the testimony of the witness on a 'stand alone' basis;
- II. consider an analysis of whether the witness' story is inherently believable;
- III. if the witness testimony survived relatively intact, evaluate the testimony based on consistency with other witnesses and with documentary evidence;
- IV. the testimony of a non-party, disinterested witnesses may be used as a reliable yardstick for comparison; and
- V. determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I. The testimony of the witnesses on a 'stand-alone' basis:

110. The testimony of both Mr. Hui and [Client 1] appears coherent on the surface. We have two different versions of what the WeChat Conversation meant.
111. BCFSA argues that as we read through the WeChat Conversation, its "plain meaning" is apparent. BCFSA's explanation of the WeChat Conversation, as supported by [Client 1]'s testimony, suggests that the parties were discussing the BCFSA investigation into Mr. Hui and the [Client 1] mortgage. BCFSA focuses on Mr. Hui's statements such as "ignore them", "do nothing" and "clean the chat history."
112. BCFSA suggested that it was impossible for [Brokerage 1] to know or track the expiry of Mr. Hui's clients – especially over a number of years. I do not agree. Clearly Mr. Hui or one of his employees reported such an incident to FICOM on March 18, 2019 and sent them a copy of one of the Poaching Letters.

113. BCFSA further submitted that [Client 1] did not become a client of Mr. Hui until after Mr. Hui had left [Brokerage 1]. However, there is no clear evidence as to when [Client 1] began discussing his mortgage with Mr. Hui.
114. Mr. Hui's explanation of the WeChat Conversation is that Mr. Hui was warning [Client 1] that Mr. Hui's previous employer was attempting to poach his clients. Further, Mr. Hui states that their discussion about BCFSA's investigation itself was primarily in relation to [Client 1]'s concerns regarding the ramifications that it could have on himself in relation to CRA matters. Mr. Hui's counsel submits that Mr. Hui was actively assisting [Client 1] to cooperate with the BCFSA investigation and provided him with the documents that [Client 1] no longer had in his possession.
115. Overall, both these explanations of the WeChat Conversation, upon first blush, appear to be plausible. We therefore need to move to the second step of the methodology.

II. An analysis of whether the witness' story is inherently believable:

116. In order to analyze the believability of each version, we can use factors as suggested in the *Faryna* and *Bradshaw* cases to look at the inherent believability of each witness' testimony: their ability to observe events, their firmness of memory, the consistency of their accounts, any motives to lie, and their demeanour.
117. First, as for demeanour, I will comment that both these witnesses were difficult. I agree with BCFSA's description of Mr. Hui as: "evasive, would not provide answers to straightforward questions in response to questions put to him he would ask questions, questioned his interpreter, and would make his own objections to questions."
118. This foregoing description, minus the comment about the interpreter as [Client 1] did not use one, can likewise apply perfectly to describe [Client 1] as a witness.
119. In addition to his behaviour during the hearing, I note that [Client 1] was reluctant to cooperate with BCFSA from the outset. [Client 1]'s first failure to comply with BCFSA's investigation occurred in September 2020. This was before there was any WeChat Conversation, which did not begin until October 23, 2020.
120. [Client 1] continued to be uncooperative with the investigation even after BCFSA began issuing him summonses. Throughout both of his interviews, and in his testimony during the hearing, [Client 1] was reluctant to answer questions relating to his reported income and financial status. For example, during his interview on July 26, 2022, when asked to pull up his bank statement to confirm the branch number, [Client 1] asked whether it was voluntary. [Client 1]'s lack of cooperation continued throughout the hearing where, despite being called as a witness in support of BCFSA's case, BCFSA had to conduct its examination of [Client 1] in the nature of a cross-examination. [Client 1] was a difficult witness, and his evidence was not straightforward.
121. Despite the fact that BCFSA told [Client 1] that he was not the subject of the investigation and there would be no jeopardy to [Client 1], it was apparent that [Client 1] did not believe this. [Client 1]'s concern about his potential liability with the CRA or other ramifications that might follow his testimony was self-evident throughout. He was not an impartial third-party whose perception of his personal interest would not be affected by these proceedings. For example, during his cross examination, when [Client 1] was asked what his income was for 2017, he gave the following response:

Q: Okay. And then for the year 2017, how much income did you make?

