BC Financial Services Authority

Citation: Anderson (Re), 2023 BCRMB 11

Date: 2023-08-15

File No. INV20.304.59125

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

AND

IN THE MATTER OF

JOHN HAWKINS ANDERSON

(REGISTRATION #145618)

DECISION ON MERITS

[This Decision has been redacted before publication.]

Date of Hearing:	May 31 – June 2, 2023
Counsel for BCFSA:	Simon Adams
Respondent:	Self-Represented
Hearing Officer:	Andrew Pendray

Introduction

1. On November 22, 2022, a Notice of Hearing was issued alleging that John Hawkins Anderson had conducted mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the *Mortgage Brokers Act* (MBA).

2. The allegations against Mr. Anderson as set out in the Notice of Hearing related to a number of transactions in which he had acted as a sub-mortgage broker in 2020, and in which he had allegedly failed to inform lenders regarding financial liabilities of borrowers, as well as allegedly failing to take steps to verify the accuracy of borrower financial information.

3. The hearing proceeded by virtual oral hearing. BCFSA called evidence and made submissions. Mr. Anderson was self-represented at the hearing. Although he attended at the hearing, Mr. Anderson elected to not call evidence, and did not make

any submissions.

The Notice of Hearing

4. The Notice of Hearing alleges that:

    1. In their capacity of mortgage submortgage broker, John Hawkins Anderson conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA when:

        a. They knew or ought to have known that the following borrowers had financial liabilities that were pertinent to the lenders and failed to disclose to the lenders the financial obligations of the borrowers when they submitted the following mortgage applications to the specified lenders:

Borrowers	Mortgage Applications	Lender Submitted To
[Borrower 1] & [Borrower 2]	Filogix [Application 1]	[Lender 1]
[Borrower 3] & [Borrower 4]	Filogix [Application 2]	[Lender 2]
[Borrower 5], [Borrower 6] & [Borrower 7]	Filogix [Application 3]	[Lender 2]
[Borrower 5], [Borrower 6] & [Borrower 7]	Filogix [Application 4]	[Lender 3]
[Borrower 6] & [Borrower 7]	Filogix [Application 4]	[Lender 4]

        and

        b. They failed to take sufficient, or any steps to verify the accuracy of the borrowers' information before submitting it to the lenders in the above noted mortgage applications.

Jurisdiction and Procedure

5. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers (the "Registrar") in respect of orders under section 8 of the MBA, pursuant to a May 16, 2023 Acting Capacity Instrument.

6. Under Section 8(1) of the MBA, after giving a person registered under the MBA an opportunity to be heard, the Registrar may suspend the person's registration, cancel the person's registration, order the person to cease a specified activity, or order the person to carry out specified actions that the Registrar considers necessary to remedy the situation.

7. BCFSA must prove its case on the balance of probabilities, that is, it must prove that it is more likely than not that the facts as alleged occurred. In order to make a finding against Mr. Anderson, I must find that the evidence is "sufficiently clear, convincing and cogent" to satisfy that test: *FH v McDougall,* 2008 SCC 53, [2008] 3 S.C.R. 41.

8. Evidence is generally considered as a matter of procedure[1]. As an administrative tribunal the Registrar is not bound by court rules of evidence, and in the absence of any statutory provision to the contrary, may consider any evidence it considers relevant, including hearsay evidence: *Adams v. British Columbia (Superintendent of Motor Vehicles,* 2019 BCCA 225 (CanLII).

9. Further, the fact that the legislation may provide for a formal structure for enforcement proceedings does not preclude hearsay evidence from being admitted at a hearing[2]. There is no provision in the MBA which imports civil or criminal rules of evidence into the administrative proceedings held by the Registrar. The Registrar may, however, draw upon principles underlying court rules of evidence to exclude or assess evidence.

10. The Registrar must also afford procedural fairness to a respondent where a decision may affect his or her rights, privileges or interests. This right includes a right to be heard. The Registrar affords every respondent an opportunity to respond to the case against him or her by providing advance notice of the issues and the evidence, and an opportunity to present evidence and argument. The Registrar must determine facts, and decide issues set out in the Notice of Hearing, based on evidence. The Registrar may, however, apply its individual expertise and judgment to how it evaluates or assesses evidence.

Issue

11. The issue is whether the evidence presented at the hearing supports the allegations set out in the Notice of Hearing.

Preliminary Comments

12. As noted above, Mr. Anderson was self-represented at the hearing, and did not call any evidence or make submissions. Much of the hearing proceeded in Mr. Anderson's absence. Given the requirement that the Registrar afford the respondent procedural fairness, including the right to be heard, I provide the following summary to provide context as to how the hearing came to proceed as it did.

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

13. The hearing of this matter was originally scheduled to commence on May 29, 2023 by way of a virtual hearing, proceeding through June 2, 2023. The hearing in fact commenced on May 31, 2023, and proceeded through June 2, 2023.

14. Two pre-hearing conferences were held in relation to this matter. The first on May 8, 2023, and the second on May 12, 2023.

15. At the initial pre-hearing conference Mr. Anderson indicated that he did not have any conflict with the dates upon which the hearing was scheduled to proceed. After some discussion at the initial pre-hearing conference, the parties indicated that they wished to engage in some discussion as to whether a hearing on liability would be required.

16. At the second pre-hearing conference on May 12, 2023, the parties indicated that they had not yet come to any resolution on the issue of liability. As a result, I issued directions to the parties which:

    - Confirmed that the hearing would proceed on May 29 through June 2, 2023, on the issue of liability only;[3]
    - Provided dates upon which the parties were to exchange any documents they intended to rely on at the hearing; and
    - Provided dates upon which the parties were to exchange witness lists and will-say statements.

17. At the outset of the hearing on the morning of May 31, 2023, Mr. Anderson applied for an adjournment. In his Adjournment Request Form, Mr. Anderson indicated that he needed an adjournment of the hearing in order to have "time to find legal counsel".

