



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

-AND-

EARL GARY LACHARITY

-AND-

JEANINE VERLE RATCLIFFE

CEASE and DESIST ORDER

(Pursuant to s.8(1.4) of the *Mortgage Brokers Act*)

I am advised and based on the materials submitted by staff of the Registrar of Mortgage Brokers ("Staff"), I am of the opinion that:

Background

1. Neither Earl Gary Lacharity ("Lacharity") nor Jeanine Verle Ratcliffe ("Ratcliffe") has ever been registered mortgage brokers in British Columbia.

Complaints and Investigation

2. On September 16, 2011, Staff received an email complaint from [REDACTED] ("W [REDACTED]") a registered mortgage broker with Dominion Lending Centres Harbour View Mortgages Corporation (Vic City) ("DLC") regarding possible unregistered mortgage broker activity being conducted by Lacharity. The details of the complaint include the following:
- (a) Lacharity convinced borrowers to pay advance fees for mortgage financing.
 - (b) DLC's office had a total of ten deals involving Lacharity. W [REDACTED] estimated that Lacharity had collected a minimum of \$8,500 in advance fees from borrowers to date.
 - (c) W [REDACTED] suspected that there was "no pool of funds available for lending and [that Lacharity] is simply extracting fees from desperate or marginalized borrowers with no other source of funding."
 - (d) W [REDACTED] was aware of two borrowers (identified as S [REDACTED] and L [REDACTED]), who had advanced fees, as well as payments on their first mortgage, to Lacharity, on the understanding that he would forward those payments to the first mortgage holder with whom he said he would negotiate. The first mortgage holder has since indicated it would begin foreclosure proceedings.
 - (e) W [REDACTED] was aware of another borrower (identified as C [REDACTED]) who had paid advance fees for mortgage financing required for the purchase of a home. On Lacharity's assurance that the mortgage funds would be advanced, the purchaser removed the conditions precedent under the contract of purchase and sale. If the mortgage funds are not advanced by the closing date, the borrower risks losing the \$30,000.00 deposit which he has paid. W [REDACTED] wrote that a \$3,000 advance fee had been paid by this borrower by way of a personal cheque to Ratcliffe, who was referred to as Lacharity's assistant, and possibly his girlfriend.

██████████ and ██████████

3. On September 21, 2011, Staff met with ██████████ ("C ██████████") and ██████████ ("C ██████████") who advised as follows:

- (a) On August 25, 2011, C ██████████ signed a contract of purchase and sale for a home in Abbotsford, BC (the "Contract"). The Contract was subject to C ██████████ obtaining satisfactory financing on or before September 7, 2011. Once all subjects were removed, C ██████████ was required to pay a \$30,000 deposit towards the purchase price. The Contract provided for a completion date of November 15, 2011.
- (b) C ██████████ and C ██████████ contacted ██████████ ("L ██████████"), a registered submortgage broker with DLC to assist them in obtaining mortgage financing for the purchase of this home.
- (c) By email dated September 1, 2011, L ██████████ advised C ██████████ that he thought he had found a lender.
- (d) In his email to C ██████████ of September 2, 2011, L ██████████ advised as follows:

■.

Mortgage proposal details

10% down

12 month term

Interest only

Open Mortgage

Rate: 5.5%

Fee: 1.25%

Renewable if in good standing at rates of the date

Please call Gary Lacharity ASAP...

Banking information for file deposit. Needs to be deposited by tomorrow 12 noon.

Payable to: Ms Jeanine Ratcliffe

██████████, Victoria B.C.

██████████ Transit ██████████ AC# ██████████

Call me once you have spoken with Gary."

- (e) On September 3, 2011, C [REDACTED] spoke directly with Lacharity about their mortgage needs. Lacharity advised C [REDACTED] that the money would come from private investors, with whom he would speak about the deal.
- (f) On September 6, 2011, Lacharity met with C [REDACTED] and C [REDACTED]. At that time, Lacharity advised them that he could not loan money until at least September 10, 2011, when he was scheduled to meet with his partners. He did, however, charge a \$3,000 fee to open the file.
- (g) On September 6, 2011, and on Lacharity's instructions, C [REDACTED] and C [REDACTED] provided Lacharity with a cheque in the amount of \$3,000, made payable to Ratcliffe, who Lacharity described as his investor or partner. That cheque was cashed on September 7, 2011.
- (h) On September 6, 2011, C [REDACTED] and Lacharity signed an "Agreement", the terms of which included the following:

"For value received the undersigned, Mr. Gary Lacharity of Victoria, British Columbia, will proceed to arrange a mortgage/loan on behalf of [REDACTED] C [REDACTED] in the amount of [\$500,000], secured by a property at [REDACTED], Abbotsford, British Columbia.

