

BC FINANCIAL SERVICES AUTHORITY

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

AND

IN THE MATTER OF

**STYLES WILLIAM STEWART
(FORMER REGISTRATION NO. 144577)**

AND

FIRST EXPANSE FINANCIAL CORP

REASONS FOR CEASE AND DESIST ORDER

(Pursuant to section 8(2) of the *Mortgage Brokers Act*)

[These Reasons have been redacted before publication.]

Introduction

1. The BC Financial Services Authority (“BCFSA”) brings an *ex parte* application for cease and desist orders pursuant to section 8(2) of the *Mortgage Brokers Act* (the “Act”).
2. Specifically, BCFSA seeks orders requiring that Styles William Stewart and First Expanse Financial Corp. (“First Expanse”) cease and desist from carrying on business as a mortgage broker or submortgage broker, and from acting as or holding themselves out as a mortgage broker or submortgage broker in any capacity, unless and until they become registered to do so under the provisions of the MBA.
3. BCFSA says that the preliminary results of its investigations into Mr. Stewart, a former registrant under the MBA, have indicated that despite the expiry of his registration in July 2022, Mr. Stewart and First Expanse have continued to carry on business as a mortgage broker, and to hold himself out as a mortgage broker, or that there exists that a real risk that he is doing so.
4. BCFSA’s position is that given this ongoing risk, as well as the fact that the time required for BCFSA to complete its investigation will take a number of months, it would be prejudicial to

the public interest to not make the requested cease and desist orders pursuant to section 8(2) and 8(1.4)(a) of the MBA.

Issues

5. The issue is whether an order should be issued in respect of Mr. Stewart and First Expanse pursuant to section 8(2) of the MBA. In considering that issue, there are two questions to be answered:
 - Is there a *prima facie* case that supports a conclusion that Mr. Stewart and First Expanse were not registered at a time when Mr. Stewart and First Expanse were engaged in any activity for which registration was required by section 8(1.4) and 21(1)(a) of the MBA?
 - If so, are the circumstances of the *prima facie* case urgent such that the protection of the public interest requires the issuing of an order pursuant to section 8(2)?

Jurisdiction

6. 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 an October 18, 2022 Acting Capacity instrument.

Background and Evidence

7. The evidence and information brought before me on this application was contained in three affidavits and the exhibits attached to those affidavits:
 - Affidavit of [Individual 1], paralegal at BCFSA, dated January 9, 2023;
 - Affidavit of [Investigator 1], Investigator at BCFSA, dated January 9, 2023;
 - Affidavit of [Investigator 2], Manager, Registrations, Mortgage Brokers, at BCFSA, dated January 9, 2023.
8. Although I have reviewed all the information contained within those affidavits and exhibits, I will only refer here to that which is necessary to provide context to my decision.

Mr. Stewart and First Expanse

9. At the outset of this background, it is necessary to note that although Mr. Stewart is not currently registered under the MBA, he was previously. BCFSA produced a section 10 certificate for Mr. Stewart which indicated that he was first registered as a submortgage broker with [Brokerage 1] (“[Brokerage 1]”) on July 31, 2008. Mr. Stewart continued to work with [Brokerage 1] until he was terminated on November 12, 2021.
10. That section 10 certificate further shows that Mr. Stewart’s registration with [Brokerage 1] was terminated with cause on December 6, 2021. It further shows that a transfer of Mr. Stewart’s registration to [Brokerage 2], was revoked on December 7, 2021, due to an “outstanding suitability review”.

11. Mr. Stewart, on November 12, 2021, submitted an application to BCFSA to have his employment transferred to [Brokerage 2]. BCFSA approved that request, in error, on December 7, 2021. The following day, on December 8, 2021, BCFSA wrote to Mr. Stewart to inform him of the error. In doing so, however, BCFSA wrote to Mr. Stewart at his [Brokerage 1] email address. Mr. Stewart submitted an application to update his registration email address on December 9, 2021.
12. Mr. Stewart emailed BCFSA (from his personal email address [Email 1]) on Friday, December 17, 2021. In that email he noted that he had received a voicemail informing him that the transfer of his license had not been approved. He requested confirmation as to whether or not his transfer had been approved.
13. Ultimately, in June 2022, [Brokerage 2] advised BCFSA that they no longer supported Mr. Stewart's transfer application. Mr. Stewart subsequently sought to transfer his registration to another mortgage broker, however that transfer did not occur. Mr. Stewart did not apply to BCFSA to renew his registration prior to its expiration on July 30, 2022.
14. A BC Company Summary for First Expanse Financial Corp. indicates that First Expanse was incorporated on August 3, 2021. Mr. Stewart is listed as the sole director. A section 10 certificate produced by BCFSA indicated that First Expanse Financial Corp. had never been registered under the MBA.

