

**BC FINANCIAL SERVICES AUTHORITY**

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

**AND**

**IN THE MATTER OF**

**GREGORY JOSEPH MARTEL**

**AND**

**MY MORTGAGE AUCTION CORP. dba**

**SHOP YOUR OWN MORTGAGE**

**Decision on Liability and Penalty**

**[This Decision has been redacted before publication.]**

**Date of Hearing:** Written Submissions

**Counsel for BCFSA:** Laura Forseille

**For Respondents:** No Appearance

**Hearing Officer:** Andrew Pendray

**Introduction**

1. On May 25, 2023, pursuant to section 8(2) of the *Mortgage Brokers Act* (the “MBA”), I issued an order suspending both Gregory Joseph Martel and My Mortgage Auction Corp., doing business as Shop Your Own Mortgage (SYOM), from acting as a submortgage broker and mortgage broker respectively: *Martel (Re)*, 2023 BCRMB 6.
2. In issuing that decision, I determined that there was a *prima facie* case that supported a conclusion that Mr. Martel and SYOM were engaged in activities that would disentitle them to registration if they were applicants for registration under section 4 of the MBA. I further determined that there was a *prima facie* case that supports a conclusion that Mr. Martel and SYOM conducted business in a manner that was prejudicial to the public interest.
3. The Registrar of Mortgage Brokers (the “Registrar”) subsequently issued a Notice of Hearing pursuant to sections 8 and 8(1) of the MBA, in respect of the Mr. Martel and SYOM (the “respondents”), on March 12, 2024. The allegations against the respondents were that Mr. Martel

and SYOM would be disentitled to registration as applicants under section 4 of the MBA due to the fact that Mr. Martel and SYOM had both been declared bankrupt, and Mr. Martel had been found guilty of contempt of court.

4. The BC Financial Services Authority ("BCFSA"), as representative for the Registrar in this matter, is seeking an order that Mr. Martel and SYOM's registration be cancelled pursuant to section 8(1)(b) of the MBA.
5. Despite being provided with an opportunity to be heard, neither Mr. Martel nor SYOM participated in the hearing of this matter. As a result, the matter proceeded by way of written submissions and affidavit evidence.

### **Issues**

6. The issues are:
  - Does the evidence support the allegations set out in the Notice of Hearing?
  - If so, what are the appropriate orders to be issued in respect of the respondents' conduct, as provided for by section 8(1) of the MBA?

### **Jurisdiction**

7. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers in respect of orders under section 8 of the MBA, pursuant to a February 19, 2025 Acting Capacity instrument.

### **Notice of hearing**

8. The Notice of Hearing set out the following allegations against the respondents:
  1. Pursuant to section 8(1)(e) of the MBA, both Mr. Martel and SYOM would be disentitled to registration as applicants under section 4 of the MBA, due to the following:
    - a. Mr. Martel, who is the designated individual and sole director of SYOM, was adjudged bankrupt by virtue of an order entered on September 6, 2023 in the BC Supreme Court, and [Trustee 1] was appointed as trustee of Mr. Martel's estate;
    - b. SYOM was declared bankrupt on June 6, 2023 by the Office of the Superintendent of Bankruptcy Canada; and
    - c. On September 11, 2023, Mr. Martel was found guilty of contempt of court in the BC Supreme Court for breaching an adjournment order, receivership orders, and investigatory powers orders in the related receivership proceeding.

### **Background and Evidence**

9. The evidence and information brought before me in this matter was contained in a September 16, 2024 affidavit of [Paralegal 1], paralegal with BCFSA, and the exhibits attached to that affidavit; the August 20, 2024 affidavit of [Investigator 1], an investigator with BCFSA, and the exhibits attached to that affidavit; as well as a Book of Documents submitted by BCFSA.
10. Although I have reviewed all the information contained within those affidavits and exhibits, as well as the additional documentary evidence, I will only refer here to that which is necessary to provide context to my decision.

### **Mr. Martel and SYOM**

11. Mr. Martel was first registered as a submortgage broker under the MBA on December 20, 2006.

12. SYOM was registered as a mortgage broker under the MBA on December 6, 2017. Mr. Martel was the designated individual and sole director of SYOM.
13. The background circumstances of this case are set out in *Martel (Re)*, 2023 BCRMB 6. For ease of reference those background details follow below.