18. Mr. Anderson provided further submissions indicating that prior to the hearing he had believed that he would be able to come to an agreement with BCFSA, and that once he had not, he had spoken to a friend the day prior to the hearing, and that his friend had, at that time, advised him to obtain legal counsel.

19. I denied Mr. Anderson's application for adjournment.

20. In doing so I determined that the evidence showed that Mr. Anderson had not been diligent in making attempts to obtain counsel, despite having been urged to do so by counsel for BCFSA for a period of six months, and despite having previously confirmed that he was prepared to proceed with the hearing as scheduled. I noted further that it was only on the date of the hearing that Mr. Anderson indicated that he was intending to seek counsel, that he had not yet taken any steps to retain counsel, and that Mr. Anderson admitted that the matter in question was not particularly

[3] There was discussion of reducing the hearing time from three days to five. As a result of information provided by the parties as to the number of witnesses they intended to call, the hearing was rescheduled to proceed for only three days, commencing May 31, 2023.

complex.

21. Upon receiving the decision on his application for adjournment, Mr. Anderson enquired as to how long the hearing would take. He was reminded that the hearing was scheduled to proceed through June 2, 2023. Mr. Anderson then replied that he did not have time to attend the hearing for three days, and enquired as to whether he could just leave.

22. I reminded Mr. Anderson that he had attended the two pre-hearing conferences, that he had indicated at that time that he did not have an issue with the dates of the hearing, and that the hearing would now be proceeding. I noted that there was no requirement that he attend, but that the hearing would proceed in his absence, and that a decision to not attend would cause him to miss the opportunity to question witnesses or provide evidence.

23. Mr. Anderson attended the initial portion of the hearing, and subsequently left and returned at varied intervals on the morning of May 31, 2023. After direct examination of BCFSA's witness was completed, the Hearing Coordinator contacted Mr. Anderson to enquire as to whether he would be returning to conduct a cross-examination of the witness, or whether he intended to provide evidence at the hearing. The Hearing Coordinator indicated to Mr. Anderson that if he did not attend at the hearing on the afternoon of May 31, 2023, the conclusion would be that he did not wish to call evidence, and that the hearing would proceed to submissions on the morning of June 1, 2023.

24. On the morning of June 1, 2023, counsel for BCFSA provided its closing submissions. During the morning break, Mr. Anderson emailed the Hearings Department indicating he needed to attend to a veterinary issue with his dog, and requested that the hearing be adjourned "until later in the day or tomorrow".

25. The hearing was then adjourned until the following day, June 2, 2023, in order to provide Mr. Anderson the opportunity to make a closing submission. On the morning of June 2, 2023, however, Mr. Anderson emailed the Hearings Department and indicated that:

> Unfortunately, I won't be available this morning as I deal with this situation at home. I know we don't need a lot of time for the remainder of this hearing but I would like to have a chance to speak at some point. If that's not an option I understand and you can move forward as planned.

26. I determined that Mr. Anderson had not provided a sufficient basis upon which a further adjournment would be granted. As a result, the hearing completed without Mr. Anderson providing a closing submission.

Background and Evidence

27. At the hearing I heard evidence from [Investigator 1], an investigator for BCFSA. The evidence and information before me also included a Book of Documents. That Book of Documents consisted largely of the Investigation Report completed by [Investigator 1], and the documents that were associated with that investigation, including mortgage applications submitted by Mr. Anderson to various lenders, land title searches, and other documents associated with those mortgage applications. The documents also included transcripts of an interview [Investigator 1] conducted with Mr. Anderson, and transcripts of interviews with two of the borrowers.

28. I have considered all the evidence and information before me in reaching my decision in this case. The following is intended to provide background for my reasons.

Mr. Anderson's Registration

29. Mr. Anderson was originally registered as a submortgage broker on January 15, 2010. He worked at the same brokerage, Dominion Lending Centres Integra Mortgage ("Integra Mortgage"), from the date of his initial registration until October 29, 2020, when his registration was transferred to his current brokerage. Mr. Anderson remains currently registered.

The Investigation

30. In his evidence [Investigator 1] explained that he had commenced his investigation into Mr. Anderson after the Registrar had, on November 23, 2020, received a verbal complaint from [Complainant 1] of Integra Mortgage. [Complainant 1] followed up by filing a Registrar of Mortgage Brokers Complaint Information Form with the Registrar on December 4, 2020.

31. In that complaint form, [Complainant 1] indicated that she was a Mortgage Brokerage owner, and that she was making a complaint against Mr. Anderson in respect of a number of transactions which [Complainant 1] characterized as involving "professional negligence [and] fraud by omission as proven by leaving properties owned off applications". [Complainant 1] identified six specific transactions she considered to be of concern, occurring in September and October 2020.

32. [Investigator 1] explained that once he had reviewed the complaint form and obtained Mr. Anderson's registration status, he began to investigate the complaints. Specifically, [Investigator 1] requested from the complainant access to the mortgage files in the transactions that were complained of, as well as access to the Filogix program for those files. [Investigator 1] stated that although he was unable to get complete access to all of the files that were the subject of [Complainant 1]'s complaint, he was able to get sufficient access that he was able to identify a number of, what he considered to be, issues in respect of the information Mr. Anderson was providing to the lenders.

33. [Investigator 1] indicated that he had also, on August 22, 2022, conducted an interview of Mr. Anderson.

34. [Investigator 1] was taken to his investigation report, and asked to explain the concerns he had identified in respect of each of the transactions in question.