A: So year '17?

Q: 2017, yes.

A: Do I have to ask? Are you, like -- do I have to answer the question?

Q: I'm asking you –

A: Do I have to answer?

Hearing Officer: Yes, please answer the question.

A: Why I have to answer this question? It's not relevant to the mortgage. It's you're not the CRA, why have to ask this question?

Hearing Officer: See, sir, Counsel is entitled to ask that question. You are under affirmation to answer it. It's not for you to decide whether it's relevant or not, it's for me to decide that. And I'm going to allow the question.

A: I don't remember. I don't have my T4.

122. During his July 2022 interview, [Client 1] told the investigator that he was making \$180,000 a year at the time he applied for the mortgage through Mr. Hui. However, his 2017 Tax Assessment states a total of only \$3,316. Even if [Client 1] was erroneously referring to his 2018 income, his 2018 Tax Assessment states a total income of \$28,263. I note that it would have been impossible, given his Canadian income as reported to CRA, for [Client 1] to obtain a mortgage for \$1,050,000.
123. Having been denied a mortgage from his own bank, he then obtained a mortgage through Mr. Hui from a lender that created a mortgage program meant for people who did not reside in Canada. Whether he created the documents that were non-genuine that enabled him to obtain the mortgage, or he was just willfully blind to allowing Mr. Hui to file them on his behalf, he did sign a mortgage application that gave his residential address as being in China, when in fact [Client 1] lived in North Vancouver at this time. When he signed this document, [Client 1] never raised this with Mr. Hui or stated that it was not his address.
124. In regards to consistency, during cross examination, [Client 1] categorically denied that he had any business or employment affiliation with China whatsoever. However, when his LinkedIn page was put to him, which had at least one entry where he put down his affiliation with a business in China, [Client 1] tried to distance himself from it. [Client 1] was reluctant to answer and claimed that the research into his LinkedIn was a waste of taxpayer dollars.
125. Further, in regards to consistency and firmness of memory, [Client 1] was inconsistent with his evidence as to whether or not he opened the PDF documents when he received them from Mr. Hui in the WeChat Conversation. When he was asked by the investigator in the interview in 2022 whether he had opened the PDF documents, he claimed he did not as he did "not want to get involved and [he] was not planning on forwarding them to BCFSA anyway". However, during cross-examination in the hearing, [Client 1] testified repeatedly that he had looked at them "briefly". I accept that [Client 1] did open them. I further note that despite looking at the documents briefly (which would have been enough to note the face of them), at no time during the WeChat Conversation or in any other communications put forward in evidence before me, did [Client 1] question that the content of the PDF documents was not correct, or state that they were not the same documents that he originally provided to Mr. Hui when he applied for the mortgage, or that those documents did not belong to him.
126. Overall, returning to the factors listed in *Faryna* and *Bradshaw*, I find that [Client 1] had motivation to lie. [Client 1] had the incentive to say that at all material times, he never worked in China and never had any overseas income because to admit otherwise, at least from his perspective, could lead to his inaccurate tax filing with the CRA being exposed. Even if [Client 1] understood and accepted that it was not within BCFSA's mandate to go after him, it is unlikely that he fully believed that he would not face any ramifications from CRA or elsewhere. On the testimony and evidence before me, there is a very real likelihood that [Client 1]'s lack of cooperation with BCFSA's investigation was of his own initiative to avoid the exposure of his inaccurate tax filings and any associated consequences from the CRA, and that he has now sought to place this lack of cooperation at the feet of Mr. Hui.

127. As for Mr. Hui, it was also difficult to get a straightforward answer to a question from him and he was often evasive in his responses. As to whether Mr. Hui had any motivation for lying during the investigation and hearing, he knew he was at risk of sanctions from his regulator, and potentially even his registration was at risk. Certainly Mr. Hui was aware that if not his entire livelihood, his professional reputation was entirely on the line.

