

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

-AND-

### **GOBI NAVA**

### **CEASE and DESIST ORDER**

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

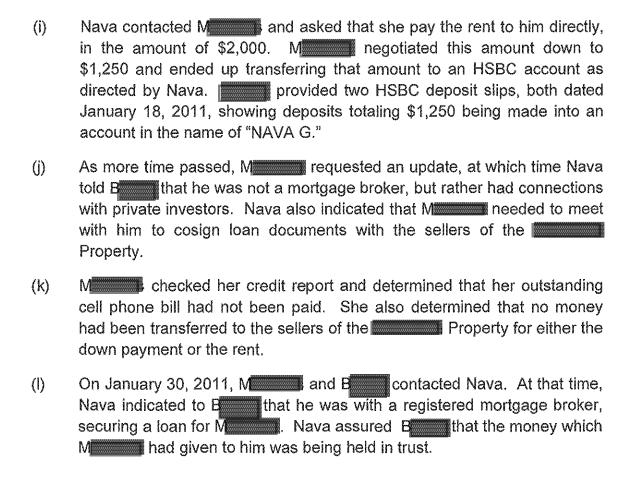
I am advised, and based on the materials submitted by staff of the Registrar of Mortgage Brokers ("Staff"), I am of the opinion that:

### **Background**

1. No person by the name of Gobi Nava ("Nava") has ever been registered as a mortgage broker or submortgage broker in British Columbia.