[Borrower 1] and [Borrower 2] Application - Filogix [Application 1] – [Lender 1]

35. [Investigator 1] was able to obtain access to the complete mortgage file in respect of this transaction, which related to a mortgage application for a building lot property located at [Property 1], Kamloops, BC (the "[Property 1] Property")

36. [Borrower 1] and [Borrower 2] completed a "Mortgage Application" to Mr. Anderson's then brokerage, Integra Mortgage. The application is signed by both [Borrower 1] and [Borrower 2], although it is not dated. In his interview with [Investigator 1], Mr. Anderson indicated that he believed that [Borrower 1] and [Borrower 2] completed those applications, sent them to him, and that he had then met with them to review the applications.

37. In his application [Borrower 1] indicated that his salary was $210,499.00 per year, and listed his assets as a boat worth $40,000, with liabilities identified as a loan and credit card bill totaling $24,300.

38. In her application, [Borrower 2] indicated that she was a salaried, full-time employee with an hourly wage of $28.50. She noted liabilities of $4,400 related to credit cards and a line of credit. [Borrower 2] further indicated that she owned a property, [Property 2], Kamloops, BC (the "[Property 2] Property"), that had a BC Assessment value of $336,000, with a mortgage of $143,000. [Borrower 2] noted, with respect to the [Property 2] Property that:

> …the above property was my deceased (2017) husband's which we occupied and invested in together. It has remained in his name and is only now involved in the probate process. I am the sole beneficiary of his will. **His parents are also still on title.** I believe as 1% owners – though they have been paid out in full in 2017.
>
> [emphasis added]

39. Mr. Anderson completed a mortgage application on behalf of [Borrower 1] and [Borrower 2], and submitted that application to [Lender 1] ([Lender 1]) on September 28, 2020.

40. In that application Mr. Anderson indicated that [Borrower 2] and [Borrower 1] were seeking a mortgage of $333,750 in order to purchase a building lot.

41. The September 28, 2020 application sets out that [Borrower 1] was self-employed, with an annual income of $250,000, while [Borrower 2] was employed with an annual income of $52,000. Additionally, the applicants were identified as having $215,000 in assets and $70,000 in liabilities.

42. Importantly for the purposes of this hearing, the mortgage application indicates that the applicants were owners of a property at [Property 2] in Kamloops, with a property value of $450,000, and a mortgage balance of $143,000.

43. A mortgage underwriter for [Lender 1] replied to Mr. Anderson on September 30, 2020, and enquired as to whether the applicants would be obtaining the money to build on the lot from the sale of their "current home". [Lender 1] also requested T1 tax information and business financials for [Borrower 1] for review.

44. In reply, Mr. Anderson indicated that the down payment on the lot would indeed come from the sale of the applicants' current home, with additional funds if needed from [Borrower 1]'s company.

45. On October 6, 2020, [Lender 1] again contacted Mr. Anderson, querying the manner in which the applicants would be funding their purchase and build:

> What is their plan to build, they don't have the funds personally or in the business to build after they take the funds from the business for the DP. **They also don't own the current home they are living in.**
>
> We don't like doing lot loans if the buyers don't have a plan or the funds to build.
>
> [emphasis added]

46. Mr. Anderson replied on October 6, 2020. Indicating that the applicants did in fact own their current home.

47. [Lender 1] replied again on October 6, 2020 and indicated that it had obtained the title of the [Borrower 2] Property, and that the title of that property indicated that it was not owned by the applicants. A title search from October 6, 2020 indicated that the registered owners of the [Property 2] Property were [Individual 1], [Individual 2], and [Individual 3].

48. Mr. Anderson replied to [Lender 1] on October 7, 2020, but did not, in that email, address the question of ownership of [Property 2].

49. On October 7, 2020, [Lender 1] provided a list of documents it would require from the applicants. This included an appraisal of the lot to be purchased, corporate summaries for the companies [Borrower 1] was involved in, confirmation of [Borrower 1]'s payment of 2019 taxes, confirmation of [Borrower 2]'s 2019 Notice of Assessment from Revenue Canada, and a copy of [Borrower 1]'s separation agreement.

50. The separation agreement referenced in [Lender 1]'s email of October 7, 2020 was included in the mortgage file obtained by [Investigator 1] in the course of his investigation. That agreement, dated February 3, 2020, indicates that [Borrower 1] was required to pay child support in the amount of $4,500 per month.

51. Mr. Anderson wrote to [Lender 1] on October 14, 2020 indicating that he was still seeking to arrange a mortgage for [Borrower 1] and [Borrower 2]. In his email of that date Mr. Anderson provided details regarding funds [Borrower 1] would have access to in order to complete a build on the lot in question. Of note, Mr. Anderson reiterated in that email that [Borrower 1] and [Borrower 2] would:

> …also be selling the house on [Property 2] with a projected profit of $300,000. That should be enough for a significant down payment.

52. [Lender 1] contacted Mr. Anderson that same date, and informed him that it would not be able to provide a mortgage for the lot purchase due to the fact that [Lender 1] felt that the applicants did not have the funds to complete a build. [Lender 1] suggested that Mr. Anderson contact its commercial lending group.

53. [Investigator 1], in the course of his investigation, performed another land title search on [Property 2]. That land title search, completed on October 25, 2022, indicated that the owners of the property remained [Individual 1], [Individual 2], and [Individual 3].

54. In his interview with [Investigator 1], Mr. Anderson indicated in respect of [Borrower 2]'s ownership of [Property 2] that his understanding had been that she owned that property with a family member. He indicated initially, that he did not believe he had done a land title search of that property, as he did not typically do so. Mr. Anderson acknowledged that it appeared that [Lender 1] had subsequently pulled the title, and had likely sent it to him. Mr. Anderson indicated that, despite the title search setting out that [Borrower 2] was not an owner of [Property 2] , that property was in fact hers through her former husband's estate. Mr. Anderson acknowledged that he believed that the property was in the process of going through probate at the time of the mortgage application.