128. However, Mr. Hui did admit the following in the ASF:

- he submitted mortgage applications and supporting documents for [Client 1] to lenders where he knew, or ought to have known that the employment, financial and residential information was false;
- he failed to conduct reasonable due diligence into the financial, occupational, and residential circumstances of the borrowers by not confirming information that was suspect in the circumstances; and
- he acted in a manner that would cause lenders to be misled in underwriting and approving mortgage applications.

(III) If the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence.

129. If the witnesses' credibility has not been called into question (which I find it has been), and if I were to accept either witnesses' explanation of the WeChat Conversation, I need to evaluate their testimony against the testimony of the other. I have noted above the inconsistencies between these two witnesses' testimonies.

130. As for comparing their testimony with documentary evidence, we are faced with the stark reality of missing documentation in this case. BCFSA submits: "Other than a few messages in the WeChat Conversation where we do not know what was said, the WeChat Conversation itself is in no way convoluted or difficult to understand. Much like listening to any conversation, the WeChat Conversation is easy to follow."

131. I disagree. We have seven instances of broken images in the WeChat Conversation. We only have conjecture, and no tangible evidence as to the contents of these images. Are they pictures, are they documents, or electronically recorded conversations? I have no cogent evidence before me on which I can draw conclusions in that respect.

132. We also do not have the actual PDF documents that were transmitted by Mr. Hui to [Client 1], we only have their titles and a description of their use as sent by Mr. Hui. We also do not know if the five PDFs referred to in the WeChat Conversation are legitimate documents, or whether they are the same documents listed in the ASF as the "non-genuine" documents submitted for [Client 1]'s mortgage application. I cannot draw definite conclusions as to what they might be.

133. During the hearing there was some discussion or theorizing as to who must have created the "non-genuine" documents. Each witness seemed to suggest that they were created by the other. It is an intriguing question which is not answered by the evidence. However, the proof of who created the "non-genuine" documents is not relevant to the Obstruction Allegation which solely concerns whether Mr. Hui counselled [Client 1] to not cooperate with the BCFSA investigation.

(IV) The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison.

134. As noted above, unfortunately, we do not have any third-party, objective witnesses in this matter. This hearing was seven days long and the testimony was confined to Mr. Hui, [Client 1] and a BCFSA investigator.

Reasons and Decision

Applicable Law

135. Section 8 of the MBA provides:

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 was an applicant under section 4;

(...)

136. Section 4 of the MBA requires the Registrar to grant registration or renewal of registration where the applicant is suitable for registration and the proposed registration is not objectionable. Section 4 is reproduced below:

4. The registrar

- a. must grant registration or renewal of registration to an applicant if in the opinion of the registrar the applicant is suitable for registration and the proposed registration is not objectionable,
- b. must not refuse to grant or refuse to renew registration without giving the applicant an opportunity to be heard, and
- c. may, in the registrar's discretion, attach to the registration or renewal of registration terms, conditions or restrictions the registrar considers necessary.

137. In order to find that Mr. Hui would be disentitled to registration if he were an applicant under section 4, the registrar must be of the opinion that:

- (a) Mr. Hui is not suitable for registration; and
- (b) Mr. Hui's registration would be objectionable.

138. As the Supreme Court of Canada has noted in *Cooper v. Hobart*, 2001 SCC 79 (CanLII), at para. 49, the Registrar is required, by the MBA, to balance a myriad of competing interests, ensuring that the public has access to capital through mortgage financing while at the same time instilling public confidence in the system by determining who is "suitable" and whose proposed registration as a broker is "not objectionable".

Discussion

139. Did Mr. Hui, while registered as a submortgage broker, conduct himself in a manner which would make him disentitled to registration if he were an applicant under section 4 of the MBA, contrary to section 8(1)(e) of the MBA? Specifically, Did Mr. Hui seek to obstruct, or attempt to obstruct the investigation by counselling his client to:

- a. not cooperate with the Registrar's summonses;
- b. provide fraudulent documents to staff of the Registrar that he provided to [Client 1] for that purpose; and/or
- c. delete evidence of their communications, being their WeChat conversation.