The proposed mortgage will have an interest rate not exceeding five and one half percent (5 ½ %) for a two (2) year term...

Should for any reason what so ever Mr. Lacharity rescinds [sic] this application due to any misrepresentation or omission of or on behalf of the borrower, or for any other reason what so ever he is unable to provide a mortgage with similar terms as outlined above, then in such case the \$3,000 consideration paid by the borrower to Mr. Lacharity will be refunded in the amount of \$2,500 within 30 days of notification. It is understood that \$500 of this consideration will be deemed as earned and not be refundable.

Please Note: This \$3,000 consideration will go first to legal fees and the remainder towards the first month's payment of this mortgage, once granted."

- (i) On September 11, 2011, Lacharity phoned C [REDACTED] and told him that only two out of the three investors who would be funding the mortgage had approved the loan.
- (j) On September 12, 2011, Lacharity phoned C [REDACTED] and told him that his investors would loan him the money if he accepted an interest rate of 5.75%. Lacharity assured C [REDACTED] in this discussion that the loan had been approved.
- (k) Based on Lacharity's assurance that the mortgage had been approved, C [REDACTED] removed the subjects in the Contract. A deposit of \$30,000 was paid towards to the purchase price.

- (l) On September 15, 2011, C [REDACTED] and C [REDACTED] were told by L [REDACTED] that DLC was not confident that Lacharity would complete funding for the purchase of the home.
- (m) On September 21, 2011, C [REDACTED] called Lacharity who assured him that the mortgage file was with his lawyer, and that a formal mortgage commitment would be forthcoming.
- (n) As of September 26, 2011, C [REDACTED] and C [REDACTED] have heard nothing further from Lacharity.

[REDACTED] and [REDACTED]

4. On September 23, 2011, Staff interviewed [REDACTED] ("L [REDACTED]") who advised as follows:
 - (a) L [REDACTED] met Lacharity through her workplace, where Lacharity was a customer.
 - (b) On one occasion, when Lacharity was in the store where L [REDACTED] worked, he mentioned that he arranged mortgages for borrowers to whom banks would not lend. L [REDACTED] indicated to Lacharity that she was looking for mortgage financing, at which time he provided her with his contact information on a business card. Contact information for Lacharity was also forwarded to L [REDACTED] by email sent by Ratcliffe on March 27, 2011.
 - (c) L [REDACTED] had previously contacted a mortgage broker, namely [REDACTED] ("L [REDACTED]") at DLC. She forwarded Lacharity's contact information to L [REDACTED].
 - (d) L [REDACTED], her husband [REDACTED] ("S [REDACTED]"), L [REDACTED] and Lacharity then met to discuss mortgage financing. At that time, Lacharity indicated that his normal fee was \$1,000 to open a file, but that he would reduce that amount to \$500.
 - (e) L [REDACTED] and S [REDACTED] subsequently gave Lacharity a cheque dated July 1, 2011 in the amount of \$500. That cheque, made payable to Lacharity, was cashed on July 5, 2011.
 - (f) L [REDACTED] and S [REDACTED] had an existing first mortgage on their home with [REDACTED] ("W [REDACTED]") and a second mortgage with C [REDACTED].

