

**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**  
**(144577)**

**AND**

**FIRST EXPANSE FINANCIAL CORP**

**Decision on Sanctions**

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

**Date of Hearing:** June 28, 2024  
**Counsel for BCFSA:** Meredith MacGregor  
**Respondents:** Self-represented  
**Hearing Officer:** Andrew Pendray

**Introduction**

1. In an April 16, 2023 decision, *Stewart (Re)*, 2024 BCRMB 4, I determined that Styles William Stewart and First Expanse Financial Corp. (“First Expanse”) had carried on business as a submortgage broker or mortgage broker without being registered to do so, between the period of approximately July 13, 2022 to February 3, 2023, contrary to section 8(1.4) of the *Mortgage Brokers Act* (“MBA”).
2. I specifically found that Mr. Stewart had carried on business as a submortgage broker without being registered as required under the MBA in respect of 24 properties, and that First Expanse had carried on business as a mortgage broker in respect of 23 properties.
3. This decision relates to the appropriate orders to be issued against Mr. Stewart and First Expanse in respect of those findings.
4. The BC Financial Services Authority (“BCFSA”) seeks an order that Mr. Stewart and First Expanse, jointly and severally, pay an administrative penalty of \$50,000, and that Mr. Stewart pay partial costs of the investigation and hearing of this matter, in the amount of \$33,625.82.
5. Mr. Stewart, who was self-represented, seeks a lower administrative penalty than that sought by BCFSA.

## Issues

6. The issue is the appropriate orders to be issued in respect of Mr. Stewart and First Expanse's conduct, as provided for by section 8(1.4) of the MBA.

## Jurisdiction

7. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers (the "Registrar") in respect of orders under section 8 and 6(9) of the MBA, pursuant to an Acting Capacity Instrument.

## Background

8. The background of this matter is set out in the liability decision, and I will not repeat the entirety of that background here. The following summary is intended to provide context for my reasons.
9. Mr. Stewart was initially registered as a submortgage broker in July of 2008. He was last registered as a submortgage broker under the MBA on December 7, 2021.
10. First Expanse has never been registered as a mortgage broker.
11. Mr. Stewart's career as a registered submortgage broker was solely with one brokerage, [Brokerage 1]. On Mr. Stewart's evidence at both the liability and sanctions hearings of this matter, [Brokerage 1] was owned by his [family member].
12. In November 2021, [Brokerage 1] informed BCFSA that Mr. Stewart's registration had been terminated for cause after an audit had indicated that Mr. Stewart had been brokering and closing mortgages through a new company Mr. Stewart had formed, First Expanse, and that Mr. Stewart and/or First Expanse had been charging brokerage and lender fees from files that were [Brokerage 1] files.
13. Mr. Stewart requested that BCFSA transfer his registration as a submortgage broker from [Brokerage 1] to a new brokerage, [Brokerage 2]. While BCFSA did initially approve that transfer on December 7, 2021 the transfer was subsequently, on December 8, 2021, deemed by BCFSA to have been processed in error. As a result, as of December 8, 2021, BCFSA considered Mr. Stewart to no longer be registered as a submortgage broker.
14. While Mr. Stewart may not initially have received notice that the transfer of his registration to [Brokerage 2] had not been approved, he did eventually become aware of that fact.
15. This led to Mr. Stewart filing an appeal of BCFSA's decision not to approve the transfer of his registration. However, Mr. Stewart withdrew that appeal on June 23, 2022.
16. Mr. Stewart engaged in communication with BCFSA regarding how to reinstate his registration and start a new mortgage brokerage on June 29, 2022. BCFSA provided Mr. Stewart with information in that regard on June 30, 2022. No further communication between Mr. Stewart and BCFSA regarding registration under the MBA occurred, and Mr. Stewart remained unregistered at the time of the liability hearing of this matter in 2024.
17. BCFSA, after receiving the complaint from [Brokerage 1], began an investigation of Mr. Stewart's activities, and specifically his work conducted through First Expanse.
18. Mr. Stewart attended for an interview with BCFSA investigators on July 13, 2022, at which time Mr. Stewart:
  - Acknowledged that he had processed mortgage files through First Expanse when he worked at [Brokerage 1]; and