140. I now turn to the final step of the *Bradshaw* test:

"Which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions?"

a) Did Mr. Hui seek to obstruct, or attempt to obstruct the investigation by counselling his client to not cooperate with the Registrar's summonses?

141. On the balance of probabilities, I cannot find that Mr. Hui counselled his client to not cooperate with the Registrar's summons.

142. The evidence offered by BCFSA that Mr. Hui did counsel [Client 1] to not cooperate is twofold:

- a) [Client 1] testified that Mr. Hui told him to "ignore it" and he understood that to be in reference to BCFSA's investigation; and
- b) BCFSA urges that conclusion based on what it terms the "plain reading" of the WeChat Communication.

143. As for [Client 1]'s evidence in the interviews by the investigator, and testimony during the hearing, as I discussed above, I do not find [Client 1] to be a credible witness. It is in his interest to explain his lack of cooperation with the investigation by blaming Mr. Hui and stating that Mr. Hui told him he did not have to do so as it and that it was voluntary.

144. The investigator left messages for him on two occasions explaining the investigation to him. While I appreciate that English may be [Client 1]'s second language, and he was not, as he himself said, a "lawyer", he is not unsophisticated. At the time he applied for the mortgage he had resided in Canada since 2001, he held a Master of Business Administration from York University in Toronto, and he was earning his living as an instructor for three business colleges in Canada. He must have understood the concept of "contempt of court" or at least that responding to a summons is not "voluntary" and the seriousness of failing to comply with a summons.

145. I find it is likely that [Client 1] made his own decision to not cooperate with the investigation as he feared ramifications from the CRA. He then adopted his explanation of the WeChat Conversation to exculpate himself.

146. BCFSA's argument that Mr. Hui counseled his client to not cooperate is based on its interpretation, or "plain reading", of the WeChat Communication. BCFSA challenged Mr. Hui's testimony as to his explanation on the meaning of the WeChat Conversation in its cross examination, but Mr. Hui remained consistent. Given the broken images and the lack of clarity as to what documents passed

back and forth in the WeChat Communication, I cannot conclude on the balance of probabilities that when Mr. Hui said “just ignore it” that he was referring to the summons.

b) Did Mr. Hui counsel his client to provide fraudulent documents to staff of the Registrar that he provided to [Client 1] for that purpose?

147. On the balance of probabilities, I cannot find that Mr. Hui counselled his client to provide fraudulent documents to the Registrar and that that he provided those documents to [Client 1] for that purpose.
148. The evidence offered by BCFSa to reach that conclusion is the five broken images of PDFs in the WeChat Communication sent from Mr. Hui to [Client 1]. As discussed above, we do not know the contents of those five PDFs, and BCFSa has not been able to tender any evidence as to their contents. Instead, BCFSa is merely inviting the Hearing Officer to draw an inference as to what these documents were.
149. As BCFSa has a positive duty to prove its allegation that Mr. Hui sent “fraudulent documents” to [Client 1] to be forwarded to BCFSa, short of reliable evidence of what those documents were, I am unable to make such a finding. In light of the entirety of the evidence and testimony, I cannot infer, on the balance of probabilities, that the five PDFs in the WeChat Conversation are the non-genuine documents set out in the ASF, and that Mr. Hui counselled [Client 1] to provide fraudulent documents to the Registrar’s staff.

c) Did Mr. Hui counsel his client to delete evidence of their communications, being their WeChat Conversation?

150. On the balance of probabilities, I cannot find that Mr. Hui counselled his client to delete their WeChat Conversation.
151. We only have [Client 1]’s testimony that he thought that is what Mr. Hui meant. However, it is equally possible that Mr. Hui was referring to deleting only the five PDFs, which contained personal financial information, which having sent them to [Client 1], he was then concerned for [Client 1]’s privacy on a social platform that he believed to be vulnerable to surveillance.
152. I find that BCFSa has not established the evidence necessary to prove this allegation on the preponderance of probabilities.