- (g) Lacharity initially suggested that he would provide financing to pay out and take over the W■■ mortgage, but then said that he would work with W■■ to reduce their interest payments.
- (h) Lacharity told L■■ and S■■ that he had spoken with W■■ and had negotiated a lower interest rate on their existing first mortgage. He also told them that he had made a mortgage payment to W■■ on their behalf in the amount of \$2,370. On July 19, 2011, L■■ and S■■ reimbursed Lacharity for this payment by way of cheque made payable to Lacharity. That cheque was cashed on July 21, 2011. L■■ has since learned that Lacharity had never made a payment to W■■ on their behalf.
- (i) Lacharity then verbally offered L■■ and S■■ a second mortgage in the amount of \$65,000. The S■■ intended to use the proceeds from this mortgage to pay out the existing C■■ second mortgage and to consolidate other debt.
- (j) On August 3 and 9 2011, L■■ and S■■ gave Lacharity cheques for \$380 and \$270 respectively, which Lacharity said would go towards legal fees associated with the mortgage. The cheques were returned by L■■'s and S■■'s bank, as they had insufficient funds in their account.
- (j) On August 9, 2011 L■■ and S■■ signed a "Direction Re: Proceeds of Mortgage Loan" which Lacharity had provided to them. Their signatures appear to have been witnessed by Lacharity. The document authorized Lacharity to pay \$43,953.65 to various creditors, including \$16,550.17 to C■■ and \$15,474.65 to W■■.
- (k) In early September 2011, L■■ and S■■ paid Lacharity \$930 in cash to cover the two returned cheques, as well as an additional \$300 which Lacharity said he had deposited in their account.
- (l) On September 16, 2011, S■■ and L■■ received a letter from W■■, advising that W■■ had commenced foreclosure proceedings.
- (m) Lacharity had advised L■■ and S■■ that their money was being held in trust by his legal counsel. They were advised by DLC, who had made inquiries on their behalf, that Lacharity's lawyer had no file for them.
- (n) On September 20, 2011, L■■ and S■■ asked Lacharity to return their money to them. He said that he needed 15 days to do so.

██████████ and ██████████ (collectively the "B██████")

5. On September 23, 2011, Staff interviewed ██████████ ("G██████") of DLC who advised that he had heard about Lacharity through L██████. G██████ contacted and/or introduced his clients, the B██████ to Lacharity as follows:

- (a) G██████ told Staff that he contacted Lacharity on the B██████' behalf. Lacharity told G██████ that he had been lending money for the last eight years and that he worked with two or three dentists. G██████ forwarded Lacharity's contact information to the B██████ who later told him that they had paid a \$1000 "set up fee" to Lacharity, and had also signed a fee agreement with him.
- (b) On September 15, 2011, G██████ contacted Lacharity's lawyer who advised G██████ that he had only been working with Lacharity for three or four weeks and had not yet received any mortgage files from him.
- (c) On September 20, 2011, Lacharity's lawyer wrote G██████. His letter included the following:

"In response to your concerns Mr. Lacharity will be withdrawing any offers of loans to clients introduced by Dominion Lending Centres...Were it not for your email some of these loans may well have been approved...Mr. Lacharity is withdrawing his support of all of these applications...Mr. Lacharity has advised that he will be refunding the deposits paid..."

The letter listed seven prospective borrowers whose loan applications would no longer be considered by Lacharity, including the B██████. Two of the borrowers listed were not DLC clients at all.

6. On September 23, 2011, Staff met with ██████████ ("L██████"), a registered submortgage broker with DLC. L██████ advised that in late June 2011, he had learned from L██████ that Lacharity was a private lender. L██████ proceeded to refer the following borrowers to Lacharity:

██████████ ("M██████")

- (a) L██████ contacted Lacharity about M██████, who needed a second mortgage on his property.
- (b) Lacharity told L██████ that any mortgage would be financed by him and two of his partners who were dentists in Vancouver. In order to get

started, Lacharity told L [REDACTED] that he needed a refundable deposit from the borrower, which would be applied to legal fees.

- (c) M [REDACTED] paid Lacharity at total of \$900 in fees.
- (d) By July 25, 2011, L [REDACTED] understood that the loan had been approved, and that Lacharity would be forwarding a commitment letter. He later wrote Lacharity on August 9, 2011 instructing him on the distribution of the second mortgage funds, which totaled \$30,000.
- (e) L [REDACTED] has, in his file, a payment order dated August 25, 2011, signed by M [REDACTED] and apparently witnessed by Lacharity, authorizing payments to be made on M [REDACTED]'s behalf which are consistent with the instructions set out by L [REDACTED] on August 9, 2011.
- (f) M [REDACTED] told L [REDACTED] that mortgage funds were never advanced as promised.

[REDACTED] ("B [REDACTED]") and [REDACTED] ("M [REDACTED]")

- (g) In August 2011, L [REDACTED] referred B [REDACTED] and M [REDACTED] to Lacharity, as they required a second mortgage.
- (h) B [REDACTED] and M [REDACTED] told L [REDACTED] that they paid Lacharity a \$1,000 fee.