Complaint to BCFSA

15. On November 12, 2021 BCFSA received an email from [Broker 1], Vice President at [Brokerage 1]. [Broker 1] attached to that email a letter in which he informed BCFSA that Mr. Stewart's registration as a submortgage broker with [Brokerage 1] had been terminated for cause due to findings of regulatory breaches and secret commissions. Specifically, [Broker 1] indicated that:
 - While registered as a sub-mortgage broker, Mr. Stewart had brokered and closed three mortgages through a new company he had formed, First Expanse Financial Corporation;
 - Mr. Stewart had charged brokerage fees and lender fees from [Brokerage 1] files without the knowledge of [Brokerage 1];
 - Mr. Stewart set up a Facebook page for First Expanse and held himself out as a mortgage broker when First Expanse was not registered with BCFSA; and
 - Mr. Stewart had engaged in unethical behaviour and business practices.
16. [Broker 1] also provided BCFSA with a copy of the termination letter he had provided to Mr. Stewart on November 12, 2021. In that letter [Broker 1] informed Mr. Stewart that his contract with [Brokerage 1] was terminated for cause, and that "Effective immediately you are no longer a registered sub-mortgage broker and must cease mortgage brokering activities."
17. [Broker 1] also attached, in his email to BCFSA, copies of the documents he had relied upon to reach his conclusions on the above.

18. Those documents indicated that Mr. Stewart had provided services on four mortgage transactions outside of [Brokerage 1].
19. The first set of documents are dated October 14, 2021. The first of those is an instruction to [Law Firm 1] (“[Law Firm 1]”) to prepare a mortgage in favour of First Expense. Those instructions are signed by “SWS”. On the attached disclosure statements, the mortgage broker is noted to be First Expense, and Mr. Stewart is listed as the authorized representative of First Expense as the mortgage broker. Mr. Stewart also signed the lender disclosure statement on behalf of First Expense. [Broker 1] indicated that he had spoken to [Law Firm 1] and that they had confirmed that this file had closed.
20. The second set of documents relates to what I will refer to as the “[Mortgage 1]”. The mortgage investment summary is set out on “Expense Financial” letterhead. Instructions to [Law Firm 1], dated October 26, 2021, are for [Law Firm 1] to prepare a mortgage in favour of First Expense, with the instructions signed by Styles Stewart. First Expense is listed as the mortgage broker on the required disclosure statements, with Mr. Stewart signing as the authorized representative of First Expense. [Broker 1] again indicated that he had spoken to [Law Firm 1] and that they had confirmed that this file had closed.
21. The third set of documents relate to what I will refer to as the “[Mortgage 2]”. Instructions to [Law Firm 1], dated October 20, 2021, are for [Law Firm 1] to prepare a mortgage in favour [Brokerage 1]. However, on October 26, 2021, those instructions were amended, by hand. Mr. Stewart signed as the authorized representative, but the instructions have been edited by striking through [Brokerage 1] and indicating that the mortgage was to be prepared in favour of First Expense. First Expense is listed as the mortgage broker on the required disclosure statements, and the mortgage commitment was produced on “Expense Financial” letterhead (although the body of that document also references [Brokerage 1]).
22. The fourth set of documents relates to what I will refer to as the “[Mortgage 3]”. There, a Mortgage Investment Summary document was created, dated November 1, 2021, on [Brokerage 1] letterhead. However, on November 8, 2021, a Mortgage Investment Summary document was created on Expense Financial letterhead. The disclosure statements show First Expense as the mortgage broker. Of note, at his interview with BCFSA, [Broker 1] indicated that he had been able to intervene on this mortgage before it was funded, and the transaction was returned to [Brokerage 1].
23. [Broker 1] also provided BCFSA with screenshots of a Facebook page operated by First Expense, with reviews indicating that “Styles does excellent work”.
24. [Broker 1] continued to email BCFSA between December 1 and December 16, 2021, attaching information that suggested Mr. Stewart continued to be active in the mortgage broker area. He provided further documents, on December 12, 2022, indicating that Mr. Stewart and First Expense had been paid on another [Brokerage 1] file, with a lender fee of \$8,000.
25. [Broker 1] was eventually interviewed by BCFSA on June 29, 2022. At that time [Broker 1] indicated that he had identified a further transaction in which Mr. Stewart had received \$1,000 directly from the borrower, by way of instruction on a mortgage transaction to [Law Firm 1].

26. Mr. Stewart was also interviewed by BCFSA, on July 13, 2022. In that interview Mr. Stewart acknowledged, among other things, that he had performed mortgage brokering work for [Brokerage 2] after leaving [Brokerage 1]; that he had created an email address associated with First Expanse which he had used to deal with First Expanse clients while he was working at [Brokerage 1]; and that he estimated seven deals had been put through First Expanse. Mr. Stewart also indicated that he did not know that First Expanse was required to register when he first began using it but that he now knew that registration was a “massive deal”.
27. After the July 18, 2022 interview, BCFSA emailed Mr. Stewart at his personal email address to attempt to deliver a summons that Mr. Stewart produce documents. BCFSA followed up on that email on August 2, 2022. No response was received from Mr. Stewart.
28. On September 18, 2022, Mr. Stewart was personally served with a summons requiring him to deliver certain documents to BCFSA. [Investigator 1], of BCFSA, emailed Mr. Stewart at his personal email address on November 24, 2022 to follow-up on the September 18, 2022 summons. [Investigator 1] also telephoned Mr. Stewart and left a voicemail on November 29, and December 27, 2022. [Investigator 1] did not receive a response to his November 24, 2022 email, or his telephone calls.