- Stated that he was unsure of the last time he had put a mortgage transaction through First Expense, but suggested that it may have been “last year – but I don’t exactly know”.
19. In fact, as I found in the liability decision, Mr. Stewart issued a mortgage commitment letter for a mortgage in the amount of \$110,000 through First Expense on July 13, 2022, the same date as his interview with BCFSA investigators.
  20. In the liability decision, I found that Mr. Stewart and First Expense had in fact carried on business as a mortgage broker or submortgage broker without being registered to do so in respect of 24 and 23 properties respectively from July 13, 2022 through to February 3, 2023, the date upon which a cease and desist order was issued against Mr. Stewart and First Expense pursuant to section 8(2) of the MBA.
  21. In the liability decision I noted that the evidence overwhelmingly indicated that Mr. Stewart and First Expense had been carrying on business as a submortgage broker or mortgage broker in respect of those property transactions<sup>1</sup>. While Mr. Stewart admitted as much in his testimony after the close of BCFSA’s case in the liability hearing, I noted further that the documentary evidence before me made it:
 

...exceedingly clear that throughout the period of time in question, Mr. Stewart was actively seeking to fund and place mortgages with private lenders. In short, I consider the documentary evidence to make show that Mr. Stewart was both arranging and holding himself and First Expense out as mortgage brokers.
  22. The documentary evidence indicated that Mr. Stewart had repeatedly issued commitment letters, on First Expense letterhead, as well as fixed credit disclosure statements, completed forms required by the Registrar such as a Form 9 Lender Disclosure Statement or a Form 10 Conflict of Interest Disclosure Statement, provided advice to lenders on the merits of mortgage applications, communicated with borrowers and their agents with respect to mortgages, and provided instructions on mortgage payouts. I found that all of that evidence clearly demonstrated that Mr. Stewart was not only holding himself and First Expense out as a mortgage broker, he was arranging mortgages for other persons. I concluded that:
 

[159] In my view, in each transaction in which Mr. Stewart issued, on behalf of First Expense, a commitment letter, or in which he completed a Form 9 and Form 10 and signed it as a mortgage broker, Mr. Stewart and First Expense must be found to have been holding themselves out as a mortgage broker and arranging mortgages.
  23. I concluded that Mr. Stewart had earned at least \$56,000 for the period from July 13, 2022 to February 3, 2023 in respect of the above noted mortgage transactions.
  24. I also found that Mr. Stewart had held himself out as a mortgage broker by sending emails to other registrants indicating that he was available to assist in arranging mortgages, providing potential rates for transactions, and informing other registrants with whom he was seeking to arrange mortgage transactions and that he was working out of his own firm that he had started.
  25. I noted that Mr. Stewart had created a false document, which purported to be a business authorization document from BCFSA, and had provided that document to another registrant with whom Mr. Stewart had been attempting to arrange a mortgage transaction. I concluded that:
 

[156] I further find that Mr. Stewart was holding himself, and First Expense, out as a mortgage broker, when he provided the purported business authorization document to [Lender 1].

[157] That purported business authorization document specifically indicated that Mr. Stewart was a registered submortgage broker, and that he was registered with First Expense. Given the evidence from [Investigator 1], which was that Mr.

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<sup>1</sup> I note that I found the evidence did not support that First Expense had carried on business as a mortgage broker in respect of one of the property transactions, [Property 1]. See paragraph 163 of the liability decision.

Stewart was not registered at the time he provided the business authorization document to [Lender 1], as well as the fact that the business authorization document contained an incorrect registration number for Mr. Stewart and an incorrect summary of his education history, I am satisfied that this document was a fabrication, and that Mr. Stewart, in providing it to [Lender 1], was intending to hold himself out as a registered mortgage broker, when he knew he was not in fact registered, contrary to section 8(1.4) of the MBA.

26. The findings set out in the liability decision were as follows:

[167] Specifically with respect to Mr. Stewart I find that:

- Contrary to section 8(1.4) of the *Mortgage Brokers Act*, Mr. Stewart, having been formerly registered, carried on business as a mortgage broker or submortgage broker without being registered to do so, and without being exempt from registration pursuant to section 11 of the MBA, in that from approximately July 13, 2022 to February 3, 2023 he carried out one or more of the following mortgage broker activities generally and with respect to all of the 24 properties identified at paragraph 14 of this decision:
  - i. Carrying on a business of lending money secured in whole or in part by mortgages;
  - ii. Holding out as, or by an advertisement, notice or sign indicating that Mr. Stewart is, a mortgage broker;
  - iii. Carrying on a business of buying and selling mortgages or agreements for sale;
  - iv. In any one year, receiving an amount of \$1,000 or more in fees or other consideration, excluding legal fees, for arranging mortgages for other persons;
  - v. During any one year, lending money on the security of 10 or more mortgages; and
  - vi. Carrying on a business of collecting money secured by mortgages.