55. With respect to [Borrower 1]'s separation agreement, Mr. Anderson indicated that he considered it likely that [Lender 1] had been prompted to ask for a copy of that agreement when they noted that it indicated that [Borrower 1] was "separated" on his taxes. Mr. Anderson acknowledged that he had not sent the separation agreement in the September 28, 2020 Filogix application to [Lender 1], but indicated that he had done so the week following. When asked whether the separation agreement was something that ought to have been disclosed to [Lender 1] as a liability, Mr. Anderson indicated that he did not think he knew that there was a monthly liability for [Borrower 1] in respect of the separation until he "dug further into it".

56. [Investigator 1] asked Mr. Anderson how he had ultimately come to obtain the separation agreement from [Borrower 1]. Mr. Anderson indicated that he was unsure

of whether he had requested the document via text or email, and noted that he would speak to [Borrower 1] "all the time".

[Borrower 5], [Borrower 6] and [Borrower 7] Application – Filogix [Application 3] – [Lender 2] – [Property 3] Application

57. This transaction concerned a mortgage application for a property located at [Property 3], Kamloops, B.C. (the [Property 3] Property). Mr. Anderson submitted the application on behalf of the applicants, [Borrower 5], [Borrower 6], and [Borrower 7] (collectively the "[Borrowers 5 -7] Applicants"), through Filogix to [Lender 2], on July 30, 2020.

58. In her December 4, 2020 complaint form [Complainant 1] had indicated that, in her view, Mr. Anderson had known that the applicant borrowers had co-signed on another property and had failed to include that information in the July 30, 2020 application.

59. A review of the July 30, 2020 Filogix application sets out that [Borrower 5] was seeking to buy his first home, and was being joined in the application for mortgage by his parents, [Borrower 6] and [Borrower 7]. The mortgage sought was in the amount of $486,540.60.

60. Two properties were listed as owned by [Borrower 6] and [Borrower 7], located at [Property 4], Kamloops, BC, valued at $900,000 and [Property 5], Sun Peaks, B.C. (the "[Property 5]"), valued at $1,800,000. The mortgage balances of both of those properties were set out in the application.

61. On July 31, 2020 [Lender 2] issued a commitment letter to [Borrowers 5 – 7] in respect of the [Property 3] mortgage, indicating that the application had been successful, with certain conditions to be met. Included in those conditions was that the applicants provide confirmation of current balance and payment for mortgages held against [Property 4] and [Property 5].

62. In his interview Mr. Anderson indicated that mortgage financing for [Property 3] had funded on November 24, 2020.

[Borrower 6] and [Borrower 7] Application – Filogix [Application 4] – [Lender 4]

63. On August 4, 2020, Mr. Anderson submitted a mortgage refinancing application for [Borrower 6] and [Borrower 7] related to [Property 5]. The application was submitted to the lender [Lender 4].

64. That August 4, 2020 application indicated that the value of [Property 5] was $1,400,000. The August 4, 2020 application further indicated that [Borrower 6] and [Borrower 7] owned another property at [Property 4] in Kamloops.

65. The August 4, 2020 application makes no reference to the fact that [Borrower 6] and [Borrower 7] were co-applicants on the [Property 3] application, which had received commitment from [Lender 2] as of July 31, 2020.

66. When asked at his interview why he had not included the [Property 3] information on the [Property 5] application, Mr. Anderson indicated that he had not done so because the [Property 3] mortgage transaction had not happened yet and it could have potentially fallen apart. Mr. Anderson noted the possession date on [Property 3] had moved multiple times, and indicated that he in fact had a client who had purchased a unit in the same building that had not been able to move in until a later date. Mr. Anderson expressed that, from his point of view, regardless of whether he had included the fact of the [Property 3] mortgage on the [Property 5] refinance application:

> …it wouldn't have affected anything, but it doesn't matter.

67. In his interview, Mr. Anderson indicated that the [Property 5] refinancing had not ultimately completed.

<u>[Borrower 5], [Borrower 6] and [Borrower 7] Application - Filogix [Application 4] – [Lender 3]</u>

68. On August 6, 2020, Mr. Anderson submitted a further mortgage refinancing application related to [Property 5]. The lender that application was submitted to was [Lender 4].

69. The August 6, 2020 application again indicated that the value of [Property 5] as being $1,400,000.

70. The August 6, 2020 application makes no reference to the fact that [Borrower 6] and [Borrower 7] were co-applicants on the [Property 3] application, which had received commitment from [Lender 2] as of July 31, 2020.

71. On October 21, 2020, [Lender 3] issued a commitment letter to [Borrower 6] and [Borrower 7] in respect of the refinancing of [Property 5].

72. That commitment letter set out conditions for final approval of the [Property 5] mortgage. Those conditions included that the applicants provide a copy of a firm sale agreement for their property at [Property 4], as well as a mortgage statement for a property located at [Property 6], Kamloops BC (the [Property 6] Property), confirming a mortgage balance of $508.482 with monthly payments of $2,433.

73. BCFSA investigators conducted a land title search which showed that [Borrower 6], [Borrower 7], and their other son registered a mortgage for [Property 6] on July 9, 2020, in the amount of $510,482.50, with a monthly payment of $2,246.31.

74. As set out above, Mr. Anderson indicated in his interview that the refinancing for [Property 5] did not complete.

[Borrower 3] and [Borrower 4] Application – Filogix [Application 2] – [Lender 2]

75. On October 14, 2020, Mr. Anderson submitted a mortgage refinancing application via Filogix on behalf of [Borrower 3] and [Borrower 4] (collectively "[Borrowers 3 & 4]"), in respect of a property located at [Property 7], Surrey, BC (the [Property 7]). The application was submitted to [Lender 2].

76. That October 14, 2020 application did not indicate that [Borrowers 3 & 4] were the owners of any other properties.

77. In her complaint, [Complainant 1] noted that the lender had searched the land title office and had determined that [Borrower 3] in fact owned two rental properties. [Complainant 1] indicated in her complaint form that Mr. Anderson had informed her that he had not been aware of [Borrowers 3 & 4] ownership of those rental properties, but that she had reviewed a previous file which did list one of the properties in question. In [Complainant 1]'s view, Mr. Anderson would have had to delete that file when he sent the October 14, 2020 [Property 7] application to [Lender 2].

78. [Investigator 1] conducted land title searches and was able to identify two properties co-owned by [Borrower 3], located in New Westminster and Vancouver. The land title searches of those properties indicate that each has outstanding mortgages.

79. [Borrower 3] attended for an interview with investigators contracted by BCFSA on June 1, 2022.

80. In his interview [Borrower 3] indicated that he had used Mr. Anderson for two mortgages, both related to the [Property 7]. The first having occurred in approximately 2012, with the second being the refinancing application in October 2020. [Borrower 3] indicated that he was confident he had informed Mr. Anderson about his other two properties at the time of the initial financing. He stated that with respect to the October 2020 refinancing, he recalled that Mr. Anderson had had to "come back and [ask] me about it" as he had forgotten to provide documents related to the Vancouver property.

81. In his interview, Mr. Anderson indicated that [Borrower 3] was a close friend, and that he had done a mortgage with [Borrower 3] previously in approximately 2016. Mr. Anderson indicated that [Borrower 3] had completed a mortgage application for him,

and that [Borrower 3] had forgotten to mention the two rental units he co-owned. Mr. Anderson indicated that once he had sent in the application, [Lender 2] had indicated that its diligence had shown [Borrower 3] as owner of two properties. Mr. Anderson, noted that his own credit bureau check on [Borrower 3] had not shown those properties, and suggested that this may have been due to the fact that [Borrower 3] co-owned the properties with his brother. Regardless, Mr. Anderson indicated that he had then contacted [Borrower 3], who had provided him with information regarding his ownership and mortgages associated with those properties. Mr. Anderson had then sent the information on to [Lender 2].

82. Mr. Anderson indicated that he had not recalled that [Borrower 3] owned other properties when he had submitted the [Property 7] application. He also noted that even if he had recalled, it could have been that [Borrower 3] had sold the properties between when Mr. Anderson had previously worked with [Borrower 3] and October of 2020. Mr. Anderson further indicated that he did not consider [Borrower 3]'s ownership of other properties to matter, in any event, from a financial perspective in respect of the [Property 7] refinance application.

Submissions

83. BCFSA submitted that in each of the five mortgage applications identified in the notice of hearing, the borrowers had financial liabilities that were pertinent to the lenders, and which liabilities Mr. Anderson failed to disclose to the lenders on those applications.

84. BCFSA submitted that a review of the five applications made clear that Mr. Anderson had failed to take sufficient, or any, steps to verify borrower financial information prior to submitting applications to the lenders. BCFSA submitted that these failures included taking simple steps such as running a credit check on his clients or doing a land title search.

Discussion

Did Mr. Anderson conduct mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the MBA when he knew or ought to have known that the borrowers identified at item 1(a) of the Notice of Hearing had financial liabilities that were pertinent to lenders, and he failed to disclose those financial liabilities when submitting the mortgage applications to the specified lenders?

Did Mr. Anderson conduct mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the MBA by failing to take sufficient or any steps to verify the accuracy of the borrowers' information before submitting it to the lenders in the transactions identified in the Notice of Hearing?

85. I find, on a balance of probabilities, that these allegations have been made out. My reasons for having reached this conclusion follow.

86. 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.

87. The Registrar of Mortgage Brokers has previously concluded that a person submitting incorrect or false information on a mortgage application to a lender has conducted business in a manner that is prejudicial to the public interest contrary to section 8(1)(i). This includes failing to disclose in mortgage applications to lenders the fact that borrowers owned other properties: *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia)*.

88. In *Kia* the respondent broker was alleged to have failed to disclose to lenders all real property owned by borrowers, as well as real property that borrowers planned to acquire. The respondent was further alleged to have failed to disclose to lenders all of the Borrower's current real property financing, and financing which the borrower's planned on seeking. The Registrar concluded that:

> Submortgage brokers and mortgage brokers are regulated by the Act and the Regulations and are subject to the orders and directions issued in the public interest by the Registrar. They must conduct reasonable due diligence with respect to information they provide to lenders…
>
> A submortgage broker's failure to disclose known material facts or knowingly misrepresenting facts to a lender undermines public confidence, places borrowers at risk of being placed in mortgages that they cannot afford, and places lenders at risk of making loans that they would not otherwise have made.
>
> ***Kia*, page 30**

89. Although I am not bound by prior decisions of the Registrar, I agree with the above excerpted comments. In my view, there can be no doubt that a submortgage broker's failure to conduct reasonable due diligence with respect to information they provide to lenders, and the failure to disclose material facts, or to knowingly misrepresent facts to a lender, constitutes conducting business in a manner that is prejudicial to the public interest.

90. I note, in reaching this conclusion, that on my review of Mr. Anderson's interview transcript, he did not view any of the applications set out on the notice of hearing as having any real issues, despite missing the identification of properties and liabilities, on the basis that, in his view, the applicant borrowers could afford the mortgages they were seeking. I note in particular that when asked about the properties that had not been included on the [Borrower 3] and [Borrower 4] application, Mr. Anderson

indicated that he did not consider this to be an issue of significance, indicating that in his view [Borrowers 3 & 4] made:

> …enough money to afford whatever they were wanting to do regardless of the rental properties.

91. I do not consider that Mr. Anderson's apparent conclusion that, as long as an applicant can "afford" the mortgage they are seeking, the failure to disclose all material facts, including properties the applicant may own which have mortgages on them, is a "non-issue".