Conclusion

153. For the reasons noted above, I find that there is not sufficiently clear, convincing and cogent evidence to satisfy, on the balance of probabilities test, that Mr. Hui counselled [Client 1] to not cooperate with the Registrar’s summons; counselled [Client 1] to provide fraudulent documents to the Registrar and that that he provided those documents to [Client 1] for that purpose; or counselled [Client 1] to delete the evidence of their communication, being their WeChat Conversation. By the above reasoning, I do not mean to suggest that I accept Mr. Hui’s version of the WeChat Conversation either. What I do conclude is that BCFSa has not discharged its onus required to prove the allegation against Mr. Hui.
154. The Obstruction Allegation must therefore be dismissed. Therefore, I find the following:
- allegations 1(a), (b), (c) and (d), 4(a), (b), and 5 in the Amended Notice, having been admitted in the ASF, have been proven;
 - allegations 3(a), (b) and (c) in the Amended Notice have not been proven; and
 - and BCFSa did not proceed on allegation 2 in the Amended Notice.

Penalty

155. I retain jurisdiction to determine issues of penalty and costs on allegations 1(a), (b), (c) and (d), 4(a), (b), and 5 of the Amended Notice, which have been admitted to in the ASF. I will hear evidence and submissions from the parties' concerning orders under section 8 of the MBA, and any costs under section 6(9) of the MBA, and any other actions available to the Registrar, at a date, time, and place to be set.
156. BCFSA and counsel for Mr. Hui must advise the Hearing Coordinator by February 7, 2025 of any requests for an in-person hearing respecting sanctions and expenses, and why an in-person hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date.
157. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting sanctions and expenses will be received in writing. Subject to future directions, the parties must provide affidavit evidence and written submissions to the Hearing Coordinator and to each other as follows:
- BCFSA must provide any affidavits and written submissions by February 21, 2025.
 - Counsel for Mr. Hui must provide any responding affidavits and written submissions by March 14, 2025.
 - BCFSA must provide any reply affidavits and written reply submissions by March 21, 2025.
158. Any party can apply to vary these dates, seek leave to cross-examine on an affidavit, or address other procedural matters.
159. Once I have arrived at a decision on sanctions and expense issues, I will issue additional reasons that will form part of this decision, make an order under sections 8 and/or 6(9) of the MBA, and such other orders under the MBA that I may deem appropriate.
160. Once an order has been made, Mr. Hui will have the right to appeal to the Financial Services Tribunal under section 9 of the MBA. Mr. Hui will have 30 days from the date of the sanction decision to appeal: *Financial Services Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

"Original signed by Thelma O'Grady"

Thelma O'Grady
Hearing Officer

APPENDIX A

File # INV19.228.48172

INV24.016.4133

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

**KA CHAI HUI also known as ELVIS HUI
(REGISTRATION NO. 500477)**

AND

**GUARANTI MORTGAGES CORP.
(REGISTRATION NO. X300397)**

AGREED STATEMENT OF FACTS

A. REGISTRATION HISTORY

1. Ka Chai Hui also known as Elvis Hui ("Mr. Hui") was first registered with the Registrar of Mortgage Brokers (the "Registrar") as a submortgage broker on October 19, 2012.
2. Guaranti Mortgages Corp dba Dominion Lending Centres Guaranti Mortgages ("Guaranti") was first registered with the Registrar as a mortgage broker on September 24, 2015 and Mr. Hui was the Designated Individual for Guaranti until April 13, 2021.
3. On or about May 1, 2019, the Financial Institutions Commission (predecessor of the BC Financial Services Authority ("BCFSA")) began a routine audit on Mr. Hui's mortgage files.
4. During that audit a number of files raised some concerns and those files of concern were forwarded for investigation.