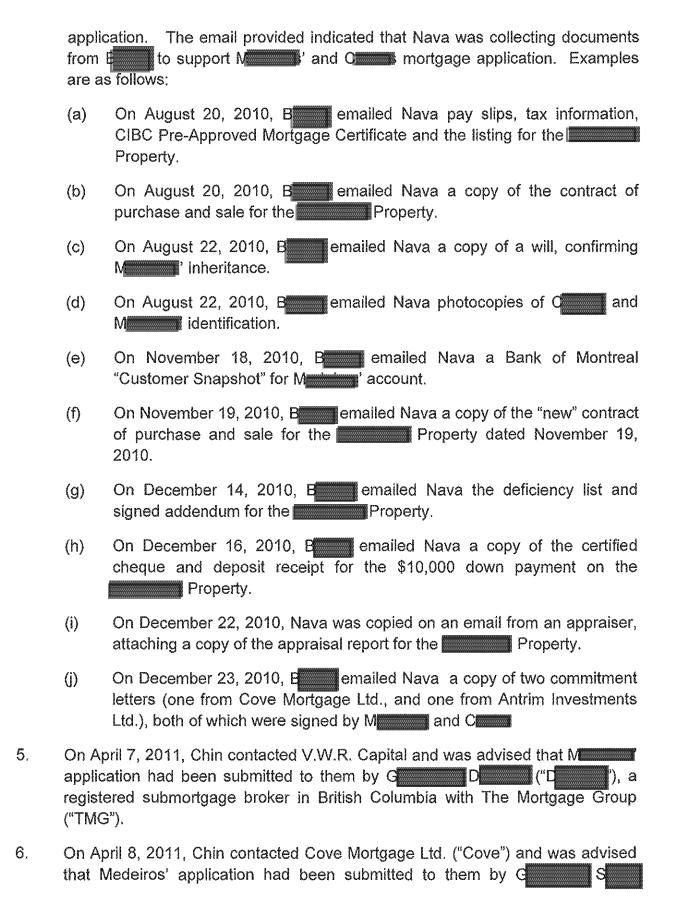
# February 2011 Complaint

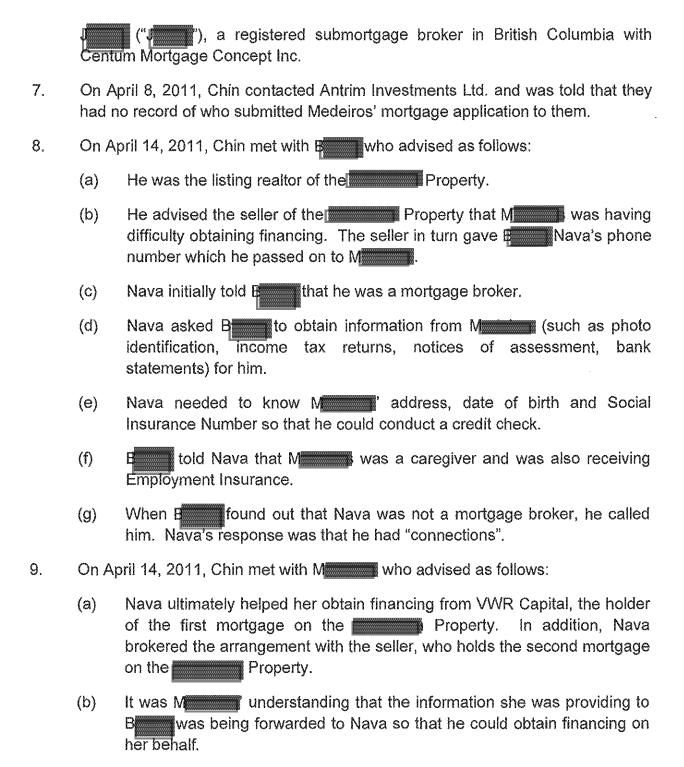
2.	On February 1, 2011, Constable of the Nanaimo RCMP contacted Staff by email about Nava. In support of his complaint, B also provided a number of documents. The following is a summary of the information provided by B		
	(a)	He was investigating a mortgage Nava obtained by L M (the Property").	
	(b)	The sale price of the Property was \$350,000. Make was only able to secure financing for \$280,000, in addition to a down payment of \$10,000, which was placed in trust with the realtor, R B ("B").	
	(c)	As Management was unable to obtain sufficient financing for the purchase, the seller [who Staff learned was Town V D ("D ("D "))] referred her to Nava for assistance.	
	(d)	Nava initially represented himself as a mortgage broker.	
	(e)	Nava brokered a deal whereby D would provide a loan of \$62,000.00 to cover the balance of the sale price. M agreed, and Nava asked her for a down payment of \$15,000, which he wanted deposited into a bank account in the name of "Mr. Troop". M complied. provided a Bank of Montreal receipt dated December 16, 2010 showing that a \$15,000 transfer had been made from "L C M M MORT." The debit memorandum reads "DOWN PYMT FOR PRIVATE MORT." Handwritten notes read "To Mr. Toor."	
	(f)	After several weeks of no activity, Nava advised Management that she had an outstanding cell phone bill, and asked her to send him \$2,500 so that he could "fix" her credit. provided a Money Mart receipt dated December 9, 2010 showing this transfer from Management to Nava.	
	(g)	More time passed, and there was still no financing in place.	
	(h)	The completion date for the purchase of the Property was pushed back several times. In the interim, M was allowed to move into the Property, agreeing to pay rent.	



### Investigation

- 3. On May 14, 2012, Staff conducted a search of the records of the BC Land Titles Office and determined the following for the Property:
  - (a) March 25, 2011.
  - (b) A first mortgage was registered by V.W.R. Capital Corp. ("VWR Capital") on March 25, 2011 in the amount of \$266,250.
  - (c) A second mortgage was registered by D on March 25, 2011 in the amount of \$72,000.
- 4. On April 7, 2011, B provided investigator Colin Chin ("Chin") with a series of emails he had exchanged with Nava in connection with M mortgage





(d) She transferred \$2,500 to Nava so that Nava would pay off a telephone bill with Rogers. She later discovered that the bill was never paid.

(c)

her with a private mortgage.