[168] With respect to First Expanse I find that:

- Contrary to section 8(1.4) of the *Mortgage Brokers Act*, First Expanse carried on business as a mortgage broker in British Columbia without being registered to do so, and without being exempt from registration pursuant to section 11 of the MBA in that, from approximately July 13, 2022 to February 3, 2023, it carried out one or more of the following mortgage broker activities generally and with respect to 23 of the 24 properties identified at paragraph 14 of this decision:
  - i. Carrying on a business of lending money secured in whole or in part by mortgages;
  - ii. Holding out as, or by an advertisement, notice or sign indicating that First Expanse is, a mortgage broker;

- iii. Carrying on a business of buying and selling mortgages or agreements for sale;
- iv. In any one year, receiving an amount of \$1,000 or more in fees or other consideration, excluding legal fees, for arranging mortgages for other persons;
- v. During any one year, lending money on the security of 10 or more mortgages;
- vi. Carrying on a business of collecting money secured by mortgages; and
- vii. Permitting Mr. Stewart to hold himself out as a mortgage broker with First Expanse while neither was registered under the MBA.

#### *New Evidence*

- 27. Mr. Stewart testified at the sanctions hearing.
- 28. Mr. Stewart acknowledged that he had been carrying on business as a submortgage broker through First Expanse during the time period in question.
- 29. Mr. Stewart explained that he had commenced using First Expanse while at [Brokerage 1] due to a falling out with his family.
- 30. Mr. Stewart described his family as being difficult people, and indicated specifically that the falling out with his [family member] had escalated to the point that his [family member] had made false criminal allegations against Mr. Stewart in or around December of 2021, which had led to Mr. Stewart being arrested.
- 31. Mr. Stewart noted that he had attempted to transfer his registration to a new company, and that he had initially believed his transfer had gone through. He acknowledged that he ultimately came to understand that his transfer had not been allowed and that he was no longer registered. Mr. Stewart stated that, in his view, he was then unable to transfer to other brokerages as BCFSA had scared them off from hiring him.
- 32. Mr. Stewart stated that he was not doing well mentally, and that in or around the summer of 2022 he began using [drugs] and alcohol, and that he had been experiencing depression and anxiety. Mr. Stewart indicated that he did not consider that he was suffering from a mental disorder, but the symptoms of those conditions.
- 33. He noted that around the time of the summer of 2022, in addition to the difficulties he was experiencing with his registration as a submortgage broker, he had purchased a home, in very late July or early August, and that the increase in interest rates had placed additional stress on him.
- 34. Mr. Stewart stated that he considered that his use of drugs and his general mental state had led to him making poor decisions, telling lies, and his judgment was impaired. He stated that he was not making decisions like a logical person. He indicated that he had eventually sought substance use counselling in March of 2023, and that he had not used drugs in over a year.
- 35. Mr. Stewart indicated that he had remorse for what he had done.

#### **Submissions**

- 36. BCFSA submitted that Mr. Stewart and First Expanse's misconduct was very serious and warranted an administrative penalty at the maximum end of the scale.

37. BCFSA noted that Mr. Stewart and First Expanse's misconduct included the repeated issuing of commitment letters and fixed credit disclosure statements; completing forms required by the Registrar; providing advice on the merits of applications; and providing instructions on mortgage payouts.
38. BCFSA further submitted that Mr. Stewart's misconduct was intentional and deceptive, and demonstrated a disregard for the requirements of the MBA and a contempt for the regulator. BCFSA specifically pointed to the fact that Mr. Stewart had awareness of the licence requirements, and the fact that his activities would contravene those requirements, as well as the fact that Mr. Stewart had made untrue statements and provided a falsified document to other registrants to explain why his licence was not available on BCFSA's website.
39. While BCFSA acknowledged that there was no conclusive evidence that harm had been incurred by the public as a result of Mr. Stewart's activities, it submitted that a significant risk of harm had existed due to the fact that Mr. Stewart had been acting outside the regulatory regime.
40. Mr. Stewart submitted that while he and First Expanse had carried on mortgage broker business without being registered to do so, he did not believe that his actions had caused any actual harm. He submitted that he had created all the correct paperwork, and that he believed that he had in fact provided good service.
41. Mr. Stewart further submitted that consideration ought to be given to the fact that he had acted in a deceitful manner out of desperation and drug use, and requested that a penalty lower than that sought by BCFSA be applied.