#### Complaints about the Respondents

14. Commencing in April 2023, BCFSA began to receive a number of complaints from investors who were seeking repayment of money from Mr. Martel and SYOM.
15. The first of those complaints came on April 5, 2023, via an email from a [Complainant 1], who indicated that he was an investor with SYOM.
16. [Complainant 1], in his email, detailed a specific loan deal in which he had loaned funds to SYOM, with repayment of those funds to be paid out to him, with interest, by December 2, 2022. [Complainant 1] indicated that the scheduled repayment had not occurred on December 2, 2022, and that although he had been promised a number of subsequent payout dates by the respondent from January 6 through March 31, 2023, he had not received any payment.
17. [Complainant 1] went on to explain that the above referenced loan deal was representative of several loan deals in which SYOM had missed payout dates, and that he was aware of several other investors in a similar situation with SYOM.
18. [Complainant 1] indicated that he was concerned that SYOM was engaged in a “ponzi scheme” and that:

I think that if we knew the money actually existed and we were going to be paid, we would not have as many concerns. One of our biggest fears is that Shop Your Own Mortgage has issued T5's for interest on the investment and they have not paid us the money which we owe to [Canada Revenue Agency].

19. The following day, April 6, 2023, BCFSA received an email from Constable [Individual 1] with the Victoria Police Department. In that email, [Individual 1] indicated that he was enquiring as to the current operating status of SYOM.
20. In his email [Individual 1] noted that he understood that investors into SYOM had attempted to withdraw funds, after having been told the funds would be released on specific dates, but that the investors had not received the promised funds. [Individual 1] further indicated that:

One of the investors attended the office location of My Mortgage Auction Corp 645 Tyee Rd. in Victoria and found the office vacant. [sic]
21. On April 18, 2023, BCFSA received a voicemail<sup>1</sup> from [Complainant 2]. [Complainant 2] indicated that they had invested in SYOM, that SYOM had issued them a T5 slip indicating that [Complainant 2] had received interest payments on that investment, but that [Complainant 2] had not in fact received any interest or received the return of their investment into SYOM. [Complainant 2] further indicated that Mr. Martel had promised him, in writing, on a number of occasions, that payment would be made by a specific date, but that payment had not in fact been received by [Complainant 2].
22. On April 24, 2023, BCFSA received a complaint from [Complainant 3]. In his complaint form [Complainant 3] indicated that he had been investing in what he believed to be short term mortgages or bridge loans with SYOM for the previous three years. [Complainant 3] indicated that he believed

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<sup>1</sup> The voicemail was transcribed into email form by an automated system.

that interest had been accumulating in his account during that time, and that the interest had then been reinvested in new loans with SYOM. [Complainant 3] noted in his complaint form a specific investment with SYOM on August 8, 2022, in which he invested \$90,152.30. [Complainant 3] indicated that investment was to mature on October 10, 2022, with a payout from SYOM in the amount of \$100,970.58.

23. [Complainant 3] explained on his complaint form that:

When I requested a payout of one of these loans in October, I did not receive the money owing. Various excuses were offered. Now I have come to believe that the whole thing is a Ponzi scheme. This company has been issuing fraudulent T5's on this imaginary income, resulting in big tax bills for me and also OAS claw back.

24. On April 26, 2023, BCFSA received a voicemail from [Complainant 4], who indicated that she had invested money with My Mortgage Action Corp. and that she was having problems getting her money back.

25. On April 26, 2023, a lawyer contacted BCFSA and indicated that she had two clients who had lent money to SYOM, and that the lawyer was concerned that the mortgage company may not be legitimate and "may have been running a scam". The lawyer noted that there were large amounts of money involved, and that she had done some searches and discovered a number of civil actions had been brought by other individuals against SYOM.

26. On May 4, 2023, BCFSA received a Registrar of Mortgage Brokers Complaint Information Form from [Complainant 5]. In that complaint form, [Complainant 5] indicated that he had understood that Mr. Martel would source money from investors to fund bridge loans and would pay interest to the investors once the bridge loan term was complete. [Complainant 5] indicated, however, that he now felt that Mr. Martel was operating a ponzi scheme, and noted that Mr. Martel and SYOM had defaulted on its repayment of the investment money he had provided and the interest he was owed, and had gone silent.