When Nava instructed her to transfer \$15,000 into a bank account, she

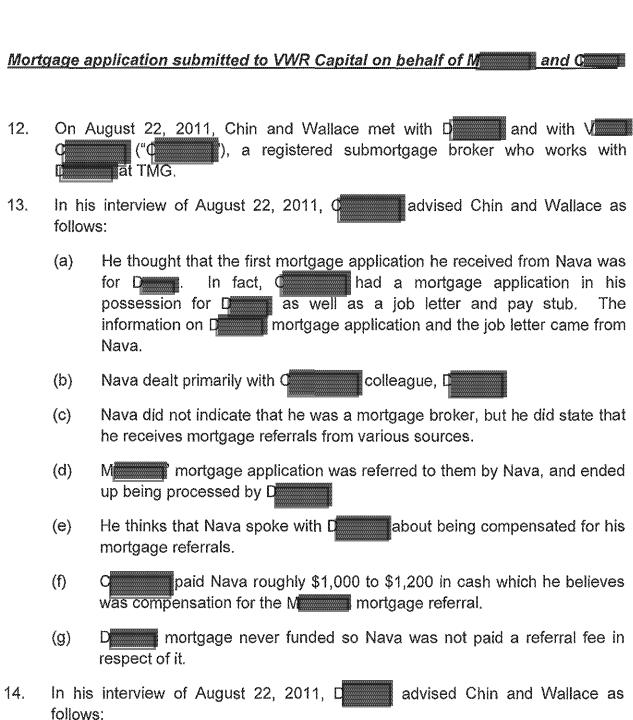
believed that the money would be given to the seller who was providing

- (e) Nava provided Manage with the following documents relating to the mortgage for the Property: a consent form which she signed and returned to Nava; a Fixed Credit Disclosure Statement; a Form 10 Conflict of Interest Disclosure Statement which she signed and returned to Nava; and a commitment letter from VWR Capital which was signed and return to Nava.
- (f) Nava told Management that he was not "licensed", but that he had been arranging mortgages for 20 years.
- (g) The information contained on the mortgage application dated February 4, 2011, found in the file of the mortgage broker who arranged the financing with VWR Capital, was incorrect in two aspects. Specifically, Manager did not work as an accountant, nor did she have \$90,000 in savings.
- 10. Chin obtained a copy of the Buyers' Statement of Adjustments and the Amended Buyers' Statement of Adjustments. The first, showing a completion date of February 18, 2011, indicated that a \$17,500 deposit had been paid directly to the sellers. The second, showing a completion date of March 25, 2011 showed both a deposit of \$17,500 paid directly to the sellers, as well as "Payment of Funds received from Gobi Nava on behalf of Buyes [sic]" in the amount of \$2,000.

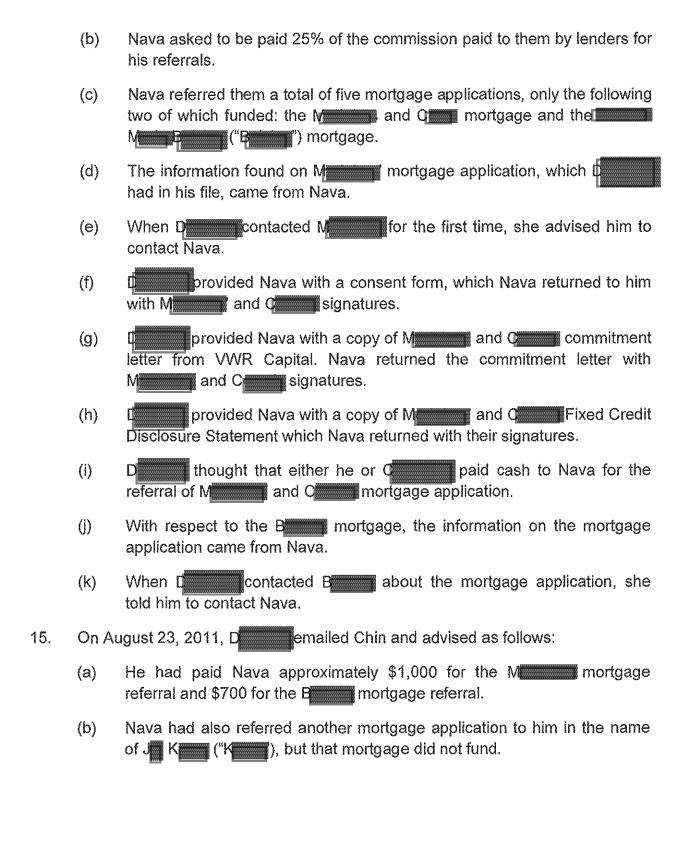
# Mortgage application submitted to Cove Mortgage on behalf of Management and

