



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

-AND-

JUSTIN PHU PHAM

-AND-

VERICO JP ELITE MORTGAGE INC. dba JP ELITE MORTGAGE

CEASE AND DESIST ORDER

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

Upon review of the evidence and submissions set out in:

1. The report and evidence submitted by staff of the Registrar of Mortgage Brokers ("Staff");
2. The certified transcript of an interview with Justin Pham; and
3. The certified transcript of an interview with T.B.

I MAKE THE FOLLOWING FINDINGS AND ORDER:

Registration History

1. Verico JP Elite Mortgage Inc. dba JP Elite Mortgage ("JP Elite") was registered as a mortgage broker from December 20, 2010 until December 19, 2016.
2. Justin Pham ("Mr. Pham") was first registered as a submortgage broker on October 5, 2004. He was last registered with JP Elite, and his registration expired on October 5, 2016.

3. On October 27, 2011, Mr. Pham became the Designated Individual (“DI”) for JP Elite, and continued in that role until Mr. Pham’s registration expired. On April 21, 2015, Mr. Pham became the sole director of JP Elite.
4. From October 5, 2016 until December 19, 2016, JP Elite did not have any registered submortgage brokers.
5. On August 5, 2016, Staff sent an email to Mr. Pham reminding him that his registration was up for renewal and would be expiring on October 4, 2016.
6. On October 3, 2016, Staff sent an email to Mr. Pham advising that they have received Mr. Pham’s application for renewal, but that it was deficient and more documents were required before the application could be processed further.
7. On October 4, 2016, Mr. Pham’s registration expired. Staff sent an email to Mr. Pham again advising that Mr. Pham’s application was deficient and could not be processed until further documents were received.
8. Further emails were sent on October 11, 2016, October 18, 2016, October 25, 2016, and November 1, 2016 to Mr. Pham by Staff advising that his application could not be processed until further documents were received.
9. On October 20, 2016, Staff sent an email to Mr. Pham reminding him that JP Elite’s registration would expire on December 19, 2016, and a renewal application for JP Elite was required.
10. On December 19, 2016, JP Elite’s registration expired.
11. On December 31, 2016, Staff sent an email to Mr. Pham reminding him that JP Elite’s annual filing was due on January 30, 2017.
12. On February 28, 2017, Staff sent Mr. Pham an email informing him that JP Elite’s registration had expired, and that no renewal application for JP Elite had been received. Mr. Pham was advised that: *“As the registration for Verico JP Elite Mortgage Inc. dba: JPElite Mortgage has expired, please be advised that neither the company nor any submortgage brokers may conduct any mortgage broker activity.”*
13. On May 11, 2017, Staff emailed Mr. Pham and informed him that they had received an application for registration of JP Elite, but the application was deficient in that the application fee was returned due to insufficient funds, and that the name “Verico” was removed with the BC Corporate Registry.
14. Further email reminders were sent by Staff regarding JP Elite’s deficient application on May 30, 2017, June 23, 2017, and July 26, 2017.
15. On March 3, 2017 and May 5, 2017, Staff notified Mr. Pham by email that both he and JP Elite were prohibited from conducting mortgage broker activities until all deficiencies with respect to their renewal applications were satisfied.

16. In total, 14 emails were sent to Pham by Staff regarding Pham's and JP Elite's registration status, between August 5, 2016 and July 26, 2017.
17. Mr. Pham was also licensed under the *Real Estate Services Act* ("RESA") to provide trading services as follows:
 - a. March 17, 2011 to March 16, 2013;
 - b. March 19, 2013 to March 18, 2015;
 - c. March 25, 2015 to March 24, 2017; and
 - d. May 29, 2017 to August 18, 2017.

The Investigation

18. Since Mr. Pham's registration expired, Staff received three complaints regarding Mr. Pham:
 - a. On November 4, 2016, a real estate licensee complained that Mr. Pham charged his client a prohibited (upfront) fee. However, the client later informed Staff that the payment he made to Mr. Pham was not an upfront fee, but rather a partial repayment of a deposit he lost when he was unable to complete a real estate transaction;
 - b. On August 3, 2017, a notary public complained that a client had obtained mortgage financing through Pham and she could not reach Mr. Pham. The client did not want to file a complaint against Mr. Pham; and
 - c. On August 23, 2017, a real estate licensee ("T.B.") contacted Staff to ask if Mr. Pham was a registered mortgage broker, as his client stated that Mr. Pham was arranging financing for the purchase of property, and was also representing the buyer as a real estate licensee for the purchase of the property (the "August 23, 2017 Complaint").
19. The client in the November 4, 2016 complaint and the August 23, 2017 complaint is the same individual ("K.V.").
20. On August 23, 2017, T.B. stated to Staff that Mr. Pham:
 - a. Wrote an offer on behalf of K.V. for the purchase of property in Abbotsford, BC (the "Abbotsford Property");
 - b. Informed T.B. that he (Mr. Pham) was a mortgage broker and that he was involved in helping K.V. obtain financing to purchase the Abbotsford Property;
 - c. Mr. Pham assured T.B. that K.V. was approved for mortgage financing;

- d. Mr. Pham sent T.B. a number of emails indicating that he was a mortgage broker, and to provide assurance that K.V. was approved for mortgage financing;
 - e. Mr. Pham provided T.B. with the name of the notary ("S.K.") and told T.B. that mortgage instructions had been sent to S.K.; and
 - f. T.B. contacted S.K. who told him that she was not K.V.'s notary with respect to the purchase of the Abbotsford Property and that she does not accept business from Pham.
21. T.B. provided Staff with the following emails from Mr. Pham, to provide assurances to T.B. that K.V. had financing in place to purchase the Abbotsford property:
- a. An email from Mr. Pham, dated August 22, 2017 that attached email correspondence from senior credit analyst ("A.L.") of a Lender to Mr. Pham as follows (in part):
 - i. On May 25, 2017, A.L. wrote the following to Mr. Pham:
Subject: Re:

*"Hi Justin,
Your deal has been reviewed.
Please provide the offer and MLS up front. "*
 - ii. On June 2, 2017, A.L. wrote the following to Mr. Pham:
Subject: Re:

*"Hi Justin,
Your deal is now approved.
Have a great day. "*
 - b. Emails to T.B. from Mr. Pham, regarding the purchase of the Abbotsford property by K.V., dated May 15, 2017, May 16, 2017, May 23, 2017, May 24, 2017, and June 11, 2017 containing a signature block indicating that Pham was a "Mortgage Consultant Partner" with JP Elite.
 - c. Email dated May 15, 2017, sent by Mr. Pham to T.B. attaching a contract of purchase and sale for the Abbotsford property. The contract provided as follows:
 - i. The contract of purchase and sale was prepared by Pham and was undated;
 - ii. Mr. Pham was the buyer's agent;
 - iii. The subject property was , Abbotsford;
 - iv. The buyers were K.V. and L.T.;
 - v. The sellers were P.N. and L.N.;

- vi. The contract of purchase and sale contained a “subject to financing clause”; and
 - vii. The completion date was June 29, 2017.
- d. An email sent by Mr. Pham to T.B. dated May 16, 2017 attaching an updated contract of purchase and sale for the Abbotsford property signed by the buyers, but not the sellers, with the following changes:
- i. The contract was dated May 16, 2017; and
 - ii. The subject to financing clause was modified to state:

Subject to a new first mortgage being made available to the Buyer by May 23, 2017. Prior to removal of this subject the Buyer agrees to provide the buyers (sic) Agent with written confirmation of unconditional approval from the Buyers (sic) lending institution.