27. [Complainant 5] explained in his complaint form that on March 23, 2023 he had contacted SYOM to enquire as to the investment process. He indicated that he was provided with information to create a profile with SYOM, and that he was then provided with an investment offer. [Complainant 5] indicated that he had made a draft payable to SYOM, and deposited it into the SYOM account.

28. [Complainant 5] indicated that he had emailed SYOM to follow-up on April 26, 2023, as the bridge loan contract had matured and he was expecting repayment of the principal amount invested plus interest. He indicated that he had received an email from SYOM on April 28, 2023 indicating that there were no further opportunities to invest, but that the email from SYOM did not respond to his request for repayment. [Complainant 5] indicated that he had written SYOM again on May 4, 2023, but that the email had returned to him on the basis that the SYOM email was "disconnected".

29. [Complainant 5] attached to his complaint a copy of an agreement between himself and SYOM, in which [Complainant 5] provided a \$100,000 investment to SYOM for the use of a bridge loan in respect of a mortgage. The loan term was to proceed from March 24, 2023 to May 3, 2023, with an interest rate payout of 14%. The agreement was signed by both [Complainant 5] and Mr. Martel on March 23, 2023. [Complainant 5] also provided a copy of the bank draft he had deposited with SYOM.

#### Receivership

30. Having received the above noted complaints, BCFSA staff conducted open source searches into Mr. Martel and SYOM. Those searches found that on May 4, 2023, the BC Supreme Court had issued a receivership order in respect of SYOM, appointing [Trustee 1] (the "receiver") as receiver of SYOM.

31. The receiver provided its first report to the court on May 9, 2023. In that report, the receiver advised that it had been unsuccessful in communicating with Mr. Martel about SYOM's operations or bookkeeping. The receiver noted that it had gained access to SYOM's bank accounts and had determined that SYOM had a balance of only \$273.98, and that over the month prior to the receiver gaining access a total of \$3.5 million had been deposited into those accounts, with \$5.0 million withdrawn, with a large number of withdrawals relating to other companies wholly owned by Mr. Martel.
32. The receiver's "Second Report to Court", also dated May 9, 2023, indicated that SYOM's general ledger showed that shareholder funds advanced to Mr. Martel had been used to fund a variety of personal expenses, including private jets, luxury apartment rentals, vehicle purchases, and home escrow payments.
33. The receiver also noted that it had visited SYOM's offices in both Victoria and Toronto, and had found that they were vacated. The receiver further indicated that at least eight civil actions had been filed against SYOM and Mr. Martel. The receiver indicated that there was real concern that assets had been dissipated, and that SYOM had not taken steps to obtain security for bridge loans from the relevant bridge loan recipients.
34. Also on May 9, 2023, the court granted an investigative powers order (which was subsequently amended on May 17 and July 26, 2023). That order required Mr. Martel to provide specific information and respond to specific requests from the receiver.
35. In the receiver's "Third Report to Court", dated May 16, 2023, the receiver indicated that Mr. Martel had failed to respond to the receiver's requests for information, contrary to the orders of the Court, and that Mr. Martel had sought to move funds from one of his bank accounts, in contravention of the court's order of May 9, 2023.
36. In a fourth report to court, dated June 7, 2023, the receiver indicated that it had not yet found any loan agreements to support the bridge loans purportedly made by SYOM. The receiver indicated that it was of the view that Mr. Martel continued to be non-compliant with the disclosure requirements in the amended orders of May 17, 2023. Of note, the receiver indicated in that report that the financial statements of SYOM indicated that there were total loans payable to investors of \$226.4 million, and that of the investors who had commenced civil claims, all appeared to have claimed against both SYOM and Mr. Martel, based on personal guarantees made by Mr. Martel. The receiver noted that in the event SYOM was unable to repay the investor loans, Mr. Martel may be personally liable for the balances.
37. In a fifth report dated July 24, 2023, the receiver indicated that Mr. Martel had yet to provide any documents to support the bridge loans recorded on SYOM's financial statements.

#### Bankruptcy

38. While the receivership process was ongoing, SYOM was ordered into bankruptcy by the Office of Superintendent of Bankruptcy Canada. The receiver was named as trustee of SYOM's estate.
39. On September 6, 2023, the BC Supreme Court ordered that Mr. Martel was adjudged bankrupt as of that date, with the receiver appointed as trustee of the estate of Mr. Martel.