Activity since July 30, 2022

29. On November 21, 2022, BCFSA received an inquiry from [Broker 2], Designated Individual at [Brokerage 3], a registered mortgage broker. [Broker 2] indicated that she had been reviewing one of the files of one of her submortgage brokers, [Broker 3], in which Mr. Stewart was involved, and that she had concerns regarding Mr. Stewart’s registration status under the MBA.
30. [Investigator 1] indicated that he had followed up by email to [Broker 2] on November 25, 2022, and that he had requested documents in her possession that related to Mr. Stewart and First Expanse. On November 29, 2022, [Broker 2] provided the requested information, which included disclosure and mortgage arranging documents dated from September and October 2022, including:
 - A September 17, 2022 commitment letter on First Expanse letterhead indicating that First Expanse will arrange a third mortgage for a borrower, [Mortgage 4]. That letter identified a \$4,000 brokerage fee, a \$4,000 lender fee, and noted that a \$1,000 non refundable deposit was required to be paid to First Expanse’s solicitor, [Law Firm 1]. The letter was signed by Mr. Stewart and [Mortgage 4].
 - A Fixed Credit – Disclosure Statement dated September 20, 2022, appearing to be signed by Mr. Stewart as broker and [Mortgage 4] as borrower. That statement again noted the lender to be First Expanse, with a lender fee and a broker fee of \$4,000 each. Page 3 of that document identifies “Styles Stewart of First Expanse Financial Corporation” as the broker preparing the mortgage, and is signed by Mr. Stewart above the “Signature of Broker” signature line.
 - An undated Conflict of Interest Disclosure Form 10 signed by Mr. Stewart.
31. Having received that information from [Broker 2], BCFSA issued a summons to [Broker 3], on December 12, 2022, seeking any documents in his possession relating to his dealings with

Mr. Stewart between August 1, 2022 and October 31, 2022, and specifically any documents related to [Mortgage 4].

32. Between December 12 and 15, 2022, [Broker 3] provided a number of documents to BCFSA which showed the communication between [Broker 3], Mr. Stewart, and other individuals as part of the process for arranging [Mortgage 4].
33. Those documents commence with [Broker 3] emailing Mr. Stewart, at his personal email address, on September 12, 2022. In that email [Broker 3] was offering funds for mortgage investment, and seeking to place [Mortgage 4], which was a third mortgage.
34. Mr. Stewart replied, also on September 12, 2022. He noted that “I do have smaller deals quite regularly...I can do third mortgages”. Mr. Stewart followed up by email to [Broker 3] again on September 13, 2022 to enquire as to whether [Broker 3]’s client ([Mortgage 4]) was interested in the terms of the third mortgage Mr. Stewart was able to offer.
35. [Broker 3] replied on September 13, 2022 that his client was interested, and in a September 14, 2022 email provided Mr. Stewart with further information regarding [Mortgage 4], including that the amount of the mortgage sought would be \$200,000.
36. Mr. Stewart followed up on September 15, 2022 informing [Broker 3] that he had a lender for [Mortgage 4], with a 2% fee for Mr. Stewart. [Broker 3] replied that same day, noting that his fee was also 2%.
37. Mr. Stewart and [Broker 3] continued to discuss the workings of the transaction by email and, on October 11, 2022, Mr. Stewart provided directions to [Broker 3] as to where the retainer of \$1,000 could be paid, that is to [Law Firm 1], or via e-transfer to “[Email 2]”.
38. In an October 13, 2022 email, Mr. Stewart informed [Broker 3] that he had received the e-transfer from [Broker 3]’s client.
39. The following day, on October 14, 2022, Mr. Stewart wrote the following to [Broker 3]:

Can you do me a favor on this file? For some reason, I don’t show up as a broker when you do an online search for me. I did receive a copy of my business authorization from the BCFSA which I have attached here for your reference. My lender would, however, still prefer if he essentially did this deal under you. Like you send him the Form 9 and 10 and a copy of the file. He said that he knows you anyway. It is [Lender 1]. We will still use [Law Firm 1] to close the file.

I can do the Forms 9 & 10 if you want and leave them blank and you can fill in the parts with your brokerage etc.

Let me know if that works

40. [Broker 3] agreed to Mr. Stewart’s above excerpted proposal by email of October 14, 2022.
41. After some discussion between [Broker 3] and [Lender 1], [Broker 3] emailed [Law Firm 1] on October 18, 2022 and directed counsel there that \$2,000 in fees from the mortgage would go

to [Lender 1], \$2,000 to Mr. Stewart, plus \$395 dollars to Mr. Stewart in document fees, and a further \$4,000 to [Brokerage 3] for [Broker 3]'s fees. [Law Firm 1] replied that it understood those instructions by way of email also dated October 18, 2022.