[REDACTED] and [REDACTED] (the "F [REDACTED]")

- (i) In August 2011, L [REDACTED] referred the F [REDACTED], who required a first mortgage, to Lacharity.
- (j) L [REDACTED] personally paid Lacharity's initial fee of \$500 on the F [REDACTED]'s behalf, intending to collect it back from the F [REDACTED] at a later date.

██████████ ("M ████████")

- (k) In August 2011 he referred M ████████, who needed a second mortgage of \$200,000, to Lacharity.
- (l) Lacharity, L ████████ and M ████████ subsequently met, and shortly thereafter Lacharity advised that the financing had been approved. He collected a \$2,000 fee from M ████████ in the form of a bank draft purchased on August 18, 2011, made payable to Lacharity.
- (m) L ████████ provided Staff with an "Agreement" dated August 18, 2011, signed by M ████████ but not signed by Lacharity. The Agreement provides in part as follows:

"For value received the undersigned, Mr. Gary Lacharity of Victoria, British Columbia, will proceed to arrange a mortgage on behalf of [M ████████] in the amount of [\$235,000] secured by a property at ██████████, Victoria, British Columbia.

The said mortgage will have an interest rate not exceeding [7.5%] for a 3 year term...

Should for any reason what so ever Mr. Lacharity rescinds [sic] this application due to any misrepresentation or omission of or on behalf of the borrower, or for any other reason what so ever he is unable to provide a mortgage with similar terms as outlined above, then in such case the \$2,000 consideration paid by the borrower to Mr. Lacharity will be refunded in full within 15 days of notification. Please note: This \$2,000 consideration will go first to legal fees and the remainder towards the first month's payment of this mortgage, once granted..."

██████████ ("W ████████")

- (n) In August 2011, he referred W ████████, who needed a second mortgage, to Lacharity.
- (o) Lacharity, W ████████ and L ████████ met to discuss the mortgage.
- (p) On September 1, 2011, W ████████ and Lacharity signed a "2nd Mortgage Agreement" which included the following terms:

"For value received the undersigned, Mr. Gary Lacharity of Victoria, British Columbia, will proceed to arrange a mortgage on behalf of ████████ W ████████ [sic] in the amount of [\$190,000], secured by a property at ██████████ Victoria BC, British Columbia [sic].

The said mortgage will be a 2nd charge behind CIBC 1st Mortgage of a maximum of \$310,000. The 2nd Mortgage will have an interest rate not exceeding [5.5%] for a 2 year term...

Should for any reason what so ever Mr. Lacharity rescinds [sic] this application due to any misrepresentation or omission of or on behalf of the borrower, or for any other reason what so ever he is unable to provide a mortgage with similar terms as outlined above, then in such case the \$500 consideration paid by the borrower to Mr. Lacharity will be refunded in full within 15 days of notification. Please Note: This \$500 consideration will go first to legal fees and the remainder towards the first month's payment of this mortgage, once granted."

- (q) W■■■■ subsequently provided Lacharity with a bank draft purchased September 2, 2011. The draft was for \$1,500 and was made payable to Lacharity.

Applicable legislation

7. Section 1 of the *Mortgage Brokers Act* (the "Act") provides the following definitions:

"mortgage" includes every instrument by which

- (a) land in British Columbia,
- (b) for the purposes only of paragraphs (c) and (f) of the definition of "mortgage broker", sections 14.1 and 17.4 and Division 3 of Part 2, land, whether or not in British Columbia,

is in any manner, conveyed, assigned, pledged or charged as security for the payment of money or money's worth to be reconveyed, reassigned or released on satisfaction of the debt, but does not include an agreement for sale of or a right to purchase land or an interest in land;

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

- (a) carries on a business of lending money secured in whole or in part by mortgages, whether the money is the mortgage broker's own or that of another person;
- (b) holds himself or herself out as, or by an advertisement, notice or sign indicates that he or she is, a mortgage broker;
- (c) carries on a business of buying and selling mortgages or agreements for sale;
- (d) in any one year, receives an amount of \$1 000 or more in fees or other consideration, excluding legal fees for arranging mortgages for other persons;
- (e) during any one year, lends money on the security of 10 or more mortgages;
- (f) carries on a business of collecting money secured by mortgages;

8. Section 8(1.4) of the Act provides as follows:

8(1.4) After giving a person an opportunity to be heard, the registrar may do one or more of the following:

- (a) order the person to cease a specified activity;
- (b) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
- (c) order the person to pay an administrative penalty of not more than \$50,000;

If, in the opinion of the registrar, the person was or is carrying on business as a mortgage broker or submortgage broker without being registered as required by this Act.