- 11. On April 26, 2011, Chin and investigator Scott Wallace ("Wallace") met with who advised as follows:
  - (a) Make was referred to him by an insurance salesman.
  - (b) J contacted M who in turn asked him to contact Nava.
  - (c) J contacted Nava, who provided him with M personal information.
  - (d) J met with M and C at E office in Nanaimo.
  - (e) Once he learned that Manager had given \$15,000 to Nava, Jack advised Manager process Manager mortgage application.

(f) Nava never explicitly asked to be compensated for the referral of Marian mortgage, however, Nava did suggest that should increase his fees so that Nava could be paid for future referrals.

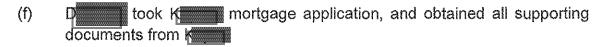


(a) C is his business partner, and it was a friend of C who introduced them to Nava.



# Mortgage application submitted on behalf of B

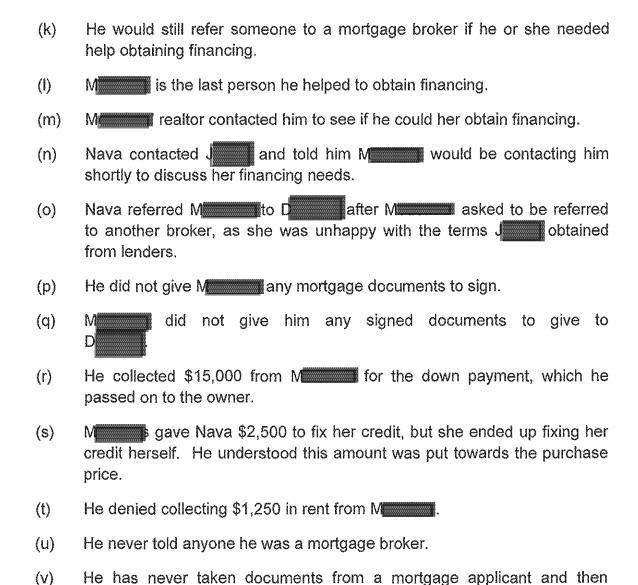
16. On August 23, 2011, I emailed Chin a copy of B mortgage	; file	
which included the following documents:		
(a) Barrier mortgage application dated May 9, 2011. The application for a second mortgage (specifically, an equity take out) in the amount \$70,000 on property owned by Barrier at Property"). The application of TMG.	nt of	
(b) A Dominion Lending Centres ("DLC") Mortgage Application dated Ap 2011, bearing the name of G ("O		
(c) A mortgage commitment letter from Nories Holdings Ltd. addresse and dated May 8, 2011. Under the terms of the letter, Nor Investments Ltd., was prepared to offer a second mortgage to Ethe amount of \$70,000.	mak	
did obtain mortgage financing from Normak Investments Ltd., and a second mortgage was registered on title to the Property on May 18, 2011.		
18. As noted above, Nava received a \$700 referral fee for the B		
Mortgage application for K		
On August 24, 2011, Decontacted Chin and advised as follows:		
(a) Nava had contacted him to ask if K mortgage had funded.		
(b) Nava wanted to meet with D		
(c) D told Nava he would call him back.		
(d) D immediately contacted Chin after speaking with Nava.		
(e) Nava had brought K <b>ritte</b> to D <b>iscontinuo</b> office.		



- (g) The mortgage application for K did not fund as K obtained financing elsewhere.
- On September 2, 2011, Chin met with O of DLC who advised that he had never met Nava, but that he knew as she had been his client. He told Chin that had wanted a second mortgage, but that he had been unable to help her obtain this financing.