## Discussion

### *Applicable Law and Legal Principles*

42. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.
43. Section 8(1.4) provides that, after giving a person an opportunity to be heard, if, in the opinion of the Registrar, the person was or is carrying on business as a mortgage broker or submortgage broker without being registered by the MBA, the Registrar may:
  - (a) order the person to cease a specified activity;
  - (b) order the person to carry out specified actions that the Registrar considers necessary to remedy the situation;
  - (c) order the person to pay an administrative penalty of not more than \$50,000.
44. I turn to the general principles to be considered when applying sanctions in the regulatory context.
45. As the Supreme Court of Canada indicated in *Cooper v. Hobart*, 2001 SCC 79, the regulatory scheme governing mortgage brokers provides a general framework to ensure the efficient operation of the mortgage marketplace (para. 49). This efficient operation of the mortgage marketplace requires the Registrar to balance a number of interests, including the instillation of public confidence in the mortgage system, with a view to the protection of the public as a whole.
46. The issuing of sanctions in the professional regulatory context is done with a view to achieving the overarching goal of protecting the public. Previous decisions of the Registrar have contemplated this purpose and concluded that:

The purpose of sanctioning orders is fundamentally to ensure protection of the public by promoting compliance with the MBA, thereby protecting the public from

mortgage brokering activity that is non-compliant, not in the public interest, and that may result in loss of public confidence in the mortgage industry.<sup>2</sup>

47. Sanctions may serve multiple purposes, including:
- (a) denouncing misconduct, and the harms caused by misconduct;
  - (b) preventing future misconduct by rehabilitating specific respondents through corrective measures;
  - (c) preventing and discouraging future misconduct by specific respondents through punitive measures (i.e. specific deterrence);
  - (d) preventing and discouraging future misconduct by other registrants (i.e. general deterrence);
  - (e) educating registrants, other professionals, and the public about rules and standards; and
  - (f) maintaining public confidence in the industry.
48. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:
- (a) **Nature, gravity and consequences of conduct**

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?
  - (b) **Character and professional conduct record of the respondent**

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?
  - (c) **Acknowledgement of the misconduct and remedial action**

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?
  - (d) **Public confidence in the legal profession including public confidence in the disciplinary process**

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?
49. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

## Discussion

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

### Nature, gravity and consequences of conduct

50. I consider Mr. Stewart and First Expanse's misconduct to have been serious in its nature.
51. Mr. Stewart was an experienced broker. He was well aware of the need to be registered. Despite that fact, Mr. Stewart and First Expanse repeatedly, over the course of approximately seven months, carried on business as though they were registered, held themselves out as though they were registered, and received remuneration for that unregistered business.
52. As set out above, Mr. Stewart advised clients on the merits of mortgage applications, communicated with borrowers and their agents with respect to mortgages, and completed all of the paperwork and forms associated with mortgages. In short, Mr. Stewart acted as though he was registered.
53. In addition to acting in that manner, Mr. Stewart specifically, held not only himself and First Expanse out as registered brokers to other registrants, but, when specifically questioned about his registration status by another registrant who had attempted to look up Mr. Stewart's status on BCFSA's website, Mr. Stewart went so far as to create a falsified document which purported to show that Mr. Stewart was in fact registered.
54. While I consider all of the above to constitute Mr. Stewart and First Expanse having essentially ignored the requirements of the regulatory regime for an extended period of time, over the course of more than 20 transactions, there is the further aggravating factor in this case of Mr. Stewart having specifically denied to investigators that he and First Expanse were engaging in unregistered mortgage business.
55. In my view, the fact that Mr. Stewart specifically informed BCFSA investigators on July 13, 2022 that he had likely not provided mortgage broker services through First Expanse since the previous year, when he in fact issued a commitment letter on that same day, is a clear indication of the flagrant disregard Mr. Stewart held for the regulatory regime.
56. I note, in reaching this conclusion, that subsequent to that July 13, 2022 interview, Mr. Stewart did not respond to various correspondence from BCFSA requesting that he provide documents, and that it was not until after BCFSA received a complaint from another registrant in November 2022, and after the February 2, 2023 cease and desist order was issued, and after Mr. Stewart was personally served with a summons for records on February 8, 2023, that Mr. Stewart began to comply with the regulator.
57. In engaging in his unregistered activities, Mr. Stewart and First Expanse made at least \$56,000 over the course of approximately seven months.
58. I acknowledge, in setting out the above aggravating factors as to the nature of Mr. Stewart and First Expanse's misconduct, that the evidence before me did not indicate that there were specific detrimental effects to any of Mr. Stewart and First Expanse's clients as a result of the mortgage transactions completed by them.
59. However, I find the mitigating aspects of this fact to be limited. In my view, to place a significant mitigating emphasis on the fact that Mr. Stewart and First Expanse's actions do not appear to have caused any specific harm would dampen the effect of the specific deterrence that is clearly required in a case such as this. Mr. Stewart needs to be discouraged from engaging in any misconduct of this type in the future. To conclude that any penalty issued against him should be mitigated, to any significant degree, by the fact that although he flagrantly disregarded the rules of the regulatory regime, he did so in a manner that did not cause any specific harm to his clients, would not, in my view, provide the deterrent effect that is required.