#### Contempt of Court

40. The receiver applied, on September 11, 2023, for an order that Mr. Martel be held in contempt of court.

41. In *1546199 Alberta Ltd. v. My Mortgage Auction Corp. (Shop Your Own Mortgage)*, 2023 BCSC 1824, the court noted that the receiver had repeatedly requested information from Mr. Martel, including through direct communication with Mr. Martel over the internet, and in making various requests to his then legal counsel. However, Mr. Martel, despite being aware of what was required, had chosen not to comply with the orders to provide information and documentation in his knowledge and under his control. As a result, the court found that Mr. Martel was guilty of contempt of court for breaching various orders, and issued an order to require that Mr. Martel be apprehended and promptly be brought before a judge.
42. Of note, the court in *1546199 Alberta Ltd.* noted that Mr. Martel had failed to cooperate with the receiver in its task of confirming the existence of bridge loans, and, more generally, discerning where approximately \$234 million of investment monies had been directed to.
43. On September 29, 2023, the United States Bankruptcy Court for the Central District of California recognized the contempt order issued in *1546199 Alberta Ltd.*, and ordered law enforcement to immediately take Mr. Martel into custody.
44. There is no evidence or information before me to indicate that Mr. Martel has ever been taken into custody.

## **Discussion**

### *Preliminary Issue*

45. Section 8(1) of the MBA sets out that the Registrar may take various enforcement actions against a person registered under the MBA, including suspending or canceling a person's registration, if, in the opinion of the Registrar, certain circumstances apply, including that a person would be disentitled to registration if the person were an applicant under section 4 of the MBA.
46. Prior to the Registrar taking enforcement actions provided for in that section, section 8(1) of the MBA requires that the person registered under the Act must be provided with an opportunity to be heard.
47. As I have indicated above, Mr. Martel and SYOM did not participate in this hearing in any way.
48. Despite the fact that they did not participate in this hearing, I am satisfied that Mr. Martel and SYOM were provided with an opportunity to be heard. They did not exercise that opportunity, and as a result the hearing proceeded by way of written submissions in their absence.
49. In reaching that conclusion, I rely on the affidavit evidence of [Paralegal 1], and its associated exhibits.
50. In that affidavit, [Paralegal 1] sets out the efforts BCFSA made to inform Mr. Martel and SYOM of the hearing of this matter.
51. Specifically, [Paralegal 1] indicated that BCFSA relied on the address for services for Mr. Martel, and the address for service for SYOM as provided by each of those to BCFSA. [Paralegal 1] indicated that BCFSA sent the notice of hearing by way of regular mail on April 30, 2024 to both Mr. Martel and SYOM at their registered addresses for service, and confirmed in those correspondences that the hearing was to take place virtually on February 18 to 20, 2025.
52. [Paralegal 1] indicated that on May 17, 2024 BCFSA received notice that the correspondence to Mr. Martel of April 30, 2024 was returned to BCFSA by Canada Post, on the basis that Mr. Martel had moved.
53. [Paralegal 1] further deposed that on June 7, 2024 she had sent the notice of hearing to both Mr. Martel and SYOM to Mr. Martel's email address, as provided to BCFSA. In that correspondence,

[Paralegal 1] informed Mr. Martel and SYOM that the hearing had been rescheduled to proceed from September 18 to 20, 2024. [Paralegal 1] indicated that she also sent that same correspondence to each the respondents by way of regular mail. [Paralegal 1] indicated that, on June 9, 2024, she received email notification that delivery of the June 7, 2024 email had failed. On June 19, 2024, the regular mail correspondence of June 7, 2024 was again returned to BCFSA by Canada Post on the basis that Mr. Martel was reported to have moved.

54. [Paralegal 1] then, on June 12, 2024, sent the notice of hearing to Mr. Martel and SYOM at another email associated with Mr. Martel. On June 13, 2024, [Paralegal 1] received further notification that her June 12, 2024 email was not delivered to that second email address.
55. In sum, although BCFSA has made repeated efforts to inform Mr. Martel of the hearing, Mr. Martel, and SYOM, have placed themselves in a situation in which BCFSA has no way of contacting them.
56. I consider BCFSA's inability to contact Mr. Martel and SYOM regarding the hearing to be consistent with the fact that the BC Supreme Court, and associated police services, have been unable, since September 2024, to have Mr. Martel attend in association with the contempt order.
57. In short, I consider the evidence to show that Mr. Martel, and as a result SYOM, have intentionally made themselves unavailable for the hearing of this matter. In my view, the respondents have been provided with ample opportunity to be heard in this matter, and have simply elected to not participate in it.
58. BCFSA attended at the time of the scheduled hearing on September 18, 2024, and no one attended on behalf of Mr. Martel or SYOM. As a result, I directed at that time that the hearing would proceed by way of written submissions. Given my comments above, I am satisfied that this is an appropriate case in which to proceed in the respondents' absence, and that they were provided with an appropriate opportunity to be heard in this matter.