### Telephone discussion and interview of Nava

- 21. On May 31, 2012, Chin called Nava. In that conversation, Nava described himself as a "referral person", and said that he had been in the business of "referring mortgages" for the past 10 years. He denied, however, being a mortgage broker.
- 22. On June 14, 2012, Nava met with Chin to discuss his referral activities. In that discussion, Nava advised as follows:
  - (a) He is paid a referral fee for referring prospective mortgage applicants.
  - (b) He does not advertise his mortgage referral business.
  - (c) In the last three years, he has referred only one mortgage.
  - (d) D paid him \$500 for referring the M and C mortgage.
  - (e) In 2010, he earned \$5,000 from mortgage referrals.
  - (f) In 2011 he did not earn any money from mortgage referrals (although he had earlier indicated that he had received \$500 from the Management transaction which took place entirely in 2011).
  - (g) He has earned no money for mortgage referrals in 2012.
  - (h) He only collects mortgage documents on behalf of the mortgage broker if instructed to do so by the mortgage applicant.
  - (i) He does not discuss rates or terms with his clients.
  - (j) He has never helped a mortgage applicant renew a mortgage.



supplied them to a mortgage broker. Similarly, he has not taken a client's documents from a realtor, and then forwarded them to a mortgage broker. The mortgage broker in these transactions gets all information directly

### <u>Applicable legislation</u>

23. Section 1 of the Act provides the following definitions:

"mortgage" includes every instrument by which

(a) land in British Columbia.

from the client.

(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;

### 24. 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.

### 25. 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).

- 26. 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. In 2011, Nava received fees in excess of \$1,000 for arranging mortgages for others. Specifically, he was paid between \$1,000 and \$1,200 for his part in arranging a mortgage for Manager and \$700 for his part in arranging a mortgage for Equation 1. This fact alone places Nava within the definition of "mortgage broker" in section 1 of the Act.
- 2. Nava held himself out as a mortgage broker to B This fact places Nava within the definition of "mortgage broker" in section 1 of the Act.
- 3. By accepting fees in excess of \$1,000 and by holding himself out as a mortgage broker, Nava is conducting mortgage broker activity in British Columbia without being registered to do so, contrary to section 21 of the Act. In addition to receiving fees for arranging these mortgages, and holding himself out as a mortgage broker, I note that Nava has also engaged in the following essential aspects of that mortgage transaction:
  - (a) Nava indicated that he could arrange a mortgage for M
  - (b) Nava obtained necessary information from Management and Comment (i.e. their identification, tax information and income information) in support of the mortgage being sought.
  - (c) Nava provided D with the information contained in the B mortgage application.
  - (d) Nava sought mortgage financing on behalf of Manage and Cartesian and

I THEREFORE CONSIDER THAT Nava is conducting himself 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 at least six witnesses, and would take approximately five days to complete and could not be held for at least four months due to scheduling of the 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. Nava, by engaging in unregistered mortgage broker activity (as set out in paragraphs 1-3 above), has undermined the integrity of the mortgage broker industry in British Columbia. I note in particular the following:

- (a) The evidence suggests that Nava has been brokering mortgages for many years while not being registered to do so. He himself admits that he has been providing referral services for the last ten years.
- (b) In the course of his activity, he has taken advance fees from at least one borrower (Manageria). Not only are advanced fees not permitted in the mortgage broker industry, but the fees Nava took were not even placed into trust.
- (c) Contrary to Nava's assertions, it appears that most, if not all, of the information provided to the registered submortgage brokers in support of the Manage and Banage mortgage applications, came from Nava himself. In the case of the Manage mortgage application, the information provided was inaccurate on two key issues, namely, Manage occupation and the value of the assets she held.

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 Gobi Nava:

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

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

Issued this <u>//</u> day of July, 2012 at Vancouver, British Columbia

Carolyn Rogers
Registrar of Mortgage Brokers
Province of British Columbia

Gobi Nava TO: