



IN THE MATTER OF THE MORTGAGE BROKERS ACT

R.S.B.C. 1996, c. 313

AND

SOHEIL ARMAN KIA aka SOHEIL ARMON KIA

DECISION ON PENALTY AND COSTS

COUNSEL FOR STAFF: Andrea K. Glen and Stephen King

COUNSEL FOR REGISTRANT: Owais Ahmed

REGISTRAR'S APPOINTEE: Brian K. Evans

A. BACKGROUND

1. On October 3, 2017 I made multiple findings that Mr. Arman Kia, contrary to section 8(1)(i) of the *Mortgage Brokers Act* ("Act"), conducted his business in a manner that is otherwise prejudicial to the public interest. The facts and analysis are set out in the Decision on Merits. I concluded at pages 35 – 37, Part I Decision (as revised by Corrigendum issued on December 13, 2017) of the Decision on Merits that Mr. Arman Kia:

a. MB

- i. Knowingly prepared and submitted for MB a mortgage application (YPFI-3223) to Scotiabank to finance a 103A Avenue, Surrey property being purchased by MB that did not disclose that MB was concurrently applying to NSCU for the refinancing of the MB's Renfrew Street condominium;

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- ii. Knowingly prepared and submitted for MB a mortgage application (YPFI-3224) to NSCU to re-finance a Renfrew Street condominium that did not disclose that MB was concurrently applying to Scotiabank to finance a 103A Avenue, Surrey property being purchased by MB;
- iii. Knowingly represented in the mortgage application (YPFI-3224) to NSCU that the Renfrew Street property was owner-occupied when he knew it would become a rental property and when he was concurrently representing in a mortgage application (YPFI-3223) to Scotiabank that the 103A Avenue property would be owner-occupied;
- iv. Knowingly failed to verify MB's income when he prepared and submitted a mortgage application (YPFI-3223) to Scotiabank showing MB as having an annual income of \$85,000 while he concurrently prepared and submitted a mortgage application (YPFI-3224) to NSCU showing MB having an annual income of \$40,000 and when he knew these applications were inaccurate and misleading;

b. M and S

- i. Prepared and submitted a mortgage application (YPFI-3835) on behalf of borrowers M and S on the same day to Scotiabank to refinance a Delahaye Drive, Coquitlam property owned and occupied by M and S for the stated purpose of consolidating debt that did not disclose that M and S were seeking mortgage financing (YPFI-3838) for the purchase of the Glen Drive, Coquitlam condominium;

c. RP

- i. Knowingly prepared and submitted a mortgage application (YPFI-3471) on behalf of RP to NSCU to finance a Unit 1 Seymour Street condominium that was being purchased by RP that did not disclose that RP was concurrently applying to Scotiabank to finance a Unit 2 Seymour Street condominium that was also being purchased by RP;
- ii. Knowingly prepared and submitted a mortgage application (YPFI-3477) on behalf of RP to Scotiabank to finance a Unit 2 Seymour Street condominium that was being purchased by RP that did not disclose that RP was concurrently applying to NSCU to finance a Unit 1 Seymour Street condominium that was also being purchased by RP;
- iii. Knowingly failed to verify RP's income when he prepared and submitted a mortgage application (YPFI-3471) on behalf of RP to NSCU showing RP as having an annual income of \$60,000 and he three days later prepared and submitted a mortgage application (YPFI-3477) to Scotiabank showing RP as

having an annual income of \$120,000 and when he knew these applications were inaccurate and misleading;

d. S and G

- i. In arranging mortgages on behalf of borrower S and G, he knowingly prepared and submitted a mortgage application (YPFI-3540) to Home Trust to re-finance an Inglewood Avenue property that did not disclose that S and G had purchased 16 months earlier and S and G continued to own a Fullerton Avenue property that was subject to a NSCU mortgage;

e. P and H

- i. Knowingly prepared and submitted a mortgage application (YPFI-3545) on behalf of P and H to Scotiabank to re-finance a Marinaside Crescent property that did not disclose that P and H owned a Howe Street property;
- ii. Knowingly prepared and submitted a mortgage application (YPFI-3545) to Merix to re-finance a Marinaside Crescent property that did not disclose that P and H owned a Carnarvon Street property; and
- iii. Knowingly prepared and submitted a mortgage application (YPFI-3545) to NSCU to re-finance a Marinaside Crescent property that did not disclose that P and H owned a Howe Street property and a Carnarvon Street property.