(T.B. later provided Staff with a fully executed copy of the contract)
- e. A Fraser Valley Real Estate Board – Removal of “Subject to Clause” form indicating that the subject to financing clause was removed on May 23, 2017.
21. A review of the contract for the Abbotsford property indicates that Mr. Pham’s client, V.K., may have removed the subject to financing condition before Pham obtained approval from Pham’s lender. It also appears that Mr. Pham may not have been licensed under RESA when he was acting as the buyer’s agent for the purchase of the Abbotsford Property.
22. A.L. was contacted by Staff on August 23, 2017, and stated:
- a. When she approved K.V.’s mortgage application, she was unaware that Mr. Pham was not registered as a submortgage broker in British Columbia; and
 - b. After she approved K.V.’s mortgage application, someone had placed a note in their system indicating that Pham was no longer registered as a submortgage broker without advising her;
 - c. K.V.’s mortgage instructions were not sent out to the notary/lawyer;
 - d. A.L. advised Mr. Pham that K.V. was required to provide the lender with additional documentation; and
 - e. Even if the lender were to receive all of the required documentation on that day, the lender would not be in a position to fund the mortgage on time.

23. On August 23, 2017, Staff interviewed T.B. who stated the following:
 - a. He was the listing agent for the Abbotsford Property;
 - b. Mr. Pham introduced himself as K.V.'s real estate representative and mortgage broker when he presented an offer he wrote on behalf of K.V. for the Abbotsford Property, and the subject to financing clause was removed on May 23, 2017;
 - c. Sometime after August 22, 2017 Mr. Pham advised T.B. that Mr. Pham was not a licensed real estate agent, and confirmed that he was a mortgage broker;
 - d. As recently as August 22, 2017 Mr. Pham held himself out as a submortgage broker, and provided an email from K.V.'s lender to provide assurance that K.V. had obtained financing; and
 - e. Mr. Pham advised T.B. that K.V.'s notary was S.K. When T.B. attempted to verify that S.K. was T.B.'s notary, S.K. stated that she did not accept business from Pham.
24. K.V. ultimately obtained a mortgage from a different lender with a 1 year term, at a rate of 8.95%. Mortgage documents indicated that K.V. was also charged a fee of \$13,500 for the mortgage. K.V. purchased the Abbotsford Property.
25. Filogix, an online platform used by submortgage brokers to submit mortgage applications to lenders, confirmed with Staff that B2B Bank approved K.V. for a 5 year mortgage with an interest rate of 2.89% on June 2, 2017; and on June 21, 2017 approved K.V. for a 5 year mortgage with an interest rate of 3.04%. On August 25, 2017 B2B Bank declined K.V.'s application for financing.
26. On August 4, 2017 Filogix confirmed that Mr. Pham had an active Filogix account indicating recent activity.
27. On September 4, 2017 Filogix confirmed that from October 6, 2016 to August 2, 2017, when Mr. Pham was not a registered submortgage broker, Mr. Pham:
 - a. created 47 mortgage applications in Filogix;
 - b. Mr. Pham accessed and/or conducted credit checks associated with 51 mortgage applications; and
 - c. Mr. Pham submitted a total of 15 mortgage applications to various lenders, the most recent being July 12, 2017.
28. Of the 15 mortgage applications submitted by various lenders, 6 of them were submitted to one particular lender. That lender confirmed that they funded a mortgage application for S.R. on July 28, 2017 that was submitted to them by Mr. Pham. The lender further confirmed that they paid \$8,131.21 to JP Elite for the referral of S.R.'s mortgage application on August 3, 2017.

29. On October 18, 2017 Staff interviewed Mr. Pham who stated that:
- a. he believed he was registered, and was therefore permitted to arrange mortgages even if JP Elite's mortgage registration remained pending;
 - b. he agreed to change his voicemail so that it no longer indicated he is a submortgage broker with JP Elite;
 - c. he was aware that his submortgage broker registration lapsed on October 5, 2016; and
 - d. he decided to "jump the gun" as he thought JP Elite would be registered, and even though he was not provided with confirmation of his registration, thought he was allowed to conduct submortgage broker activities as it was just a matter of time.
30. Before the interview could be concluded, Mr. Pham indicated that he had to leave for medical reasons, and agreed to a further interview the following day. Mr. Pham contacted Staff on October 19, 2017 stating he could not attend for an interview. Further attempts to re-schedule the interview were made but ultimately no further interview was conducted.