#### Liability

##### *Does the evidence support the allegations set out in the Notice of Hearing?*

59. Section 8(1)(i) of the MBA sets out that the Registrar may take one of the actions set out in section 8(1)(a) through (d) if, in the opinion of the Registrar, the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest.
60. Section 4(a) of the MBA sets out that the Registrar 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.
61. Section 8(1) of the MBA sets out that the Registrar may take various enforcement actions against a person registered under the MBA, including suspending or canceling a person's registration, if, in the opinion of the Registrar, any of the following paragraphs under section 8 apply:
  - (e) the person would be disentitled to registration if the person were an applicant under section 4;
  - (f) the person is in breach of this Act, the regulations or a condition of registration;
  - (g) the person is a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;
  - (h) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was

made, was false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading;

(i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;

(j) the person is in breach of a provision of Part 2 or 5 of the Business Practices and Consumer Protection Act prescribed under section 9.1 (2).

62. In determining who is suitable for registration, and whose registration is not objectionable, the registrar must balance the public's need for access to mortgage financing with the need for public confidence in the regulatory scheme: *Cooper v. Hobart*, 2001 SCC 79, [2001] 3. S.C.R. 537 ("*Cooper*"), para. 49.
63. Whether a registrant is suitable under section 4 has been found in previous decisions of the Registrar to include the inherent characteristics of the applicant, such as knowledge or honesty, as well as the individual's reputation. An applicant's registration can be found to be objectionable if that registration would negatively impact the public and industry confidence in the financial services sector: *In the Matter of the Mortgage Brokers Act and Eugenio Pugliese*, Decision of the Registrar of Mortgage Brokers, April 19, 2006.
64. BCFSA takes the position that Mr. Martel and SYOM's 2023 bankruptcies would make each of them disentitled to registration as applicants under section 4 of the MBA. In making that submission, BCFSA relies on regulatory statements issued by BCFSA, as well as public facing statements that have been issued by BCFSA in respect of suitability requirements for submortgage applicants.
65. In reviewing the regulatory statement as well as the public facing statements set out on BCFSA's website referred to in BCFSA's submissions, I note that neither of those is binding upon me. I may, however, be guided by the information set out in both the regulatory statement and on BCFSA's website. The regulatory statement in particular, represents the regulator's position on suitability for registration under section 4 of the MBA, and provides detail as to what the regulator considers is required in order for an applicant to be suitable for registration, and for a registration not to be objectionable.
66. The regulatory statement relied on by BCFSA is Regulatory Statement 24-001, "Suitability Requirements for Submortgage Broker Applicants". That regulatory statement sets out that applicants for registration must have met or exceeded the Registrar's requirements pursuant to section 4 of the MBA, as published in Regulatory Statement 22-006, and provides further detail of the Registrar's general requirements for individuals to demonstrate that they are suitable for registration, and that the proposed registration is not objectionable. Those further details of the Registrar's general requirements include specific details regarding bankruptcies:

Mortgage brokers work with their clients to help them make decisions often involving significant amounts of money and can be involved in the actual handling of those funds. Therefore, an applicant's lack of financial responsibility may demonstrate a lack of suitability, depending on the circumstances.

If the applicant has been discharged from bankruptcy, BCFSA will require a copy of the certificate of discharge under the Canadian Bankruptcy and Insolvency Act. If the applicant has fully performed the proposal, BCFSA will require a copy of the certificate of full performance of proposal made under the Canadian Bankruptcy and Insolvency Act. If the discharge or performed proposal is more than seven years old and/or the applicant no longer has access to the necessary documents, they may be asked to provide a written disclosure of the date of discharge or certificate of completion.