92. Rather, I note that included in the duties of the Registrar, in its administration of the MBA, is ensuring public confidence in the mortgage system in British Columbia as a whole (*Cooper v. Hobart,* 2001 SCC 79, para. 49). I agree with the comments in *Kia* that the "public" to whom that duty is owed is broad, and ought to be taken to include:

> …lenders, borrowers, public and private mortgage insurance companies like CMHC, the mortgage broker industry, and numerous other interested stakeholders.
>
> ***Kia*, page 25**

93. In my view, in order for the public, which includes lenders, to have confidence in the industry, the Registrar has a duty to ensure that submortgage brokers are providing fulsome information on borrowing applications submitted to lenders. I consider that allowing brokers to submit incorrect or false information on a mortgage application to a lender would cause public confidence in the mortgage system to be lost. I find that a broker who undertakes such an action should be found to have conducted business in a manner that is prejudicial to the public interest contrary to section 8(1)(i).

94. I turn to the transactions set out in the Notice of Hearing.

<u>[Borrower 1] and [Borrower 2] Application</u>

95. I find the evidence regarding this transaction to make clear that Mr. Anderson failed to take sufficient, or in fact any steps to verify the accuracy of the information regarding [Borrower 2]'s "ownership" of [Property 2].

96. On her application form, which she provided to Mr. Anderson, [Borrower 2] indicated that [Property 2] remained in the name of her deceased husband, and in the name of his parents. [Borrower 2] also indicated that her husband's parents had "been paid out in full", that she was the sole beneficiary of her husband's will, and that the property was "now involved in the probate process".

97. Even if I accepted that Mr. Anderson's general practice of not conducting a title search on properties his borrower's claimed to own was reasonable (and I make no finding in that regard), I do not consider the circumstances as described by [Borrower 2] in her application would have allowed that general practice to have been acceptable in these circumstances.

98. Given the information provided to him by [Borrower 2], it was not reasonable for Mr. Anderson to have identified [Borrower 2] as the owner of [Property 2] on the [Property 1] Application, without having taken some steps to confirm that was the case. In my view, once Mr. Anderson had received the information that he had from [Borrower 2], it was incumbent upon him to enquire further as to who in fact had ownership of [Property 2], prior to listing [Borrower 2] as the owner of that property on the [Property 1] Application.

99. I note that nowhere in the [Property 1] Application is there any indication to the lender that [Borrower 2] was not on title of [Property 2], that other individuals were on title of that property, and that the property was in fact subject to the probate process.

100. Simply put, the evidence before me does not indicate that Mr. Anderson took any steps to verify [Borrower 2]'s claim that she was the beneficial owner of [Property 2] prior to submitting the application to the lender indicating that she was.

101. In the circumstances, I consider that Mr. Anderson must be found to have failed to take sufficient or any steps to verify [Borrower 2]'s information as to her ownership status on [Property 2] prior to submitting the application to the lender, and that such failure constitutes conducting mortgage business in a manner prejudicial to the public contrary section 8(1)(i) of the MBA.

102. I turn to [Borrower 1]'s monthly child support liability.

103. There is no question that Mr. Anderson did not disclose [Borrower 1]'s monthly child support liability to the lender on the [Property 1] application. I consider it to be clear that an ongoing monthly liability of $4,500 would likely be relevant to the lender.

104. The question, in my view, is whether the evidence shows that it is more likely than not that Mr. Anderson failed to take any, or sufficient, steps to verify the accuracy of the information [Borrower 1] had provided regarding his separation agreement, and whether Mr. Anderson knew, or ought to have known, about [Borrower 1]'s child support liability when he submitted the [Property 1] application.

105. When he was asked about [Borrower 1]'s separation at his interview, Mr. Anderson indicated that he had thought that [Borrower 1]'s separation had involved him giving his wife "the house and there was no separation amount", until he "dug further into it". Mr. Anderson was asked whether he knew about [Borrower 1]'s separation agreement before sending the application to [Lender 1], and he replied that from what [Borrower 1] had told him, there were not going to be any ongoing payments associated with the separation. Mr. Anderson stated that he had not known about an ongoing monthly payment until after the application was submitted to the lender, and that he had not obtained the separation agreement until after [Lender 1] had requested it.

106. Having considered the above, I find that it is more likely than not that Mr. Anderson failed to take any steps to confirm the accuracy of [Borrower 1]'s statements regarding his separation agreement financial obligations. On the evidence, I consider that Mr.

Anderson's "digging into" the matter likely only occurred once [Lender 1] requested a copy of the separation agreement.

107. Mr. Anderson's failure to take steps in this regard created a situation in which the lender was not made aware of [Borrower 1]'s relevant financial liabilities. I find that Mr. Anderson's failure in this regard constitutes conducting mortgage business in a manner prejudicial to the public interest as contemplated by allegation 1(b) of the Notice of Hearing.

108. I also consider the evidence to support a conclusion that Mr. Anderson ought to have been aware of [Borrower 1]'s financial liability in respect of his separation agreement, and that his failure to disclose that liability to the lender constitutes conducting mortgage business in a manner prejudicial to the public interest. As I have indicated above, I consider that Mr. Anderson should have taken the step to confirm [Borrower 1]'s information regarding his separation agreement. It is clear that when he was ultimately required to do so, it was a simple matter for Mr. Anderson to obtain a copy of the agreement, and the agreement makes [Borrower 1]'s monthly liability plain.

109. Simply put, I find that it was a straightforward matter for Mr. Anderson to have been aware of [Borrower 1]'s liability, and I consider that he ought to have known of it. That liability was clearly relevant to the lender, and by failing to make himself aware of it, Mr. Anderson failed to disclose it and conducted mortgage business in a manner prejudicial to the public interest.

<u>[Borrower 5], [Borrower 6] and [Borrower 7] Transaction – [Property 3] Application</u>

110. BCFSA's position on this transaction is that Mr. Anderson failed to disclose that [Borrower 6] and [Borrower 7] had an interest in another property, [Property 6], which had a registered mortgage.