42. On October 20, 2022 a paralegal at [Law Firm 1] wrote to [Lender 1] by way of email and informed him that a \$1,000 good faith deposit had already been made to Mr. Stewart, and that as a result he had reduced his fees to \$1,000.
43. In a November 22, 2022 email to [Lender 1], [Broker 3] noted that his compliance department had checked and determined that Mr. Stewart was not registered with BCFSA. [Lender 1] replied and noted that when Mr. Stewart had contacted him about [Mortgage 4], [Lender 1] had not been able to find Mr. Stewart as a registered submortgage broker, and that when he had indicated as much to Mr. Stewart, Mr. Stewart had informed him that there was a glitch in the BCFSA system. [Lender 1] noted that he had not been comfortable with that explanation and it was for that reason he had done the deal with [Broker 3] going forward.
44. BCFSA interviewed [Broker 3] on December 15, 2022. In that interview [Broker 3] indicated that:
 - Mr. Stewart had informed him that a glitch in the system meant he did not show up on the BCFSA website, and that Mr. Stewart had provided him with a business authorization document which supported him in fact being registered with BCFSA;
 - Mr. Stewart provided the commitment letter for [Mortgage 4];
 - Mr. Stewart was paid \$1,000 in advance, and the rest was paid by the lawyers; and
 - Mr. Stewart was to receive a total of \$2,000 for fees, and an additional \$395 in document fees, and [Broker 3] was not contacted by Mr. Stewart to indicate that he had not received such payments.
45. [Investigator 1] provided the “business authorization” Mr. Stewart had given to [Broker 3] in his October 14, 2022 email to support his claim of being registered with BCFSA, to [Investigator 2], Manager, Registrations, at BCFSA. [Investigator 2] informed [Investigator 1], via email dated December 21, 2021, that the registration number set out in that “business authorization” document belonged to another submortgage broker, not Mr. Stewart. [Investigator 2] further noted that First Expanse was not a registered brokerage with BCFSA.
46. In his affidavit of January 9, 2023, [Investigator 1] indicated that the completion of his investigation into Mr. Stewart and First Expanse's activities would take several more months, in particular due to the fact that Mr. Stewart continued to fail to respond to the September 18, 2022 summons for documents. [Investigator 1] indicated that he needed to interview and obtain further statements from lenders, borrowers, and lawyers involved in the various transactions Mr. Stewart and First Expanse were involved in as identified in the documents provided by [Broker 1], [Broker 2], and [Broker 3].

Relevant Law

47. Section 1 of the MBA defines “mortgage broker” as 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
48. "Submortgage broker" is also defined at section 1 of the MBA, to mean any person who actively engaged 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.
49. Section 21(1) of the MBA prohibits carrying on business as a mortgage broker or submortgage broker without registration; carrying on business as a mortgage broker otherwise than in the person's registered name; carrying on business other than at a person's registered address; advertising other than under the person's registered name; and employing a submortgage broker who is not registered.
50. Although the prohibitions in section 21 are categorized as offences, section 8 of the MBA permits the registrar to take enforcement actions against both registered and unregistered individuals for various conduct including carrying on business as a mortgage broker or submortgage broker without being registered; or where a registered mortgage or submortgage broker carries on business in breach of the MBA, its regulations, or a condition of registration; or otherwise conducts business in a manner prejudicial to the public interest.
51. Specifically, section 8(1.4) sets out that the registrar may order a person to cease a specified activity if the registrar is of the opinion that the person "was or is carrying on business as a mortgage broker or submortgage broker without being registered as required" by the MBA.
52. Section 8(2) of the MBA sets out that where the registrar is of the opinion that the length of time that would be required to give a person the opportunity to be heard in an enforcement action under section 8 would be "prejudicial to the public interest", the registrar may make an order under section 8(1.4) without giving a person an opportunity to be heard.

Discussion

53. I find that, pursuant to section 8(2) of the MBA, an order should be issued in respect of Mr. Stewart and First Expanse. My reasons for having reached this conclusion follow.
54. I turn first to a consideration of the appropriate approach to the issuing of an order pursuant to section 8(2).

55. BCFSA, citing *Cooper v. Hobart*, 2001 SCC 79, submits that the overarching purpose of the MBA is to protect the public, particularly consumers of mortgage broker services, and to maintain public confidence in the industry and BCFSA as a regulator. As such, BCFSA submits that a consideration of how section 8(2) should be applied must be done in accordance with its terms and in light of the guidance of previous decisions and orders issued under that section.
56. BCFSA notes, however, that while previous orders have been issued pursuant to section 8(2) of the MBA, those decisions had not engaged in detailed analysis of the underlying test for the issuing of such orders.
57. I have reviewed the prior section 8(2) orders cited by BCFSA in its Book of Authorities, and agree that those decisions do not engage in a detailed analysis of the nature of the test for the issuing of an order pursuant to section 8(2). As a result, I provide my view as to the nature of the appropriate test for the issuing of an order pursuant to section 8(2) below.
58. BCFSA has submitted that there are similarities between section 8(2) of the MBA and section 51 of the *Real Estate Services Act* (“RESA”), and submits that the test for determining whether to issue an order in urgent circumstances allowed for by section 51 of RESA ought to be applied to section 8(2) of the MBA.
59. I agree that there are clear similarities between section 8(2) of the MBA and section 51 of RESA. As set out above, section 8(2) provides that the registrar may issue an order without giving a person an opportunity to be heard, in situations where the length of time that would be required to provide that opportunity to be heard would be “prejudicial to the public interest”.
60. Section 51 of RESA, similarly, provides that the superintendent of real estate may make an order respecting unlicensed activity without first holding a hearing allowing a person to be heard, where the length of time that would be required to complete an investigation or hold a hearing, or both, prior to the making of such an order, “would be detrimental to the public interest”.
61. In sum, both section 8(2) of the MBA, and section 51 of RESA, specifically contemplate the making of an order in respect of unlicensed activity, without first providing the person against whom the allegations have been made, the opportunity to be heard. Such orders are permitted where the length of time required to allow that opportunity to be heard would be “prejudicial” or “detrimental” to the public interest.
62. In *Bakker (Re)*, 2022 BCSRE 7, I considered the approach to issuing an order pursuant to section 51 of RESA:
 48. The former RECBC, in considering the issuing of orders in urgent circumstances under RESA described its approach (in circumstances involving a licensee in *Brown (Re)*, *Reasons for Order in Urgent Circumstances*, March 28, 2019 (BC REC)) as follows:
 42. In assessing evidence, the Committee does not make “final” findings of fact. Investigations are ongoing, and any “final” determinations must occur

through a discipline hearing, or through admissions. This Committee engages in a “provisional” assessment of evidence, so that it may consider, among other things, if “there has been conduct in respect of which a discipline committee could make an order under section 43 [discipline orders] against a licensee,” under Section 45(1)(a) of RESA.