B. BORROWER [CLIENT 1]

5. On or about December 4, 2018, Mr. Hui submitted a mortgage application for borrower [Client 1] ("[Client 1]") to obtain funding for the purchase of a property at [Property 1] in North Vancouver, under [Bank 1]'s Non-Resident Mortgage Program ("NRMP").
6. Under [Bank 1]'s NRMP, borrowers must satisfy the following underwriting criteria to qualify for financing:

- a. Borrowers can be Canadian citizens, permanent residents, or foreign residents but cannot reside in Canada;
 - b. Canadian citizens or permanent residents who are temporarily relocated to another country by their employers are not eligible;
 - c. Down payment must be from the borrower's own resources. There is an exception for gifted down payment if the funds are provided by immediate family members; and
 - d. The maximum loan to value ratio is 65%.
7. Mr. Hui's mortgage file contained the following documents for [Client 1] which were not genuine:
 - a. A [Bank 2] account statement for the period between October 1, 2018 and October 31, 2018, which indicated that [Client 1] had a balance ranging between \$1,212,906.93 and \$1,221,910.83;
 - b. A letter of employment from Beijing [Company 5] ("[Company 5]") which indicated that [Client 1] has been employed as a Financial Director since August 1, 2012, and earns 1,350,000 Yuan annually;
 - c. A paystub for [Client 1] from [Company 5] dated November 21, 2018 which indicated he was paid a monthly base salary of \$112,500 Yuan per month; and
 - d. A Bank of China Account Statement for the period between May 1, 2018 and October 31, 2018.
8. [Client 1]'s evidence at an interview on July 26, 2022 was that:
 - a. at the time of his mortgage application, he worked for University Canada West and two other universities as a university instructor;
 - b. he had not lived in Beijing for the last ten years and had never worked for [Company 5];
 - c. that the [Bank 2] account statement showing a balance of \$1,212,906.93 was not his; and
 - d. he denied to have provided these ingenuine documents to Mr. Hui.
9. Mr. Hui's mortgage file for [Client 1] also contained:
 - a. [Client 1]'s mortgage application included a contract of purchase and sale dated April 11, 2018, in which [Client 1] provided the following information:
 - (i) he was a resident of Canada;
 - (ii) his address was [Property 6], North Vancouver;
 - (iii) his phone number contained a 306 area code (Canadian); and
 - (iv) his email address was from York University (Canadian).
10. In contrast to the information provided in the contract of purchase and sale, [Client 1]'s mortgage application stated that [Client 1] lived in China for the past six years

and nine months.

11. The BC Land Title search for the subject property that [Client 1] purchased listed [Client 1]'s employment as university lecturer.
12. Mr. Hui ought to have known that this borrower would not meet the underwriting criteria for the [Bank 1]'s NRMP.

BORROWER [CLIENT 2]

13. On or about April 23, 2019, Mr. Hui submitted a mortgage application for borrower [Client 2] ("[Client 2]") to obtain funding for a property located at [Property 2] in Surrey under [Bank 1]'s NRMP.
14. [Client 2]'s mortgage was approved.
15. [Client 2]'s mortgage application contained a [Bank 3] ("[Bank 3]") bank account statement in support of [Client 2]'s income which [Bank 3] has since confirmed is not genuine.
16. Staff of the Registrar ("Staff") found a second [Bank 3] bank account statement belonging to [Client 2] misfiled in an unrelated mortgage file, showing lower account balances.
17. [Bank 3] confirmed that the second [Bank 3] bank account statement with the lower account balances was genuine.
18. Mr. Hui's mortgage file as found during the original audit, contained:
 - a. [Client 2]'s work permit approving work in Canada with a particular employer in Winnipeg expiring October 22, 2019; and
 - b. a letter from Service Canada confirming [Client 2]'s social insurance number.
19. Mr. Hui knew or ought to have known that [Client 2] would not have qualified for financing under [Bank 1]'s NRMP if it was disclosed to the lender that she worked for a company in Winnipeg.