111. There is no question that [Borrower 6] and [Borrower 7] were registered owners of [Property 6] by July 2020. As set out above, [Borrower 6] confirmed that fact in his interview with investigators, indicating that he had co-signed on a mortgage application for that property with their other son. A land title office search indicates the same. Of interest, however, is that when he was asked in his interview with investigators whether he, in July 2020, owned [Property 6], [Borrower 6] replied:

> No. That's another son of mine who I also co-signed for his purchase of his first house.

112. There is also no question that Mr. Anderson did not, in the [Property 3] Application, identify [Borrower 6] and [Borrower 7]'s financial liability in respect of the [Property 6] mortgage.

113. The question regarding this transaction, in my view, is whether the evidence supports a conclusion that Mr. Anderson knew or ought to have known about that financial liability.

114. The evidence before me is that the mortgage on [Property 6] was registered on July 9, 2020, prior to when the [Property 3] Application was made on July 30, 2020. It appears to be on that basis that BCFSA says that Mr. Anderson failed to disclose a financial obligation to the lender that he knew or ought to have known the existence of. That is, BCFSA submits that [Borrower 6] and [Borrower 7] had a financial liability in respect of [Property 6] at the time that the [Property 3] Application was made, and that Mr. Anderson did not disclose that financial liability to the lender in that application.

115. I consider, however, that there is some question as to whether Mr. Anderson in fact knew of the financial obligation associated with [Property 6].

116. In his interview with investigators, [Borrower 6] indicated that Mr. Anderson was not involved in the [Property 6] transaction, and that Mr. Anderson had not been used as the mortgage broker for that transaction.

117. I note further that in the July 31, 2020 commitment letter issued by [Lender 2], the lender indicated that it was seeking additional information regarding the mortgages held by [Borrower 6] and [Borrower 7] in relation to the [Property 5] and [Property 4] Properties, but made no mention of the [Property 6] mortgage. This request can be juxtaposed with the fact that in the commitment letter received from [Lender 3] on October 21, 2020 in respect of the [Property 5] Application, [Lender 3] requested further information regarding the [Property 6] mortgage.

118. On the other hand, I note that in his interview with investigators Mr. Anderson described his regular process in preparing an application for a lender after a party had completed a mortgage application and filled out their expenditures and liabilities. Specifically, Mr. Anderson stated that he would "pull a credit bureau", which would enable him to see "who they owe money to".

119. One would expect then, that if Mr. Anderson had in fact engaged in his regular practice and "pulled a credit bureau" in relation to [Borrower 6] and [Borrower 7] when preparing [Property 3] Application, he would have seen that they were joint tenant owners of [Property 6], and that there was a mortgage associated with that property.

120. However, I do not have any specific evidence before me that would confirm that expectation. I note that Mr. Anderson was not asked in his interview as to whether he had any knowledge of [Borrower 6] and [Borrower 7]'s ownership interest in [Property 6].

121. Rather, the evidence and information I have before me is that [Borrower 6] did not really consider himself to be an owner of [Property 6], that Mr. Anderson was not involved in the [Property 6] mortgage transaction, and that the lender, in issuing its commitment letter on July 31, 2020 also does not seem to have identified the mortgage on [Property 6] as having been associated with [Borrower 6] and [Borrower 7].

122. Having considered all of the above, I find the evidence to be insufficient for me to reach a conclusion that it is more likely than not that Mr. Anderson knew or ought to

have known of [Borrower 6] and [Borrower 7]'s financial liability with respect to [Property 6] at the time of the [Property 3] Application.

123. In my view, it is more likely than not that [Borrower 6] and [Borrower 7] did not inform Mr. Anderson of their financial liability in respect of the [Property 6] mortgage. I note again that [Borrower 6]'s initial response to being asked whether he owned [Property 6] in July 2020 was to say "No", and that he had merely co-signed for the purchase of that property with his other son.

124. Further, I consider the fact that [Lender 2] did not, in its July 31, 2020 commitment letter, identify [Borrower 6] and [Borrower 7]'s liability in respect of the [Property 6] mortgage, whereas as [Lender 3] did identify that liability in its October 21, 2020 commitment letter, to provide some suggestion that perhaps that liability did not yet appear on any credit bureau check Mr. Anderson would have conducted on [Borrower 6] and [Borrower 7] at the time he submitted the [Property 3] Application on July 30, 2020.

125. While I do not consider the evidence to lead to a conclusion that it is more likely than not that the [Property 6] mortgage did not appear on a credit bureau check performed at the time of the [Property 3] Application, that is not the test.

126. Rather, the test is whether BCFSA has demonstrated that it is more likely than not that Mr. Anderson knew or ought to have known about the [Property 6] mortgage liability at the time he submitted that application.

127. In my view, to reach such a conclusion, based on the evidence before me, would require speculation.

128. I note in particular that there is no evidence before me indicating what a credit bureau check on [Borrower 6] and [Borrower 7], completed on or around July 30, 2020, would have shown in respect of the [Property 6] mortgage.

129. Given my findings that [Borrower 6] and [Borrower 7] likely did not inform Mr. Anderson of the existence of that mortgage, and the fact that [Lender 2] did not identify the existence of that mortgage on its commitment letter, I find the evidence, on balance, to fall short of leading to a conclusion that Mr. Anderson knew or ought to have known about the [Property 6] mortgage liability at the time the [Property 3] Application was completed.

130. In my view, on the evidence before me, it is at least as likely as not that Mr. Anderson simply was not aware of the existence of [Property 6] at the time he submitted the [Property 3] Application. I do not consider the evidence before to prove, on a balance of probabilities, that that unawareness was due to a lack of diligence on Mr. Anderson's part.