Regardless of whether the applicant is discharged or whether they have completed their proposal, BCFSa will require them to provide a copy of their statement of affairs made under the Canadian Bankruptcy and Insolvency Act, which is available from the trustee or administrator. If the bankruptcy occurred in another country, BCFSa will require the equivalent of these documents from that jurisdiction.

### *Business Bankruptcy*

If an applicant was an owner, director, officer, or partner of a business that was subject to bankruptcy, insolvency, receivership, or Companies' Creditors Arrangement Act proceedings while the applicant held that position, BCFSa may request further information regarding the applicant's involvement in the business and the circumstances of the bankruptcy, insolvency, or receivership to assess suitability.

67. As set out above, Mr. Martel has been declared bankrupt by the BC Supreme Court pursuant to an application by one of his creditors. SYOM has also been declared bankrupt. The evidence and information before me suggest that those bankruptcies were, as BCFSa submits, due to Mr. Martel's failure to fulfill both his and SYOM's financial obligations.
68. There is no evidence or information before me which would suggest that Mr. Martel or SYOM entered into bankruptcy as part of a voluntary assignment. Rather, the evidence and information before me indicates that Mr. Martel and SYOM failed to secure various bridge loans on behalf of their clients, and failed to ensure that those clients were able to be repaid as required by their loan agreements. Specifically, as the receiver has noted in its reports, and in its application, the primary task of the receivership was to determine the actual existence of the bridge loans, locating the bridge loans, and more generally, determine what assets were available to repay the thousands of investors who had loaned SYOM more than \$234 million and where those investment monies had in fact been directed.
69. As the court noted in its reasons for finding Mr. Martel in contempt, Mr. Martel did not comply with specific orders to provide information regarding the above to the receiver.
70. Mr. Martel and SYOM's actions in this regard are directly contrary to the requirements set out in Regulatory Statement 24-001. The fact that they have been placed into bankruptcy, and that the receiver remained, in September 2023, in a position in which it was unable to determine where over \$234 million dollars of investment monies had been directed, and in fact even unable to determine whether the bridge loans which had attracted those investment monies in fact existed, clearly demonstrates, in my view, that Mr. Martel and SYOM demonstrated a significant degree of financial irresponsibility.
71. Being bankrupt, as both Mr. Martel and SYOM are, in circumstances where the evidence suggests significant client investment funds may be missing and may have been inappropriately redirected, and in circumstances where Mr. Martel has failed to take steps required to account for those missing funds despite a court order to do so, demonstrates the type of financial irresponsibility which, in my view, is of the type that demonstrates a lack of suitability for registration. Simply put, the evidence and information before me suggests that Mr. Martel and SYOM cannot be trusted to assist their clients in making sound financial decisions, or to handle funds in an honest way as may be required of a submortgage or mortgage broker.
72. I find that the allegations set out in items 1(a) and 1(b) have been made out on a balance of probabilities.

### *Contempt of Court*

73. BCFSa submits that the fact that Mr. Martel has been found to be in contempt of court would further disentitle him to registration, in that his registration would be objectionable.