9. Section 8(2) of the Act provides as follows:

8(2) If the length of time that would be required to give a person an opportunity to be heard under subsection (1), (1.2), (1.3) or (1.4) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may, without giving the person an opportunity to be heard, suspend a registration under subsection (1)(a) or (1.3)(a) or make an order under subsection (1)(c) or (d), (1.2)(a), (1.3)(c) or (d) or (1.4)(a) or (b).

10. Section 21(1)(a) of the Act provides as follows:

21(1) Unless exempted under section 1, a person must not do any of the following:

- (a) carry on business as a mortgage broker or submortgage broker unless the person is registered under this Act;

...

AND WHEREAS I AM THEREFORE OF THE OPINION THAT:

1. Lacharity is holding himself out as a mortgage broker; arranging mortgages for other persons for a fee. He has also suggested that Ratcliffe is his business partner, and has directed, in at least one instance, that advance fees in respect of a mortgage be made payable to her.
2. Lacharity and Ratcliffe are currently conducting mortgage broker activity in British Columbia without being registered to do so, contrary to section 21 of the Act. To date, Staff has uncovered eight instances where Lacharity has

held himself out as someone who lends money, secured by mortgages on land in British Columbia. There is evidence from Lacharity's own legal counsel that there may be two additional borrowers who have approached Lacharity for mortgage financing.

I THEREFORE CONSIDER THAT Lacharity and Ratcliffe are conducting themselves in a manner that would enable me to make an order under section 8(1.4).

I AGREE with Staff that a hearing of this matter would involve several witnesses, and would take approximately two weeks to complete, and could not be held for at least three months due to scheduling of parties, witnesses, counsel and the hearing officer.

I FIND that the length of time that would be required to hold a hearing in order to make an order under section 8(1.4) would be detrimental to the due administration of the Act. Lacharity and Ratcliffe, by engaging in unregistered mortgage broker activity, have undermined the integrity of the mortgage broker industry in British Columbia. I note, in particular, as follows:

- (a) Lacharity has held himself, and Ratcliffe, out as private lenders, willing to advance mortgage funds to those who cannot obtain traditional financing.
- (b) Staff is currently aware of at least eight instances where Lacharity and/or Ratcliffe have offered to consider mortgage applications and/or provide mortgage financing to borrowers. In all cases, borrowers were required to pay advance fees, which total \$13,700, none of which appear to have been refunded by Lacharity and/or Ratcliffe to date. It does not appear that mortgage funds, even where promised, were ever advanced, either.

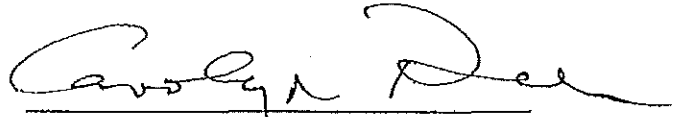
I AM FURTHER OF THE OPINION that it is in the public interest to make a summary order under section 8(1.4)(a) and 8(2) of the Act so that the public is protected against further non-compliance with the Act's provisions.

I THEREFORE ORDER, pursuant to sections 8(1.4)(a) and 8(2) of the Act that Lacharity and Ratcliffe:

Cease and desist engaging in unregistered mortgage broker activity in the Province of British Columbia, effective immediately, unless and until they become registered to do so under the provisions of the Act.

TAKE NOTICE that Lacharity and Ratcliffe may, under section 9 of the Act, appeal this Order to the Financial Services Tribunal.

Issued this 31st day of October, 2011
at Surrey, British Columbia



Carolyn Rogers
Registrar of Mortgage Brokers
Province of British Columbia

TO: Earl Gary Lacharity
[Redacted]
[Redacted]
[Redacted]

AND TO: Jeanine Verle Ratcliffe
[Redacted]
[Redacted]
[Redacted]