(collectively the "Findings")

B. SUBMISSIONS OF STAFF

Ms. Glen refers to the salient findings relevant for sentencing including that Mr. Arman Kia was unreliable and engaged in dishonest behaviour which should attract significant disciplinary consequences. She submits that there is a need in discipline to consider general and specific deterrence, aggravating and mitigating factors, case law dealing with penalty considerations and previous penalties.

Mr. Arman Kia should be suspended for between two and five years and he should complete the "Mortgage Brokerage in British Columbia Course" as a condition of future registration. Alternatively, if a suspension is not ordered, Mr. Arman Kia should pay an administrative penalty of between \$40,000 and \$50,000 and he should be prohibited from acting as a designated individual for five years.

Ms. Glen submits that an award of costs is warranted in these circumstances, including investigation expenses of \$5,287.50, and costs assessed under Rule 14-1 (Appendix B, scale B) of the British Columbia Supreme Court Civil Rules.

C. SUBMISSIONS ON BEHALF OF MR. ARMAN KIA

Mr. Ahmed refers to Mr. Arman Kia's personal and occupational circumstances, including the fact that there has been no suggestion of any wrongdoing since 2012, and no evidence of actual harm to any lender or borrower. He submits that a designated individual such as Mr. Arman Kia does not have "an elevated level of responsibility" which warrants a greater penalty.

Mr. Ahmed submits that the focus should be on general rather than specific deterrence and he notes a number of mitigating factors, which I have considered below. Mr. Arman Kia does not have a disciplinary history, there has not been a complaint from a lender or client, the public nature of these proceedings has already had an adverse effect on Mr. Arman Kia's practice and his revenue, and it is "extraordinarily unlikely" he will reoffend. He further submits that any order should be "protective" and "preventive" rather than "remedial" or "punitive". He refers to instructive case law and notes that some of the cases relied on by the Staff involve more egregious misconduct than that shown by Mr. Arman Kia.

Mr. Ahmed submits that an appropriate order given the Findings is that Mr. Arman Kia should pay an administrative penalty of not more than \$25,000 and he should be prohibited from acting as a designated individual for any mortgage broker for three years. These provisions satisfy the need for specific and general deterrence and are optimally in the public interest; the provisions suggested by Ms. Glen, on the other hand, are punitive and excessive. He submits that no costs should be ordered under section 6(9) of the *Act* in this matter.

D. ANALYSIS

1. Penalty

Given that the primary focus of the *Act* is the protection of the public interest, it follows that the sentencing process must ensure the public is protected. Section 8(1)(a) to (d) and (1.1) set forth the range of options from which I must choose, in addition, of course, to not issuing any penalty. In determining an appropriate penalty, I must consider what steps might be necessary to ensure that the public is protected, while taking into account the risk of allowing Mr. Arman Kia to continue as a submortgage broker. I have taken into account submissions from both counsel.

Factors in sentencing include deterrence, rehabilitation, a consideration of punishment or denunciation, and the need to maintain the public's confidence in the ability of the disciplinary process to regulate the conduct of registrants under the *Act*.

While there have been multiple findings of having conducted business in a manner that is otherwise prejudicial to the public interest, this is the first time Mr. Arman Kia has been found to have contravened the *Act*. In his favour are the

facts that he has been registered as a submortgage broker for almost 18 years and that the Findings did not, for the most part, relate to Mr. Arman Kia in his supervisory role as a designated individual. The Findings relate to his first offences committed over roughly a one and one half year period, seven to eight years ago.

One consideration in sentencing is the impact of Mr. Arman Kia's conduct on stakeholders. Although the loans which were actually funded may be under secured and a higher risk than they should be, there is no evidence that any of the loans are or will be non-performing. Fortunately in this case for the borrowers, the lenders, and indirectly Mr. Arman Kia, the risk of default has diminished given the rising real estate values from funding to present day.

Regardless, Mr. Arman Kia's lack of full disclosure and misrepresentation of facts undermines the public confidence in the mortgage marketplace, places borrowers at risk of payment obligations they could not afford and allows lenders to make loans they otherwise would not have made. Mr. Arman Kia committed these acts with the knowledge he would receive remuneration that would otherwise not be payable, and he did so on multiple occasions.

Specific deterrence is an important factor that applies and needs to be considered. In this case Mr. Arman Kia's conduct put lenders and borrowers at risk and he benefitted financially by his intentional wrongdoing. A proper penalty needs to specifically deter Mr. Arman Kia from considering like conduct in the future. A financial penalty can act as a specific deterrent to improper conduct but it can also be viewed as a cost of doing business to maintain the financially successful, high volume practice that Mr. Arman Kia enjoyed.

General deterrence must also be considered. The mortgage marketplace, the mortgage broker industry and the public interest demand that the registrar have zero tolerance for this type conduct and that any future transgressions must be dealt with appropriately and transparently. A penalty must reflect the need to ensure the public confidence in the integrity of mortgage broker regulation.

It is noteworthy, in my view, that Mr. Arman Kia was a director and the designated individual with an elevated level of responsibility at Yespros for most of the transactions and a director of Yespros Mortgages Inc. ("Yespros"). While the Findings relate to him in his role as a submortgage broker, the fact he was the designated individual for all relevant times until April 11, 2012 cannot be ignored. In this case not only mortgage brokers and submortgage brokers, but designated individuals must have no option but to follow prudent practice and they must be strongly discouraged from considering the short term benefits that may be achieved by cutting corners. Submortgage brokers who also act as designated individuals must set a high ethical standard.

An analysis of penalty requires me to consider whether I should order an administrative penalty or a suspension. In this case I found Mr. Arman Kia on multiple occasions knowingly failed to fully disclose borrowers' current or

prospective financing, current or prospective property ownership, and income particulars. A factor which militates against an administrative penalty but in favour of a suspension is an element of dishonesty. In this case there were multiple contraventions. Another factor is that Mr. Arman Kia, as designated individual and a director, was entrusted with an elevated level of responsibility when he breached that duty. A sentence that includes a suspension that allows a registrant to reflect on his conduct will usually have a greater general and specific deterrent effect than a financial penalty alone. The range of penalties imposed in similar cases must also be considered. I have considered the case law provided by both counsel.

I note the December 22, 2015 Consent Order *Re: Kambiz (Kam) Ali Mahinsa* and the November 9, 2015 Consent Order *Re: Mehrdad Nevis aka Rod Nevis*. Mr. Mahinsa and Mr. Nevis were at times colleagues of Mr. Arman Kia at Yespros.

In separate consent orders, Mr. Mahinsa was ordered to pay an administrative penalty of \$13,000 and investigation costs of \$1,000 and Mr. Nevis was ordered to pay an administrative penalty of \$10,000 and investigation costs of \$1,500. Both were not eligible to act as a designated individual for two years, were required to submit a list of all mortgage transactions to the Registrar and to have all of their transactions reviewed by their designated individual for one year, and be subjected to random reviews by the Registrar.

I find Mr. Arman Kia's conduct, while displaying similar misconduct themes to those involving Mr. Mahinsa and Mr. Nevis, involved more aggravating factors. The Registrar's procedures required that Mr. Mahinsa's and Mr. Nevis' conduct be overseen by their designated individual. Mr. Arman Kia, on the other hand, knew that in his case there was no such oversight. He was also at all times a Director, a controlling mind, of the mortgage brokerage. He should be held to a higher standard as he was, for the most part, his own designated individual with no brokerage oversight.

Further, in the consent orders involving Mr. Mahinsa and Mr. Nevis, both "... fully cooperated with Staff's investigation and provided information to Staff when requested to do so". Both Mr. Mahinsa and Mr. Nevis could refer to the mitigating factor that they admitted their wrongdoing and it was resolved by way of settlement.

The same cannot be said of Mr. Arman Kia, who I noted in the Decision on Merits was uncooperative, unreliable, and evasive. Mr. Arman Kia had every right to expect the Staff to prove their allegations and, having done so, he has the right not to have that approach treated as an aggravating factor. I have not done so.

I found the conduct of Mr. Arman Kia more serious than the conduct that was in issue in the August 24, 2011 Consent Order *Re: Yogendra Kumar Nagpal*. The conduct in issue commenced approximately five years after he was first registered as a submortgage broker. It is noteworthy he inadvertently failed to disclose the fact that the two individual prospective borrowers were, for almost

one year, guarantors under a \$1.1 million mortgage when they or either of them applied for mortgage financing on three residential properties. These applications incorrectly referred to the fact that the properties would be owner-occupied and while they were submitted concurrently to three different lenders, they did not reveal the existence of the other applications.