131. I therefore find that the allegations in respect of the [Property 3] Application have not been made out.

<u>[Borrower 6] and [Borrower 7] – [Property 5] Applications</u>

132. In each of the [Property 5] Applications, Mr. Anderson did not disclose the [Property 6] mortgage liability. However, I note that each of the [Property 5] Applications were completed within days of the [Property 3] Application. For the reasons set out above at paragraphs 115-130, I find the evidence to fall short of proving the allegations relating to Mr. Anderson having not disclosed the [Property 6] mortgage on the [Property 5] Applications. As I have noted above, although [Lender 3] did identify the existence of the [Property 6] mortgage in its commitment letter, that commitment letter was not issued until months after the [Property 5] Applications were submitted.

133. That does not end the matter in respect of the [Property 5] Applications.

134. Mr. Anderson also did not disclose, in either of the [Property 5] Applications, the fact that [Borrower 6] and [Borrower 7] had signed on as co-applicants for the [Property 3] mortgage, and that a commitment letter for that mortgage had been received on July 31, 2021.

135. In explaining why he had not set out information regarding the [Property 3] mortgage on the [Property 5] applications, Mr. Anderson noted that the [Property 3] mortgage had not funded at the time he made the [Property 5] applications, and that the closing date for that mortgage had moved on a number of occasions. Mr. Anderson explained that, in his view, while the [Property 3] mortgage had been approved, there remained a possibility that the deal would not complete, and that as such, it was not necessary to include that mortgage as a liability on the [Property 5] applications.

136. The [Property 3] mortgage commitment letter called for monthly payments of $2,093.28. [Borrower 6] and [Borrower 7] were co-applicants for that mortgage. I consider that the fact that [Borrower 6] and [Borrower 7] were seeking such financing which would create an ongoing obligation ought to have been disclosed to the lender by Mr. Anderson.

137. In my view, the fact that [Borrower 6] and [Borrower 7] had in fact sought, and obtained a commitment for, financing for another mortgage, regardless of whether that mortgage had in fact funded at the time the [Property 5] applications were made, was financial liability information that was relevant to the lenders, that Mr. Anderson was aware of, and that was not disclosed to the lenders by Mr. Anderson.

138. Mr. Anderson's failure to disclose that financial liability information constituted, in my view, the conduct of mortgage business in a manner prejudicial to the public interest.

<u>[Borrower 3] and [Borrower 4] Application</u>

139. Similar to the [Borrower 6] and [Borrower 7] applications, the [Borrowers 3 & 4] [Property 7] application involved a circumstance in which Mr. Anderson submitted an application which failed to identify financial liabilities associated with mortgages on other properties owned by the applicants.

140. I acknowledge that [Borrower 3] indicated in his interview that he believed he may have forgotten to inform Mr. Anderson of his ownership in his other properties when

he completed his application. In his interview, Mr. Anderson indicated that [Borrower 3] had not identified his ownership of the two rental properties in the application form he had completed for Mr. Anderson, and that Mr. Anderson had only become aware of those properties when the lender had indicated that they had identified [Borrower 3] as the owner of those properties which had mortgages on them.

141. Mr. Anderson indicated at his interview that he did not think the mortgages on [Borrower 3]'s Vancouver and New Westminster rental properties had appeared when he had done a credit bureau search. He stated that he would have noticed if those mortgages had appeared, and that perhaps they had not because "it was under his brother's name."

142. I have difficulty understanding how it is that Mr. Anderson could have done a credit check, which did not show [Borrower 3]'s mortgages associated with the two rental properties, while the lender's credit check did show those mortgages. In my view, it is more likely than not that if Mr. Anderson had in fact followed his general practice of conducting a credit bureau check on [Borrower 3], he would have been made aware of the mortgages on the two rental properties.

143. As a result, I consider it to be more likely than not that that with proper diligence, Mr. Anderson would have been aware of [Borrower 3]'s additional two mortgages on the two rental properties. I find that Mr. Anderson ought to have known about those financial liabilities, and that his failure to disclose those financial liabilities to the lender constituted conducting mortgage business in a manner prejudicial to the public interest.

Conclusion

144. I find that the allegations against Mr. Anderson in the Notice of Hearing have been proven on the balance of probabilities, with the exception of the allegations relating to the [Property 3] Application.

145. Specifically, I find that Mr. Anderson conducted mortgage business in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA, when he failed to disclose borrower financial liabilities to lenders, which financial liabilities he knew or ought to have known, in respect of each of the mortgage applications set out at item 1(a) of the Notice of Hearing, with the exception of the [Property 3] Application.

146. I find that the allegations regarding the [Property 3] Application have not been proven.

147. I further find that the allegation set out at item 1(b) of the Notice of Hearing was proven in that Mr. Anderson conducted mortgage business in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA when he failed to verify the information provided by [Borrower 2] as to her ownership status in respect of [Property 2] prior to submitting the application to the lender, as well as when he failed to verify the information provided by [Borrower 1] as to the nature of his obligations related to his separation agreement, and that such failure constitutes conducting

mortgage business in a manner prejudicial to the public contrary section 8(1)(i) of the MBA.

Penalty

148. I retain jurisdiction to determine issues of penalty and costs.

149. BCFSA and Mr. Anderson must advise the Hearing Coordinator, by August 21, 2023 of any request for an in-person hearing respecting penalty and costs, and why an in-person hearing is necessary or desirable. If an in-person hearing is directed, the Hearing Coordinator will contact the parties to arrange a suitable hearing date.

150. Unless an in-person hearing is directed, any further evidence will be received through affidavits, and submissions respecting penalty and costs will be received in writing. The parties are at liberty to propose a schedule for the provision of written submissions to deal with these issues.

Issued at Kelowna, British Columbia, this 15 day of August, 2023.

"ANDREW PENDRAY"

Andrew Pendray
Hearing Officer