Applicable Legislation

31. The Applicable sections of the *Mortgage Brokers Act* (Act) are as follows:

a. **Section 1:**

"mortgage" includes every instrument by which

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

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

- (a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
- (b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
- (c) carries on a business of buying and selling mortgages or agreements for sale;
- (d) in any one year, receives an amount of \$1 000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;

- (e) during any one year, lends money on the security of 10 or more mortgages;
- (f) carries on a business of collecting money secured by mortgages;

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

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

- d. **8(2)** If the length of time that would be required to give the person an opportunity to be heard under subsection (1) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may suspend registration without giving the person an opportunity to be heard.

- e. **11(1)** The registration provisions of this Act do not apply to any of the following while acting as mortgage brokers or submortgage brokers under their proper names:
 - (a) insurance companies;
 - (b) savings institutions;
 - (c) a member of the Law Society of British Columbia entitled to practice as a solicitor in British Columbia if the loan transaction is made in the course of and as part of the member's practice;
 - (d) any person acting for the government or for an agency of the government;
 - (e) a liquidator, receiver, trustee in bankruptcy or a person acting under the authority of any court or an executor or trustee acting under the terms of a will or marriage settlement.

- (2) The registration provisions of this Act do not apply to any of the following:
 - (a) an employee, or director, of a person exempted from registration under subsection (1) (a) or (b) or paragraph (b) of this subsection;
 - (b) a person lending money, directly or indirectly, on the security of land to provide housing for the person's employees;
 - (c) any other person or class of persons exempted from registration by the registrar.

- f. **21(1)** Unless exempted under section 11, a person must not do any of the following:
 - (a) Carry on business as a mortgage broker or submortgage broker unless the person is registered under this Act;
 - (b) Carry on business as a mortgage broker otherwise than in the person's registered name or elsewhere than at or from the person's registered address;
 - (c) Advertise or in any other way indicate that the person is a mortgage broker or submortgage broker other than under then registered name of the mortgage broker;
 - (d) Employ as a submortgage broker any person not registered under this Act.

Conclusions

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

33. Section 21 prohibits a person from carrying on business as a mortgage broker or submortgage broker without being registered under the Act. Both “mortgage broker” and “submortgage broker” are defined terms as set out above, and include holding out as a mortgage broker and collecting more than \$1,000 in fees in any one year as remuneration for arranging mortgages for others.
34. Staff have provided clear evidence that Pham and JP Elite were carrying on business as a mortgage broker or submortgage broker and holding out as a mortgage broker or submortgage broker while not registered to do so.
35. The Commercial Appeals Commission (the predecessor to the Financial Services Tribunal) has considered the definition of “arranging mortgages” for the purpose of determining whether certain activities fell within the definition of submortgage broker in the Act.
36. In *Horizon Financial Services Ltd. v. British Columbia (Registrar of Mortgage Brokers)*, [1990] B.C.C.O. No 4 (“Horizon”), the Commission found that the intent of the Act is to license every person and company involved in an essential way in the process of arranging mortgages.
37. *Legge (c.o.b. Mortgageline) v. British Columbia (Registrar of Mortgage Brokers)*, [1995] B.C.C.O. No 13 and *Horizon* considered indicia of arranging mortgages (and in turn holding out as a mortgage broker who arranges mortgages) which included promoting services, direct communication with clients explaining mortgages, mortgage products, mortgage documents and/or disclosure statements, taking mortgage applications, and obtaining supportive documentation.
38. Staff provided clear evidence that Mr. Pham was carrying on business as a mortgage broker or submortgage broker and holding himself out as a mortgage broker or submortgage broker even though he was not registered as a mortgage broker or submortgage broker. The evidence is clear that Mr. Pham was “arranging mortgages” and holding himself out as a mortgage broker as follows:
 - a. Mr. Pham submitted a mortgage application to a lender on behalf of K.V. well after his registration lapsed, and despite numerous notifications from staff informing him that his and JP Elite’s registration was about to lapse, had lapsed, and that applications for renewal were deficient and would not be processed further until the deficiencies were corrected;
 - b. Mr. Pham held himself out as a submortgage broker by sending emails with his signature block indicating he was a “Mortgage Consultant Partner” with JP Elite after his registration lapsed;
 - c. Mr. Pham informed T.B. that he was K.V.’s mortgage broker;
 - d. Mr. Pham created 47 mortgage applications in Filogix during the time he was not registered;