The order disclosed mortgage applications involving seven sets of borrowers where Mr. Nagpal failed to make accurate disclosure to lenders of the borrowers' other liabilities and/or concurrent mortgage applications, which amounted to conduct prejudicial to the public interest, contrary to section 8(1)(i) of the Act. The facts include that "Nagpal fully cooperated with the Registrar's staff throughout his inquiries and voluntarily disclosed his conduct, and records, relating to the forgoing". While Mr. Nagpal became a designated individual after the events in question and after he changed brokerages, he was not the designated individual during the events in question.

Mr. Nagpal was ordered to pay an administrative penalty of \$25,000, costs of \$5,000, could not act as a designated individual for two years, consented to semi-annual audits and agreed to take *The Applied Information Course* within one year.

The March 13, 2006 Decision *Re: Gurdip Chand* is instructive. Mr. Chand failed to disclose judgments against him on his registration application, prepared a false employment letter that he submitted it to a lender to support the granting of credit, and he misled a lender as to a borrower's indebtedness by failing to disclose a second mortgage. Mr. Chand was found to have "conducted his business in a manner prejudicial to the public interest." The registrar considered, amongst other concerns, Mr. Chand's "lack of remorse, his evasiveness and his total lack of credibility". He was suspended for five years, ordered to retake the mortgage broker examination, ordered to take an ethics course if there was not an ethics component, and ordered to pay costs of \$5,000.

I also found helpful the May 22, 2015 Consent Order *Re: Margaret Schulz and W. I. Mortgage Pros Ltd. ("W.I.")*. Unlike Mr. Arman Kia, Ms. Schulz had a disciplinary history. Ms. Schulz and W.I. failed to provide proper disclosure to an unsophisticated client relating to a mortgage transaction, on several mortgage applications they failed to disclose that the client was concurrently seeking to finance other properties and/or owned other properties, misrepresented properties as owner-occupied by the borrower, failed to disclose conflicts of interest involving property owners and vendors and their related family or employment relationships, submitted concurrent applications from the same borrower to different lenders that included different income, and misstated facts to the Staff. Ms. Schulz and W.I. were not eligible to apply for registration for five years, and jointly and severally ordered to pay an administrative penalty of \$37,500 and costs of \$5,000.

An analysis of the sentencing factors in light of my findings leads me to the inevitable conclusion that a suspension is not excessive but rather is is

warranted. I have not followed the submissions of Ms. Glen to suspend Mr. Arman Kia for a full five years given that Mr. Arman Kia should be permitted to show he can, with the passage of time and further training, both rehabilitate himself and remediate his practice.

Considering all the relevant factors discussed above, I have concluded that an appropriate sanction is not an administrative penalty as suggested by Mr. Ahmed but a suspension of two years, at the lower end of the suspension range suggested by Ms. Glen. This term recognizes that Mr. Arman Kia, with a reasonable passage of time, should be able to demonstrate his efforts towards rehabilitation. The public interest demands that submortgage brokers and designated individuals be deterred from acting in a similar manner in the future, a requirement that Mr. Arman Kia update his training before being registered as a submortgage broker, and that upon his registration as a submortgage broker his files will be audited at his cost by staff at the Register of Mortgage Brokers. His transgressions were willful and, for the most part, conducted while he was a designated individual at Yespros. He should not be permitted to be in a leadership role for a long period time so he can show by work product he has changed both his character and his conduct. I find that he should not be permitted to act as a designated individual for seven years.

2. Costs

I do not agree that the *Act* should be narrowly construed so that costs are only payable when section 8(1)(f) of the *Act* is charged and there is an adverse finding of that paragraph. Section 6(9) of the *Act* provides if "... the inquiry discloses a contravention of this Act or the regulations or orders or directions of the registrar, the registrar may order the costs to be paid by the person." The Findings relate specifically to section 8(1)(i) of the *Act*, which while general in scope is a more focussed allegation than the more general section 8(1)(f) - "... breach of this Act, the regulations or a condition of registration" - a common catch-all provision found in regulatory statutes.