49. I agree with this approach and note that it is consistent with that set out by the BC Court of Appeal in *Scott v College of Massage Therapists of British Columbia*, 2016 BCCA 180, where the court considered the imposition of interim conditions by the College of Massage Therapists of British Columbia under section 35 of the *Health Professions Act*.
50. In *Scott* the Court held that the imposition of interim conditions or suspension under the *Health Professions Act* may be taken where a prima facie case supporting the allegation was met, and where, based on the material before the inquiry committee, the public required immediate protection.
51. I consider the approach set out in *Scott* to have application in determining whether to issue an order under section 51(2) and 49(2)(a) and (b), and am of the view that in determining whether to issue such an order the superintendent must consider two questions.
52. First, in respect of section 51(1)(a), the following question must be considered:
 - Is there a prima facie case that supports a conclusion that the person subject to the hearing did not hold a licence at a time when the person was engaged in any activity for which such a licence was required by section 3 of the Act?
53. Second, in respect of section 51(1)(b), the following question must be considered:
 - Are the circumstances of the prima facie case urgent, such that the public must be protected by the issuing of an interim order?
63. I agree with the submission of counsel for BCFSA that the similarities between section 8(2) and section 51 suggest that the test set out in *Bakker* should also apply under the MBA. In my view, the orders permitted by those sections, and the basis upon which such orders are permitted by the legislation, are so similar as to merit the same test for each.
64. Section 8(2) of the MBA sets out that where the registrar is of the opinion that the length of time that would be required to give a person the opportunity to be heard in an enforcement action under section 8 would be “prejudicial to the public interest”, the registrar may make an order under section 8(1.4) without given a person an opportunity to be heard.
65. I turn then, to a consideration of the whether the test for the issuing of an order pursuant to section 8(2) has been met in the circumstances of this case.

Is there a prima facie case that supports a conclusion that Mr. Stewart was not registered at a time when he was engaged in any activity for which registration was required by section 8(1.4) and 21(1)(a) of the MBA?

66. As set out above, what constitutes the business of a mortgage broker is defined in section 1 of the MBA. Here, BCFSA takes the position that Mr. Stewart was engaged in the business of a mortgage broker under subparagraph (b) of that definition by holding himself out to be a registered submortgage broker, and under subparagraph (d) of that definition by receiving an amount of \$1,000 or more in fees for arranging [Mortgage 4].
67. I agree.
68. First, I consider the evidence to demonstrate a *prima facie* case that Mr. Stewart was carrying on the business of a mortgage broker or submortgage broker as contemplated by subparagraph (d) of the definition of a mortgage broker in that he received an amount of \$1,000 or more in fees or other consideration for arranging mortgages in 2022.
69. In reaching this conclusion I rely on the documentary evidence from September and October 2022, including Mr. Stewart's emails with [Broker 3] regarding [Mortgage 4], and the related documents prepared by Mr. Stewart in respect of [Mortgage 4], including the September 17, 2022 commitment letter and the September 20, 2022 Fixed Credit – Disclosure Statement, to show that Mr. Stewart was engaged at that time in the “arranging” of a mortgage.
70. I note that I accept that the types of conduct that constitute “arranging mortgages” includes things such as: communicating with clients in order to explain mortgages and taking instructions from clients, creating mortgage documents and/or disclosure statements, taking mortgage applications, obtaining supportive documents, and soliciting mortgage services from the public¹. In summary, I consider that arrange ought to be given its plain meaning, and to include the taking of steps to obtain a mortgage, and the giving of instructions and making preparations in that regard.
71. Turning to the second part of the requirement of subparagraph (d), I further find the evidence to show that Mr. Stewart received at least \$1,000 in fees for the arrangement of that mortgage. Mr. Stewart specifically informed [Broker 3] in an October 13, 2022 email that he had in fact received an e-transfer in the amount of \$1,000 from the [Mortgage 4] clients.
72. As a result, I consider the evidence to show that Mr. Stewart was carrying on business as a mortgage broker or submortgage broker, as contemplated by subparagraph (d), in September and October 2022, without being registered to do so as required by the Act. Here I note again that section 21 of the MBA sets out that a person must not carry on business as a mortgage broker or submortgage broker unless the person was registered under the MBA. Mr. Stewart's registration, although suspended well prior to July 30, 2022, did in fact lapse as of that date, such that he was not registered in September and October 2022.
73. BCFSA has also submitted that Mr. Stewart's activities in September and October 2022 support a conclusion that he was holding himself out as a submortgage broker contrary to

¹ See *Pham (Re)*, at paragraph 37, and *Horizon Financial Services Ltd. v. BC (Registrar of Mortgage Brokers)*, [1990] BCCO No. 4, at page 5.

subparagraph (b) of the definition of mortgage broker. Specifically, BCFSA submits that the fact that Mr. Stewart sent [Broker 3] the “business authorization” document, which purported to show that Mr. Stewart was in fact registered under the MBA, is sufficient to show that Mr. Stewart was holding himself out as a submortgage broker and mortgage broker.