- e. Mr. Pham submitted a total of 15 mortgage applications to various lenders during the time he was not registered; and
 - f. On July 12, 2017 Mr. Pham submitted a mortgage application to a lender on behalf of S.R. which subsequently funded and to which Mr. Pham received a commission of \$8,131.21 for the referral of S.R.'s application.
39. Staff also provided clear evidence that JP Elite was carrying on business as a mortgage broker while not registered as such. In particular:
- a. Mr. Pham sent out emails indicating he was a Mortgage Consultant Partner at JP Elite, when JP Elite was not registered; and
 - b. A lender's commission statement indicates that JP Elite was the brokerage that originated the mortgage application for S.R. when JP Elite was not registered.
40. Therefore I find Mr. Pham was carrying on business as a mortgage broker or submortgage broker, while not registered to do so in contravention of section 21 of the Act. As such, his conduct may be subject to the remedies set out in section 8(1.4) of the Act. There is no evidence that Mr. Pham would be exempt from the registration requirements under section 11 of the Act.
41. I further find JP Elite to be carrying on business as a mortgage broker, while not being registered to do so, in contravention of section 21 of the Act. As such, its conduct may be subject to the remedies set out in section 8(1.4) of the Act. There is no evidence that JP Elite would be exempt from the registration requirements under section 11 of the Act.
42. Mr. Pham's conduct is very serious in that while he was not registered, he acted dishonestly with a real estate licensee stating that mortgage instructions had been sent to a notary when they had not been sent, and by providing assurances to a real estate licensee about the availability of financing for his client when financing was not available. It also appears that in order to save a transaction, one of his clients may have accepted a high interest rate mortgage.
43. In addition, Mr. Pham is a former registrant, and therefore ought to understand the importance of registration as a cornerstone of a regulated industry. He was given numerous notices from Staff regarding the status of both his and JP Elite's registration renewal. Regardless, he continued to act for clients knowing he was not registered.
44. I agree with staff that a hearing into Mr. Pham's and JP Elite's conduct would require approximately 10 witnesses and at least 5 days to complete which could not be realistically scheduled for a number of months. Given Mr. Pham's deceitful conduct, recent unwillingness to engage with Staff, and the potential for public harm, I find that a delay would be prejudicial to the public interest, and this supports an order to be made pursuant to section 8(2) of the Act.

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

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

I HEREBY ORDER, pursuant to section 8(1.4)(a) and 8(2) of the Act, that Justin Phu Pham and Verico JP Elite Mortgage Inc. dba JP Elite Mortgage immediately:

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

TAKE NOTICE THAT Justin Phu Pham and Verico JP Elite Mortgage Inc. dba JP elite Mortgage may under section 9 of the Act, appeal this Order to the Financial Services Tribunal.

Issued this 22 day of December, 2017
At Vancouver, British Columbia


Chris Carter,
Acting Registrar of Mortgage Brokers

Notice to: Justin Phu Pham

Notice to: JP Elite
210 – 4603 Kingsway
Burnaby, BC V5H 4M4

Notice to: Financial Services Tribunal
4th Floor – 747 Fort Street
Victoria, BC V8W 9V1