The registrar may order that costs are payable if the inquiry discloses a contravention of:

1. section 8(1)(e) - (j), inclusive, of the *Act*,
2. other provisions of the *Act*,
3. the regulations, or
4. orders or directions of the registrar.

The Findings amount to contraventions of the *Act* for which the registrar may order that costs are payable. I have decided that costs should be payable.

A consideration of costs involves many factors, including the seriousness of the offence, the financial circumstances of the registrant, the total effect of the penalty including possible fines and/or suspensions, and the extent to which the conduct of the registrant has resulted in the costs accumulating or being saved.

Costs assessed after hearings involving multiple hearing days where adverse findings are made should in the usual course exceed costs assessed summarily through the consent order process. Some of the consent orders are: *Re: Mahinsa* (\$1,000, partial investigation costs), *Re: Cook* (\$10,000, costs of the investigation), *Re: Schulz and W.I.* (\$5,000, investigation costs jointly and severally) and *Re: Nevis* (\$1,500, partial investigative costs), and *Re: Nagpal* (\$5,000, investigation costs).

While the sum of \$5,287.50 on account of the investigation expenses has been proven and is reasonable, it is only part of a costs assessment. Hearing costs should also be ordered. The BC Court of Appeal in *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149, at para 56 dealt with a similar costs provision as found in the *Act*. The court held that a general power to award costs will be taken to mean an award under Rule 57 of the Supreme Court Rules (now known as Rule 14-1 of the Supreme Court Civil Rules):

"... 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 will govern the tribunal's award of costs. In those cases, Rule 57 will define the nature of the costs available, including special costs. The court's power to award special costs under Rule 57 translates, by analogy, into the tribunal's power to award special costs under the tribunal's constituent statute. As Mr. Justice Goldie stated, when the Legislature grants a general power to award costs, it is taken to intend that the power granted is the usual power exercisable by the courts with respect to costs under Rule 57."

In the December 13, 2004 decision of the Registrar of Mortgage Brokers in *Re: Danh Nguyen and Express Mortgages Ltd.*, legal costs were awarded at the legal costs tariff set out in the British Columbia Supreme Court Rules.

I ask Ms. Glen to make submissions along with a draft Bill of Costs based on the Supreme Court Civil Rules (Schedule B, scale B) by December 29, 2017 if an agreement cannot be reached on legal costs. In such an event, Mr. Ahmed will have until January 5, 2018 to submit his comments in reply.

E. ORDERS

I make the following orders:

1. Pursuant to section 8(1)(a) of the *Mortgage Brokers Act*, Mr. Arman Kia will be suspended for two years from the date of this Decision on Penalty for conducting his business in a manner that is otherwise prejudicial to the public interest contrary to section 8(1)(i) of the *Mortgage Brokers Act*.
2. Pursuant to section 8(1)(d) of the *Mortgage Brokers Act*:

- i. As a condition of registration as a submortgage broker, Mr. Arman Kia will successfully complete the "Mortgage Brokerage in British Columbia Course";
 - ii. For a two year period following Mr. Arman Kia's registration as a submortgage broker, he will consent and cooperate with any audit by the registrar's staff for compliance with his duties and responsibilities as a registrant and he shall bear all the costs of these audits (at a rate of \$80/hour);
 - iii. Mr. Arman Kia will not be eligible to be a designated individual for any mortgage broker, including any mortgage broker business operated by him, for a period of seven years from the date of this Decision on Penalty and Costs.
3. Pursuant to section 6(9) of the *Mortgage Brokers Act*, Mr. Arman Kia will pay costs of this proceedings, as agreed between counsel. If an agreement cannot be reached, I direct Ms. Glen to make submissions along with a draft Bill of Costs based on the Supreme Court Civil Rules (Schedule B, scale B) by January 5, 2018. In such an event, Mr. Ahmed will have until January 12, 2018 to submit his comments in reply.
 4. All payments will be made by cheque, bank draft or money order payable to the Minister of Finance and all amounts outstanding 30 days following execution of this Order will represent a debt owing and be subject to interest pursuant to the *Financial Administration Act*, R.S.B.C. 1996, c. 138.
 5. Mr. Arman Kia will not be considered for registration unless and until the costs under this Order are paid, in full.

Issued, December 14, 2017
at Vancouver, British Columbia

Brian K. Evans
Appointee of the Registrar of
Mortgage Brokers
Province of British Columbia