74. I agree. I accept that the correspondence between Mr. Stewart and [Broker 3], including the provision by Mr. Stewart of the “business authorization” document, demonstrates a *prima facie* case that Mr. Stewart was holding himself out as a registered submortgage broker to [Broker 3], when in fact he was not. I further consider the various mortgage documents prepared by Mr. Stewart in association with [Mortgage 4], including the Fixed Credit – Disclosure Statement of September 20, 2022, which identified Mr. Stewart as the broker preparing the mortgage similarly could be viewed as Mr. Stewart holding himself out as a submortgage broker.
75. BCFSA has acknowledged, in their submissions, that subparagraph (b) of the definition of mortgage broker can only have application in the context of submortgage brokers if it is interpreted to include holding oneself out as a submortgage broker. In essence, BCFSA acknowledges that there is a question as to whether holding oneself out as a submortgage broker constitutes the carrying on of business for which registration is required by the MBA.
76. I have no difficulty finding that the intention of the MBA is to prohibit individuals who are not registered as submortgage brokers to hold themselves out as registered submortgage brokers.
77. While I acknowledge that the MBA distinguishes in many areas between mortgage brokers and submortgage brokers, I consider it to be telling, in the context of the issue of holding oneself out as a mortgage broker, that section 21(1)(c) of the MBA prohibits advertising as not only a mortgage broker, but also as a submortgage broker, except under a registered name under the MBA. In my view, section 21(1)(c) clearly provides that advertising oneself as a submortgage broker, other than under the registered name of a mortgage broker, is prohibited by the MBA. I consider this fact, to support a conclusion that the intention of the MBA is to prohibit individuals from holding themselves out not only as mortgage brokers, but also as submortgage brokers.
78. Section 8(1.4) speaks to orders to be issued against persons who, in the opinion of the registrar, was or are carrying on business as a mortgage broker, or submortgage broker, without being registered as required by the MBA. Given that the definition of submortgage broker specifically means that any person who actively engages in “any of the things referred to in the definition of mortgage broker”, I consider that it would be an absurd interpretation of the MBA to conclude that a mortgage broker would have to be registered under the act to hold oneself out as a mortgage broker, but the same restriction would not apply to a submortgage broker. As noted in *Cooper v. Hobart*, 2001 SCC 79, the MBA is intended to provide a general framework to ensure the efficient operation of the mortgage marketplace. In my view, if subparagraph (b) of the definition of mortgage broker were not found to include the holding out of oneself as a submortgage broker, the intention of the MBA would be thwarted.
79. I note, in any event, that the “business authorization” document Mr. Stewart provided to [Broker 3] identifies First Expanse as the “Managing Entity” in respect of Mr. Stewart’s

purported registration as a submortgage broker. In my view, this indication alone can be seen as Mr. Stewart holding out First Expanse as a mortgage broker. Further, I consider the fact that the September 17, 2022 commitment letter on [Mortgage 4], signed by Mr. Stewart, and issued on First Expanse letterhead, indicating that First Expanse would arrange the third mortgage, are all indications that Mr. Stewart was holding First Expanse out as a mortgage broker in that transaction.

80. In all of the circumstances, I am satisfied that evidence demonstrates a *prima facie* case that Mr. Stewart was, by holding himself and First Expanse out as a submortgage and mortgage brokers respectively, and by receiving \$1,000 or more in fees for arranging [Mortgage 4], carrying on business as a submortgage broker without being registered as required by the MBA.

Are the circumstances of the prima facie case urgent such that the protection of the public interest requires the issuing of an order pursuant to section 8(2)?

81. Counsel for BCFSA casts the issuing of an order pursuant to section 8(2) of the MBA as the issuing of an interim order. Counsel referred to the cases of *Scott v College of Massage Therapists of British Columbia*, 2016 BCCA 180, and *Kalia v Real Estate Council of Alberta*, 2021 ABQB 950 (CanLII) as providing some principles to be considered in the imposition of an interim order in the context of a professional body.

82. In *Scott*, the court identified a number of guidelines to assist in determining whether to issue an interim order against a registrant in a professional body. While Mr. Stewart is not in fact a registrant under the MBA, I consider that the following basic principles can be taken from *Scott* and applied to an individual who is not a registrant:

- For an interim order to be necessary for the protection of the public, the inquiring body must be satisfied that there is a real risk to the public if an order is not made. It is not enough for the panel to consider that an order is merely desirable; and
- Consideration should be given to the seriousness of the allegation, the nature of the evidence, and the likelihood of the alleged conduct being repeated if an interim order were not imposed.

83. In *Kalia*, the court set out a list of factors to be considered in weighing the balance of convenience on an application for a stay of an interim or temporary suspension. Those factors included consideration of:

- the nature and gravity of the impugned conduct;
- the circumstances in which the impugned conduct occurred;
- whether interim relief remains necessary to protect the public from a real risk of harm;
- the likelihood of the impugned conduct being repeated; and
- the overall passage of time in the conduct proceedings, including the likely timeline until the conclusion of the proceedings.

84. I consider the evidence before me to indicate that there is a real risk to the public if an order is not made in this case.