60. In addition to the specific deterrence required for Mr. Stewart and First Expanse, I consider that the circumstances of this case require general deterrence in order to demonstrate to the mortgage broker industry that the actions engaged in by Mr. Stewart will not be tolerated under the MBA.
61. The nature of mortgage transactions is that they can have significant financial impacts on borrowers, lenders, and on those who broker those transactions. The legislature has determined that the business of brokering mortgages is one that requires regulation. The regulatory regime created by the MBA is intended specifically to operate with a view to protecting the public. Having regard to all of the above, it is clear that it is simply not acceptable for individuals to conclude that the law does not apply to them, and to operate outside of that regulatory regime.
62. As a result, general deterrence is further required in order to maintain public confidence that when they deal with an individual who is holding themselves out as a mortgage broker, they are in fact registered under the MBA, and that individuals will not simply be able to engage in unregulated mortgage business activity that creates risk to the public and undermines public confidence in the industry, without facing proportionate consequences.

#### Character and professional conduct record of the respondent

63. Mr. Stewart was registered for approximately 13 years prior to his registration being terminated in 2021. He had no discipline history prior to that time.
64. While Mr. Stewart submitted that I ought to consider this fact to be a mitigating factor, I do not agree.
65. In my view, the absence of a discipline history on the part of a registrant is generally properly considered to be a neutral factor.
66. As I have indicated previously (see *Khunkhun (Re)*, 2024 BCRMB 6, at paragraph 90), individuals who participate in regulated industries such as mortgage brokering are subject to the laws, rules, and regulations associated with those industries. They are expected to comply with those laws, rules, and regulations, and such compliance is a part of an individual registrant's professional responsibility. I consider that it would be illogical, in the face of such expectations, to conclude that the fact that an individual registrant had not previously breached the applicable regulatory regime would be a mitigating factor in respect of professional misconduct that they had been found to have committed.
67. Again, compliance with the regulatory regime is the expectation. Mr. Stewart, as a longtime former registrant, would have had a clear understanding and knowledge of his regulatory obligations. This is not a case in which Mr. Stewart and First Expanse innocently or mistakenly breached the requirements of the MBA such that I would consider the lack of any previous breach of the regulatory regime could be considered as a mitigating factor.
68. I note that BCFSA submitted that Mr. Stewart's significant level of experience could in fact be considered to be an aggravating factor. In making that submission, BCFSA referenced a case from the Real Estate Council of Alberta, *Chaudhri (Re)*, 2023 ABRECA 1. In *Chaudhri*, the panel found that the fact that the licensee took the steps he did to commit fraud, rather than protecting his clients, despite his profound degree of life and professional experience, was an aggravating factor.
69. While I accept that there may be cases such as *Chaudhri* where the level of the registrant's knowledge and experience would be seen as an aggravating factor, I consider that to be dependent on the nature of the misconduct.

70. Here, as noted above, Mr. Stewart and First Expanse deliberately and specifically ignored their obligations under the MBA. His deliberate actions in that regard are an aggravating factor in this case. I consider that this would be so regardless of his level of experience.

#### Acknowledgement of the misconduct and remedial action

71. While Mr. Stewart acknowledged his misconduct, he did so only after the close of BCFSA's case at the liability portion of this hearing.
72. Further, I do not consider that Mr. Stewart and First Expanse can be seen to have cooperated in a meaningful way with BCFSA's investigation into this matter. While it is true that Mr. Stewart did eventually permit his lawyer to provide documents to BCFSA, this only occurred after the cease and desist order was issued in February 2023, after ignoring multiple previous requests for documents, and after Mr. Stewart lied to investigators about whether he was conducting mortgage business through First Expanse.
73. Given the timing of both Mr. Stewart's eventual acknowledgement of misconduct, and eventual cooperation with BCFSA's investigation, I do not consider that those should be accepted as mitigating factors.
74. I have considered Mr. Stewart's evidence regarding the depression and anxiety he was experiencing in and around the summer of 2022, and the fact that he began to use [drugs] and alcohol around that time. Mr. Stewart described himself as having been deceitful out of desperation and drug use.
75. I have no doubt that Mr. Stewart was frustrated with his registration status under the MBA, and that he was finding his lack of registration to be stressful. I accept that he was experiencing feelings of depression and anxiety surrounding his personal financial circumstances.
76. However, Mr. Stewart did not provide any medical evidence to suggest that his feelings of stress, depression, or anxiety, in any way impeded his awareness of the requirements of the MBA. Nor did he provide any medical evidence indicating that his drug use was such that it caused him to be unaware of the requirements of the MBA.
77. Overall, there is no evidence before me to suggest that Mr. Stewart was suffering from a mental disorder. I note that in his evidence Mr. Stewart specifically indicated that he did not feel that he had been suffering from a mental disorder, so much as he had been experiencing feelings of depression, anxiety, and desperation.
78. In the circumstances of this case, where it is clear that Mr. Stewart was aware of the requirements to be registered, and where the evidence does not establish that he was suffering from a mental health issue which impeded his ability to make decisions such that it affected his ability to abide by the requirement to be registered or to know that it was wrong to falsely hold himself out as registered, I am of the view that the mental health symptoms that Mr. Stewart reports experiencing during the time period from July 2022 through February 2023 are not properly considered to be mitigating factors.
79. I note that my conclusion in this regard should not be taken as an indication that Mr. Stewart is unable to be rehabilitated. Rather, I consider the evidence before me to show that Mr. Stewart does in fact have remorse for his behaviour, and that he has taken the admirable step of seeking treatment to address his substance use and other mental health issues.

#### *Decision on Penalty*

80. Penalties in the regulatory context must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.
81. As the court in *Thow* noted, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that a penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.

82. As I have indicated above, I am of the view that the serious nature of the misconduct engaged in by Mr. Stewart and First Expanse requires both specific and general deterrence, and warrants an administrative monetary penalty of significance. The question that remains is what amount of administrative monetary penalty will provide adequate specific and general deterrence, and will also ensure public confidence in the industry is upheld.
83. In determining the appropriate amount of penalty, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty in which the public will have confidence.
84. I note that, in considering consent orders, I am of the view that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty imposed following a discipline hearing, given that there may be a myriad of reasons for a respondent to agree to a consent order which are not apparent from a review of that consent order.
85. I have reviewed the previous decisions and consent orders referred to by BCFSA, including:
  - *In the Matter of the Mortgage Brokers Act and Michael Randall Esler, Esler Resort Consulting Ltd., 0798552 BC Ltd. dba Off-Piste Capital, 2022 BCRMB 7 (Consent Order)*: In this consent order the respondents' registration had expired in July 2016. The respondent, Mr. Esler, had continued to be registered with the Real Estate Council of Alberta. Mr. Esler and his companies had continued to engage in mortgage broker activities between July 2016 and February 2021, and during that time funded 28 mortgages involving properties in BC over that period of time, receiving \$804,579 in fees.

Mr. Esler self-reported to the Registrar that he had continued to conduct mortgage brokering activity in BC after the expiration of his registration. In doing so, Mr. Esler noted that the regulator had not reminded him to renew his registration, and that as a result he had forgotten to do so. Mr. Esler acknowledged that it was his fault for overlooking the registration requirement, and agreed to an administrative penalty of \$40,000 and investigative costs in the amount of \$7,937.32

- *Nielsen (Re), 2023 BCRMB 4 (Consent Order)*: Nielsen, an unregistered person, consented to a \$45,000 penalty and \$15,000 in investigative costs for having carried out mortgage broker activity in relation to 8 mortgage applications where Nielsen provided income documents that were false and inflated borrower income significantly.
- *In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v. Dean Frank James Walford and Loan Depot Canada (decision dated December 22, 2021)*: \$50,000 penalty issued. The respondents had never been registered, and in 2011, the regulator issued an order that they cease engaging in unregistered mortgage broker activity. Despite that, the respondents continued to engage in the business of a mortgage broker into 2018, on more than 114 applications. A lender suffered a financial loss of \$146,000.
- *In the Matter of Mortgage Brokers Act [RSBC 1996] c. 313 and Michael Alexander Campagna (decision dated March 18, 2019)*: \$20,000 penalty issued, along with a two-year ban from re-applying for registration. The respondent was found to have continued to hold himself out as a mortgage broker following the expiration of his registration, and attempted to arrange mortgages on behalf of three borrowers. The respondent also presented at least one borrower with a false document, made false representations to borrowers regarding his status as a submortgage broker, and provided borrowers with assurances that mortgage financing was or would be arranged when it was not. Borrowers experienced harm, including loss of a \$10,000 deposit and additional fees in the amount of \$13,800.
- *In the matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v. Dennis Percival Rego, Shank Capital Systems Inc., and Arvind Shankar (decision dated January 15, 2018)*: \$50,000 penalty issued. The respondent was found to have engaged in at least three instances of unregistered mortgage broker activity, in respect of two borrowers regarding three properties.

The respondent was found to have handled and submitted documents containing false or misleading information, including non-genuine documents as well as applications containing widely varying information regarding a borrower's income and assets. The respondent received commissions in excess of \$172,000 for arranging mortgages from the registered brokerage over two years.

- *In the Matter of the Mortgage Brokers Act and Justin Phu Pham and JP Elite Mortgage, 2024 BCRMB 1*: \$50,000 penalty issued, as well as \$13,300.49 in investigative costs. Mr. Pham had been registered for a number of years and, after the expiration of his registration, continued to solicit business and hold himself out as a registered submortgage broker, and JP elite as a registered mortgage broker, for a period of approximately two years. During that time Mr. Pham met with clients, provided advice on mortgage applications, and completed mortgage applications for at least 15 files. His clients experienced financial losses in excess of \$40,000.

86. Having considered the cases and consent orders referred to by BCFSA, I am of the view that the nature of Mr. Stewart's activities in this case is of the type that would warrant the maximum administrative penalty permitted under the MBA. In reaching that conclusion I would reiterate my comments in *Pham (Re)*, 2024 BCRMB 1:

[145] In my view, a penalty at the maximum end of the administrative penalty scale is generally only warranted in circumstances where the respondent has demonstrated repeated disregard or contempt for the regulatory framework and/or their professional responsibilities; in circumstances where the sheer volume of the misconduct makes a maximum penalty necessary in order to impose sufficient specific and general deterrence; or in circumstances where the consequences or seriousness of the misconduct are so significant as to warrant a maximum administrative penalty.

87. I consider this case to be one in which Mr. Stewart demonstrated repeated disregard or contempt for the regulatory framework, and did so in significant volume such that a maximum penalty is warranted. While I have indicated above that I accept that Mr. Stewart may well be able to be rehabilitated, I am of the view that there is a significant need to impose a penalty that will prevent and discourage future misconduct of this nature by Mr. Stewart.
88. Mr. Stewart knew he was not registered. He knew he needed to be. He ignored that knowledge and that requirement and continued to conduct submortgage and mortgage broker business. This demonstrates contempt for the regulatory framework.
89. Mr. Stewart knew he was conducting mortgage business through First Expanse contrary to the requirements of the MBA, and despite that knowledge he told investigators he had not conducted such business through First Expanse since 2021, when he in fact issued a commitment letter that same day. Again, this demonstrates contempt for the regulator.
90. Finally, Mr. Stewart told other registrants that he was registered, and in fact created a false document to show to other registrants to lead them to believe that he was in fact registered. In addition to demonstrating contempt for the regulatory framework and the regulator, this demonstrates a willingness to take intricate steps to avoid being subject to regulation.
91. In my view, all of the above constitutes the type of deliberate and flagrant disregard for the regulatory regime that requires a penalty of significance in order to prevent and discourage future misconduct on the part of Mr. Stewart and First Expanse, and to uphold public confidence in the industry. I consider this case to be one in which Mr. Stewart demonstrated repeated disregard or contempt for the regulatory framework, and did so in significant volume such that the maximum penalty is warranted.
92. I note again, in reaching that conclusion, that I have accepted that Mr. Stewart was experiencing symptoms of stress, anxiety, depression and desperation, along with substance use during the time period in question. I reiterate that while I am sympathetic to Mr. Stewart's issues around that

time, I do not consider the evidence before me to suggest that Mr. Stewart did not know that what he was doing was wrong. While I accept that Mr. Stewart was perhaps not thinking, as he put it, logically, I note again that there was no medical evidence provided which would suggest that Mr. Stewart was unable to follow the requirements of the MBA due to any mental health or substance use issues. As a result, I do not consider a reduction in what I consider to be the appropriate penalty in this case to be warranted.

93. In addition to the above, I consider the volume of transactions and the income earned by Mr. Stewart to demonstrate that a sanction of significance is required in order to ensure that Mr. Stewart, members of the industry, and the public, are aware that unregistered activity of this type, which essentially chooses to ignore the MBA and the regulator altogether, will not be tolerated.
94. While I acknowledge that this case, unlike *Pham*, did not involve financial harm to members of the public, I consider it to be clear that the potential for such harm exists to a greater degree in the circumstances of unregulated as opposed to regulated mortgage brokering activities. Further, Mr. Stewart and First Expanse engaged in more unregistered mortgage transactions than did the respondents in *Pham*, and Mr. Stewart engaged in the aggravating activities of lying to investigators and to other registrants regarding his registration status.
95. Similarly, despite Mr. Stewart's submissions, I am of the view that it would not harm public confidence, or be inconsistent with previous disciplinary decisions, to issue a penalty higher than the consent order in *Esler*. While there is no question that *Esler* involved more significant financial transactions than in this case, the total number of transactions was similar, and the misconduct in *Esler* was of an inadvertent nature. There was nothing in the consent order to suggest that Mr. Esler had intentionally engaged in unregistered mortgage brokering, and he in fact self-reported upon realizing the error. Mr. Stewart's actions, on the other hand, were purposefully deceptive. In my view, Mr. Stewart's actions in that regard warrant a more significant sanction.
96. I also consider it to be of note, as was submitted by BCFSA, that Mr. Stewart was able to earn at least \$56,000 from the transactions in question in this matter. At the end of the day, Mr. Stewart, despite being subject to the maximum administrative penalty, will therefore still have been able to profit on his unregistered activity. I consider this further fact to suggest that a maximum administrative penalty would not be inappropriate in this case.
97. Having considered all of the above, I am of the view that an appropriate administrative monetary penalty in this case is \$50,000.