C. BORROWER [CLIENT 3]

20. On or about April 4 or 5, 2019, Mr. Hui submitted two concurrent mortgage applications for borrower [Client 3] ("[Client 3]") to obtain funding for the purchase of two leasehold properties at UBC:
 - a. [Property 3], Vancouver ("Unit 1907"), mortgage application to [Bank 4]; and
 - b. [Property 4], Vancouver ("Unit 1708"), mortgage application to [Lender 1].
21. Mr. Hui advised a representative from [Bank 4] about the concurrent loan applications on the phone and by email. However, both mortgage applications for [Client 3] failed to sufficiently disclose that the borrower would be seeking financing to purchase a second property.
22. Both mortgage applications were accepted, and [Client 3] purchased the two properties using the mortgage funds.

23. On November 3, 2020, another representative from [Bank 4] confirmed that they were advised on the mortgage application that the property would be owner-occupied, not a rental, and that they were not aware that [Client 3] was seeking mortgage financing to purchase another property at the time.

D. BORROWERS [CLIENT 4] AND [CLIENT 5]

26. Mr. Hui assisted borrower [Client 4] ("[Client 4]") and borrower [Client 5] ("[Client 5]") with obtaining mortgage financing with [Lender 2], which was approved.
27. The borrowers subsequently proceeded to obtain financing on their own from [Bank 5] ("[Bank 5]").
28. During the audit and initial investigation, the following documents were found in Mr. Hui's mortgage file for [Client 4] and [Client 5], which were not genuine:
- a. A job letter indicating [Client 4] was employed by [Company 6] as a full-time Product Manager since February 2014;
 - b. Payroll record from [Company 6]; and
 - c. Bank of China account statement.
29. When investigators requested mortgage files, Mr. Hui provided additional documents in [Client 4] and [Client 5]'s mortgage file now included new documents not previously in the mortgage file:
- a. A job letter from [Company 7] indicating [Client 4] has been employed as a general manager since February 2014;
 - b. [Client 4]'s paystub from [Company 8]; and
 - c. [Client 5]'s job letter.
30. [Client 4] was at all relevant times employed by [Company 8], did not live in China, was not employed by the companies in China as indicated in the fraudulent job letters and did not have a bank account with the Bank of China.
31. The Employment Verification Documents for [Client 4] and [Client 5] were necessary records to keep in [Client 4] and [Client 5]'s mortgage file.
32. [Client 4] and [Client 5] directed that Mr. Hui be paid \$2,450 out of the mortgage proceeds from [Bank 5] for his assistance in obtaining a mortgage from [Lender 2].
33. Mr. Hui and Guaranti failed to make proper disclosure through a Form 10 to [Bank 5] of the funds they received from [Client 4] and [Client 5] for the brokerage fee in the amount of \$2,450.

E. GENERALLY

34. Mr. Hui submitted the subject mortgage applications for the subject borrowers referred to herein, including supporting information and documentation to lenders with employment,

financial and residential information that he knew or ought to have known was false.

35. Mr. Hui failed to conduct reasonable due diligence into the financial, occupational, and residential circumstances of the borrowers by not confirming information that was suspect in the circumstances.
36. Mr. Hui acted in a manner that would cause lenders to be misled in underwriting and approving mortgage applications.
37. Mr. Hui has no prior history of discipline with the Registrar.

The Registrar, Mr. Hui and Guaranti agree that this ASF contains facts that are not in dispute. The parties are at liberty to lead additional evidence on any matters contained in the ASF and on any matters for which there are no agreed facts. The Registrar, Mr. Hui and Guaranti agree that the documents and facts referred to herein will be admitted as evidence at any pre-hearing conference, settlement conference or hearing.

"Original signed by Ka Chai Hui"

"Original signed by Simon Adams"

KA CHAI HUI also known as ELVIS HUI on his own
Behalf and on behalf of GUARANTI MORTGAGE
CORP.

Simon Adams
Legal Counsel for the BC Financial Services
Authority

Dated 12 day of May, 2024

Dated 13th day of May, 2024