85. I agree with the submission of BCFSA that the emails between Mr. Stewart and [Broker 3] appear to indicate that Mr. Stewart's conduct in arranging [Mortgage 4] was not simply a "one-off" transaction for Mr. Stewart. The fact that Mr. Stewart began to use First Expense, despite it not being registered as a mortgage broker, while still at [Brokerage 1] in 2021, combined with the fact that Mr. Stewart continued to use First Expense to arrange mortgages nearly a year later (in September and October 2022) suggests, in my view, that Mr. Stewart has continued to engage in mortgage broker work despite no longer being registered to do so.
86. The fact that Mr. Stewart responded to [Broker 3]'s initial September 12, 2022 inquiry regarding Mr. Stewart's ability to place a third mortgage on the very same day of the inquiry, with that immediate reply being that "I do have smaller deals quite regularly...I can do third mortgages" clearly, in my view, suggests that Mr. Stewart had been engaged in ongoing mortgage broker work, despite not being registered to do so. I consider the fact that Mr. Stewart provided the "business authorization" documents suggests further that Mr. Stewart had taken steps, including the development of that document, with the intention of supporting his ability to continue to engage in mortgage broker business while no longer being registered to do so.
87. I also agree with BCFSA that the nature and gravity of Mr. Stewart's conduct presents a real risk to the public. While Mr. Stewart acknowledged in his July 18, 2022 interview with BCFSA that he understood that registration, and in particular the registration of First Expense, was a "massive deal", that acknowledgement is belied by the reality of his actions in September and October 2022, when he continued to use First Expense letterhead and to identify First Expense as the mortgage broker on that deal, at a time when Mr. Stewart knew that he was under investigation by the BCFSA, and when he knew that he was not registered to arrange mortgages. Simply put, I consider the evidence to support a conclusion that there is a real risk to the public that Mr. Stewart will continue to arrange mortgages while not being registered to do so, and therefore not subject to the regular aspects of regulation set out by the MBA.
88. It is useful to note, in considering the risk to the potential prejudice to the public, that the only way in which BCFSA can become aware of Mr. Stewart's activities is where it receives a complaint such as that received from [Broker 2] in November 2022. Absent the issuing of an order pursuant to section 8(2), I consider the evidence to support a conclusion that Mr. Stewart would simply continue to engage in arranging mortgages while not being registered to do so, thus putting the public at risk.
89. There is still, the question of whether the time that would be required to give Mr. Stewart the opportunity to be heard under section 8(1.4) would be prejudicial to the public interest. I consider the answer to that question to be "yes", in the circumstances.
90. Those circumstances include not only the fact that Mr. Stewart appears to have continued to engage in the arranging of mortgages while under investigation by BCFSA and while not being registered to do so, but also that Mr. Stewart has not complied with BCFSA's into his activities dating to the fall of 2021 when BCFSA was first contacted by [Broker 1]. BCFSA has sought a number of documents from Mr. Stewart, first by way of email request and subsequently by way of a personally delivered summons. Mr. Stewart has not responded in

any way to that summons. As BCFSA has submitted, the evidence from [Investigator 1] is that there are further significant investigative steps to be taken which will take several more months. I accept that the investigative process will likely be delayed by Mr. Stewart's refusal to comply with the summons requiring him to produce documents.

91. Given that the evidence before me shows that Mr. Stewart has not complied fully with BCFSA's investigations, and has in fact continued to arrange mortgages while not being registered to do so and while subject to that investigation, as well as the fact that the investigation into this matter is likely to take a further number of months before BCFSA would be ready to bring the matter to a hearing, I consider that it would be prejudicial to the public interest to wait to provide Mr. Stewart an opportunity to be heard prior to issuing an order pursuant to section 8(2).
92. In reaching this conclusion, I note that I have considered the impact that a cease and desist order would have on Mr. Stewart. As neither Mr. Stewart nor First Expanse is registered as a submortgage broker or a mortgage broker, I consider that the impact of an order that Mr. Stewart and First Expanse 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 British Columbia in any capacity, is likely very limited. This is not a case in which the order would be preventing Mr. Stewart or First Expanse from engaging in business activities they are registered to engage in. Certainly, in the current circumstances, where there exists a *prima facie* case that Mr. Stewart, as an unregistered individual, is continuing to carry on business as a mortgage broker or submortgage broker, I find that the need to protect the public outweighs any impact the proposed order would have on Mr. Stewart.

Interim Order

93. As I have set out above, I consider that there is a *prima facie* case that supports a conclusion that Mr. Stewart was not registered at a time when he was engaged in activity for which registration was required by the MBA, and that the circumstances of that *prima facie* case are urgent such that the protection of the public interest requires the issuing of an order pursuant to section 8(2).
94. The remaining question relates to the wording of that order.
95. BCFSA submits that the order issued pursuant to section 8(2) should be in the nature of an interim order. In making that submission, BCFSA acknowledges that the wording of section 8(2) does not refer specifically to interim orders, however, BCFSA notes that the practice of the registrar in past cases has included interim orders (see *Savage (Re)*, 2022 BCRMB 1; *Aulak (Re)*, Suspension order, Registrar of Mortgage Brokers, April 25, 2016; *Toor (Re)* Suspension Order Under Section 8(2), Registrar of Mortgage Brokers, December 12, 2005).
96. BCFSA further takes the position that section 8(2), and the MBA as a whole, is drafted to provide broad powers by which the Registrar of Mortgage Brokers is required to regulate the mortgage industry. It submits that the lack of explicit references to detailed procedures (other than a right to appeal directions, decisions, or orders of the Registrar) supports a broad, remedial, and flexible approach to the interpretation of the legislation and its implementation by the Registrar. In BCFSA's submission:

Applying the modern and well-known approach to interpretation set out in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 as well as the requirement in section 8 of the *Interpretation Act*, RSBC 1996, c 238 that “[e]very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects”, results in an interpretation of MBA, s 8(2) that includes an authority to make such orders as would be necessary to protect the public in the circumstances. The explicit review mechanisms in RESA, ss 45 and 51 are not necessary to create such a power within the natural meaning of s 8(2) because the public interest requires that they be available.