## Costs

98. Section 6(9) of the MBA provides that if an inquiry discloses a contravention of the MBA or the regulations, or orders or directions of the Registrar, the Registrar may order the costs of the inquiry to be paid by the person.
99. The Registrar does not have its own tariff of costs.
100. I consider that, in the circumstances, it is appropriate to assess legal costs using Rule 14-1 of the BC Supreme Court Civil Rules. Importing the BC Supreme Court Rules method of assessing costs into the administrative tribunal context has been endorsed by the BC Court of Appeal in *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149, where the court held, at paragraph 56, that:

...where the provisions for costs in the constituent statute, or Rules properly passed pursuant to the statute, do not indicate otherwise, the provisions of Rule 57 [now Rule 14-1] will govern the tribunal's award of costs. In those cases, Rule 57 will define the nature of the costs available, including special costs.<sup>3</sup>

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<sup>3</sup> Rule 57 is now Rule 14-1.

101. Previous decisions of the Registrar have also considered orders for costs. In *Allan (Re)*, Decision on Penalty and Costs, August 19, 2020 (BC Financial Services Authority), the designate of the Registrar noted that:

Costs are typically awarded to the litigant who has been substantially successful, unless there is some reason why that party ought to be deprived of costs (*Fotheringham v. Fotheringham*, 2001 BCSC 1321). While a costs award is discretionary, the burden of displacing the usual rule that costs follow the event falls on the person who seeks to displace that rule (*Giles v. Westminster Savings Credit Union*, 2010 BCCA 282).

In addition to indemnification of the successful litigant, the courts have identified a number of objectives of a costs award including: deterring frivolous actions or defences; encouraging conduct that reduces the duration and expense of litigation and discouraging conduct that has the opposite effect; encouraging litigants to settle whenever possible; and to have a winnowing function in the litigation by requiring litigants to carefully assess the strength or weakness of their respective case at the start of and throughout the litigation (*Giles*, supra).

102. BCFSA has submitted a Certificate of Costs in the amount of \$33,625.82. That includes \$13,155.54 in investigative costs, at \$100 per hour based on past practice of the Registrar and consistent with the limits set out in other regulatory regimes such as the *Real Estate Services Regulation*; \$12,430.00 in legal costs, as per the *Supreme Court Civil Rules*, related to legal costs for preparation of the hearing, as well as disbursements related to the investigation and the hearing, totalling \$8,040.28.

103. BCFSA has indicated in its submissions that as Mr. Stewart did not admit liability until during his testimony at the liability hearing, and the fact that he did not respond to BCFSA's summons for documents, all of the investigative and legal costs were necessary for BCFSA to address this matter.

104. I agree. BCFSA achieved substantial success in this matter. There were a significant number of transactions at issue, thousands of pages of documentary evidence, and the evidence called at the hearing was relevant to the allegations set out in the Notice of Hearing. The investigation process was lengthened by Mr. Stewart's failure to promptly and fully comply with the summons for documents.

105. Having considered all of the above, I do not consider the Bill of Costs to require reduction, and therefore order that the Respondents should pay \$33,625.82 for costs of the inquiry.

### **Conclusion and Orders**

106. Having found that Mr. Stewart and First Expanse conducted mortgage business in British Columbia in a manner prejudicial to the public interest contrary to section 8(1.4) of the MBA as set out in the liability decision, I make the following orders:

- Pursuant to section 8(1.4) of the *Mortgage Brokers Act*, Styles William Stewart and First Expanse Financial Corp., jointly and severally, are ordered to pay to BCFSA an administrative penalty of \$50,000, within 60 days of the date of this order; and
- Pursuant to section 6(9) of the *Mortgage Brokers Act*, Styles William Stewart is ordered to pay to BCFSA \$33,625.82 for costs of the inquiry, within 60 days of the date of this order.

107. Pursuant to section 9 of the *Mortgage Brokers Act*, Styles William Stewart and First Expanse Financial Corp. may appeal the above order to the Financial Services Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this July 29, 2024

“Original signed by Andrew Pendray”

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Andrew Pendray  
Chief Hearing Officer