74. In the circumstances of this case, I agree.
75. In making its submissions, BCFSA relies on the “Suitability Requirement for Submortgage Broker Applicants” guidance set out on its website. As I have indicated above, while that guidance is not binding on me, I am able to take guidance from it. In my view, the guidance set out on BCFSA’s website provides useful detail regarding what the regulator considers to be objectionable conduct that would disentitle an individual to register as a submortgage broker.
76. The guidance on BCFSA’s website sets out that:
- An applicant is suitable if they are qualified by education and experience, honest, candid, of good reputation, willing to comply with regulatory and industry standards, and have sufficient financial responsibility. An applicant’s registration is not objectionable if they are suitable, it will not bring the mortgage broker industry into disrepute, and it will not harm the public interest.
77. BCFSA’s website does not indicate that applicants may not be registered where they are subject to previous judgments, orders, or pending litigation. Rather, BCFSA indicates that the registrar will consider such litigation on a case by case basis, noting that public confidence in the mortgage broker industry requires registrants to respect and comply with the law. BCFSA’s website goes on to set out that:
- The Registrar will place particular scrutiny on cases where the nature of the claim could adversely impact public interest, public confidence in the mortgage broker industry, or the reputation of the mortgage broker industry. These include, for example, claims that involve dishonesty or a lack of integrity (fraud, misappropriation, fraudulent misrepresentation, conversion) or abuse of positions of power or authority (breach of trust, breach of fiduciary duty).
78. In my view, the fact of Mr. Martel’s contempt of court conviction is a clear indication that he does not respect and comply with the law. As I have described above, Mr. Martel’s contempt of court conviction arises in circumstances in which he is alleged to have failed to comply with a multitude of court orders, all relating to the bankruptcy cases in which there appears to be a significant sum of missing money that Mr. Martel and SYOM were supposed to have been investing on behalf of their clients, who were solicited through Mr. Martel’s BC based mortgage brokerage. In sum, I consider Mr. Martel’s contempt conviction to relate directly to bankruptcy and civil proceedings which involve claims of dishonesty and a lack of integrity on the part of Mr. Martel.
79. Further, as BCFSA submits, Mr. Martel is currently subject to arrest warrants not only in British Columbia, but in California, in relation to the contempt of court conviction.
80. I consider that, given Mr. Martel’s contempt of court conviction, the outstanding warrants associated with that conviction, and the nature of the proceedings brought against him (and SYOM) which led to that conviction, his application for registration under section 4 would be objectionable. Simply put, I consider that public confidence in the mortgage industry would be negatively affected if Mr. Martel were not considered to be an objectionable applicant for registration.
81. I find that the allegation set out at item 1(c) of the Notice of Hearing has been proven on a balance of probabilities.

#### Penalty

82. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.
83. Section 8(1) and section 8(1.1) address the sanctions or actions the Registrar may take against a person who is registered under the MBA.

84. Specifically, section 8(1) provides that:

**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 has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (f) the person is in breach of this Act, the regulations or a condition of registration;
- (...)
- (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (...)

85. Section 8(1.1) further provides that after giving a person registered under the MBA an opportunity to be heard, the Registrar may order the person to pay an administrative penalty of not more than \$50,000, if, in the opinion of the Registrar, any of the paragraphs (f) to (i) of section 8(1) apply.

86. Having reviewed the applicable legislation, I turn to the general principles to be considered when applying sanctions in the regulatory context.

87. 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.<sup>2</sup>

88. 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.

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

89. 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**

[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?

90. While the above factors are not binding on me, but they do form a useful framework in making my assessment. I also highlight that these factors are not exhaustive. The whole of the matter should be considered in determining the appropriate penalty.

The Misconduct

91. I consider the nature of the misconduct engaged in by Mr. Martel and SYOM to be severe.

92. First, with respect to the bankruptcies, it is important to reiterate the context in which those bankruptcies have arisen. As summarized above, the financial circumstances of those bankruptcies involve multiple civil claims for misappropriation of funds provided by investors to SYOM, and overall allegations of the misappropriation of many millions of dollars of funds, including allegations that funds given by investors to SYOM were funneled by Mr. Martel to himself and to other companies solely owned by him. In general terms, the bankruptcies have arisen in a situation in which Mr. Martel and SYOM solicited investor funds through Mr. Martel's registered mortgage brokerage, and allegedly has either misappropriated and mismanaged those funds or both.

93. The negative impact on the public can be seen plainly seen in the numerous civil claims brought against Mr. Martel and SYOM, and the fact that the receiver has indicated that there appears to be a

significant shortfall in funds that are alleged to be owed to investors in SYOM. The impact is no doubt significant.

94. I further consider Mr. Martel's contempt of court conviction to be misconduct of a severe nature. Again, the circumstances of that contempt conviction bear repeating. Mr. Martel was found to have specifically failed to comply with court orders to provide the bankruptcy receiver with information relating to the existence of bridge loans, the location of bridge loans, and, more generally, to provide information which would enable the receiver to discern where the approximately \$234 million of investment monies had been directed. I consider it to be clear that that non-compliance not only demonstrated a disregard for the courts, which is on its own significant misconduct, but a disregard for the harm potentially caused to the public in terms of the missing investment monies which had been received by SYOM. That disregard, in my view, constitutes misconduct that is appropriately described as severe.

#### Acknowledgement of the Misconduct and Remedial Action

95. Mr. Martel has not acknowledged his misconduct in this case or engaged in any remedial action. Not only has he not participated in the hearing of this matter, the nature of his misconduct, in failing to comply with court orders to provide the receiver with information regarding the missing investment monies, in fact demonstrates an ongoing refusal to acknowledge his misconduct or engage in any meaningful remedial action which would serve to potentially mitigate losses experienced by his and SYOM's alleged victims.