This is supported by the fact that the orders permitted under section 8(2) do not include cancellation or monetary penalties. BCFSA submits that it is obvious that there might be circumstances which require both urgent action by the Registrar and which would require cancellation of a registration or monetary sanction. Therefore, the fact that section 8(2) is limited to suspensions and orders to take remedial action or cease contraventions suggests that the legislature contemplated the Registrar’s ability to take further steps. It would be absurd if the legislature had created a power that could not be exercised in the most egregious of circumstances.

97. I find this submission to be compelling. I consider that the type of order to be issued under section 8(2) of the MBA, be it final or interim, is left to the discretion of the registrar. In either case, the person affected by the order is provided with the opportunity to appeal the order in question, and as such I do not consider that any procedural unfairness could be said to arise due to the nature of the order made.
98. In the circumstances of this case, where I consider that the length of time required to await the completion of the investigation and to then provide Mr. Stewart an opportunity to be heard prior to the taking of a step to protect the public would be prejudicial to the public interest, I consider that the issuing of an interim pursuant to section 8(2) of the MBA is appropriate.

Conclusion

99. I find that there is a *prima facie* case that supports a conclusion that Mr. Stewart and First Expanse were not registered at a time when Mr. Stewart and First Expanse were engaged in activity for which registration was required by section 8(1.4) and 21(1)(a) of the MBA, including Mr. Stewart holding himself out as a submortgage broker, holding First Expanse out as a mortgage broker, and Mr. Stewart receiving fees of at least \$1,000 for the arranging of mortgages.
100. I further find that the circumstances of the *prima facie* case are urgent such that the protection of the public interest requires the issuing of an order pursuant to section 8(2) prior to providing Mr. Stewart and First Expanse the opportunity to be heard.
101. As a result, I will order that:

- Styles William Stewart 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 British Columbia in any capacity, effective immediately unless and until he becomes registered to do so under the MBA.
- First Expanse Financial Corp. 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 British Columbia in any capacity, effective immediately unless and until it becomes registered to do so under the MBA.

102. The above orders will remain in force until the investigation into the conduct and activities of Mr. Stewart and First Expanse Financial Corp is completed and a determination is made by the Registrar of Mortgage Brokers, after Mr. Stewart and First Expanse Financial Corp. have had an opportunity to be heard, as to whether any orders should be made under sections 8(1) to 8(1.4) of the MBA.

103. A copy of the signed order is attached to these reasons.

Issued at Kelowna, British Columbia, this 2 day of February, 2023.

“ANDREW PENDRAY”

Andrew Pendray
Chief Hearing Officer

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

AND

IN THE MATTER OF

**STYLES WILLIAM STEWERT
(FORMER REGISTRANT NO. 144557)**

AND

FIRST EXPANSE FINANCIAL CORP

CEASE AND DESIST ORDER

(Pursuant to section 8(2) of the *Mortgage Brokers Act*)

[This Order has been redacted before publication.]

Upon reading the sworn Affidavits of [Investigator 1], [Individual 1], [Investigator 2], and [Individual 2], and upon reading the written submissions and hearing the oral submission of Gareth Reeves, counsel for the BC Financial Services Authority ("BCFSA"), I am satisfied that the requirements under section 8(2) of the *Mortgage Brokers Act*, RSBC 1996, c 313 ("MBA") have been met:

1. there has been conduct on the part of Styles William Stewart and First Expanse Financial Corp, notably the carrying on of business as mortgage brokers or submortgage brokers and the holding out as mortgage brokers or submortgage brokers, in respect of which the Registrar of Mortgage Brokers could make an order under section 8(2) of the MBA;
2. the length of time required to conduct an investigation or hold a hearing under section 8(1.4) of the MBA or both would be prejudicial to the public interest; and
3. it is in the public interest to make an order under section 8(2) of the MBA against Styles William Stewart and First Expanse Financial Corp; AND

I THEREFORE ORDER pursuant to section 8(2) of the MBA as follows:

1. Styles William Stewart 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 British Columbia in any capacity, effective immediately unless and until he becomes registered to do so under the MBA.

2. First Expanse Financial Corp 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 British Columbia in any capacity, effective immediately unless and until it becomes registered to do so under the MBA.
3. The above orders will remain in force until the investigation into the conduct and activities of Styles William Stewart and First Expanse Financial Corp is completed and a determination is made by the Registrar of Mortgage Brokers, after Styles William Stewart and First Expanse Financial Corp have had an opportunity to be heard, as to whether any orders should be made under sections 8(1) to 8(1.4) of the MBA.

TAKE NOTICE that Styles William Stewart, First Expanse Financial Corp, or both may appeal these orders to the Financial Services Tribunal under section 9 of the MBA.

This Order is made this 2nd day of February, 2023 at the City of Kelowna, British Columbia.

“ANDREW PENDRAY”

Andrew Pendray
Chief Hearing Officer