96. In my view, Mr. Martel's actions demonstrate that, at this time, this factor would weigh in favour of a significant penalty.

#### Public Confidence

97. This is a case in which I have found that Mr. Martel and SYOM engaged in significant misconduct such that their actions would likely have brought the mortgage industry into disrepute. There is no doubt that general deterrence is required in this case in addition to the need for specific deterrence in order to demonstrate to the industry as a whole that the type of actions undertaken by Mr. Martel and SYOM will be met with a sanction of significance. I consider that a failure to impose a sanction of significance would cause the public to lose confidence in the registrar's ability to maintain discipline of registrants.

98. A consideration of this factor weighs in favour of a significant penalty.

#### Character and Professional Conduct Record

99. Neither Mr. Martel nor SYOM have a discipline history. Mr. Martel had over 20 years of registration at the time of the misconduct.
100. I agree with BCFSA's submission that the lack of a misconduct record can appropriately be considered a neutral factor, rather than a mitigating factor, in determining the appropriate penalty to be issued.
101. The expectation of individuals who participate in regulated industries is that they will comply with the laws, rules, and regulations that are applicable to them. Compliance with the regulatory scheme is part of a registrant's professional responsibility. That an individual registrant has not previously been found to have breached the requirements of the regulatory scheme does not, in my view, automatically entitle them to a reduction from whatever the appropriate penalty would be for the misconduct they have now been found to have engaged in.
102. In setting out the above, I acknowledge that there may be circumstances in which it may be found that an individual's history of compliance with the regulatory scheme may be found to be a mitigating factor. I consider a potential scenario for such a finding would be where the registered individual,

although found to have engaged in misconduct, did so in a situation which was based more on inadvertence rather than negligence or intentionality, and where such non-compliance was found to be so wholly out of character as to suggest that it would be particularly unlikely to occur again in the future.

103. None of those factors are present in this case. As a result, the lack of discipline history in this case is nothing more than a neutral factor.

#### Decision on Sanction

104. 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.
105. 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.
106. This is a case which clearly warrants a significant penalty.
107. Mr. Martel and SYOM were both forced into bankruptcy in the context of what appears to be an extremely large volume of missing client investment funds. Mr. Martel has been found to have engaged in contempt of court by failing to provide information that could potentially assist the court appointed receiver to determine where those funds have gone, and assist its ability to retrieve them. Mr. Martel is the subject of arrest warrants in two jurisdictions as a result of that contempt conviction.
108. This is precisely the type of activity which requires a penalty that engages not only significant specific deterrence, but also general deterrence. The industry, and the public, must be shown that the type of behaviour engaged in by Mr. Martel and SYOM cannot be tolerated in the mortgage broker industry.
109. As set out above, there are no mitigating circumstances before me.
110. After considering all of the above, and the submissions by BCFSa, I am of the view that the circumstances of this case are such that the only penalty that would ensure public confidence in the mortgage broker industry would be the cancellation of both Mr. Martel's and SYOM's registration.

#### **Conclusion**

111. I find that the allegations set out at item 1 of the Notice of Hearing have been proven on a balance of probabilities.
112. Specifically, I find that in being declared bankrupt, both Mr. Martel and SYOM conducted themselves in a manner that would make them disentitled to registration if they were applicants under section 4 of the MBA, contrary to section 8(1)(e) of the MBA. I further find that in being convicted of contempt of court, Mr. Martel conducted himself in a manner that would make him disentitled to registration if he was an applicant under section 4 of the MBA, contrary to section 8(1)(e) of the MBA.
113. Having made the above noted findings, I make the following orders:
- Pursuant to section 8(1)(b) of the *Mortgage Brokers Act*, Gregory Joseph Martel registration under the *Mortgage Brokers Act* is cancelled.
  - Pursuant to section 8(1)(b) of the *Mortgage Brokers Act*, My Mortgage Auction Corp. doing business as Shop Your Own Mortgage's registration under the *Mortgage Brokers Act* is cancelled.

114. Pursuant to section 9 of the *Mortgage Brokers Act*, the respondents 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 13th day of March, 2025

“Original signed by Andrew Pendray”

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Andrew Pendray  
Chief Hearing Officer