



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

and

MICHAEL ALEXANDER CAMPAGNA

DECISION ON PENALTY AND COSTS

DATE OF HEARING: Written submissions

APPEARING FOR STAFF: Stephen King, Ministry of Attorney General

APPEARING FOR MR. CAMPAGNA: No one

REGISTRAR'S APPOINTEE: Cheryl Vickers

INTRODUCTION AND ISSUE

1. On October 5, 2018, I issued a Decision on Merits finding that the Respondent, Michael Alexander Campagna, carried on business as a mortgage broker without being registered contrary to section 8(4.1) of the *Mortgage Brokers Act* (the *Act*) following the expiration of his registration as a sub-mortgage broker. The issue now is to determine the appropriate administrative penalty to be made against Mr. Campagna. The maximum penalty under the *Act* is \$50,000.

SANCTIONING PRINCIPLES AND CONSIDERATIONS

2. The purpose of administrative sanctions in the regulatory context is to promote compliance with legislation in the public interest. Specifically, in the context of the regulation of mortgage brokers and mortgage brokering in British Columbia, the *Act's* role is the protection of the public and maintenance of public confidence in the mortgage industry (*Cooper v. Hobart*, 2001 SCC 79). The purpose of sanctioning orders is fundamentally to ensure the protection of the public by promoting compliance with the *Act*, thereby protecting the public from mortgage

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

3. In assessing the appropriate sanction, I may rely on principles of specific deterrence (detering the person whose conduct is at issue) and general deterrence (detering those who might be inclined to engage in similar conduct). Maintaining public confidence in the integrity of a regulated industry or profession is key, particularly where misconduct displays a lack of integrity (*The Law Society of British Columbia v. Nathan Richard Bauder*, 2013 LSDD 17).
4. In assessing the appropriate sanction against Mr. Campagna, I must be mindful of the specific circumstances of the case. I may consider various factors including the nature and gravity of the conduct proven, whether the respondent has a prior discipline record, the advantage gained or to be gained from the respondent, and the range of penalties imposed in similar cases.

THE FINDINGS AGAINST MR. CAMPAGNA

5. Mr. Campagna contravened section 8(4.1) of the *Act* by carrying on business as a mortgage broker without being registered to do so, and without being exempted from registration pursuant to section 11 of the *Act*, following the expiry of his registration as a sub-mortgage broker on May 31, 2017. Following the expiration of his registration, Mr. Campagna attempted to arrange mortgages for three borrowers by:
 - a. providing assurances to each of them that he could obtain a mortgage;
 - b. gathering the personal information of at least two borrowers for the purpose of making mortgage applications;
 - c. obtaining documents and information from three borrowers for the purpose of supporting mortgage applications;
 - d. ordering an appraisal for two borrowers to support mortgage applications;
 - e. advising two borrowers he was dealing with multiple potential lenders in attempting to arrange a mortgage;
 - f. explicitly holding himself out as a mortgage broker to one borrower;
 - g. leaving the impression with two borrowers that he was a registered mortgage broker by failing to advise those borrowers that he was no longer registered and therefore not permitted to carry on business as a mortgage broker;
 - h. providing a borrower with a "subject removal certificate" using the letterhead of a network of registered mortgage brokers assuring the borrower that he had arranged a mortgage and that they could remove the "subject to finance" clause in a contract of purchase and sale for a real estate transaction (Subject to Finance Clause);
 - i. providing another borrower with assurances that they could remove a Subject to Finance Clause; and
 - j. providing a borrower with a "mortgage summary" document naming a non-retail lender that originates mortgages through mortgage brokers.

6. Following expiration of his registration, Mr. Campagna continued to hold himself out to the public as a mortgage broker by identifying himself as such on his voice mail message and by maintaining a social media platform where he held himself out as offering the services of a mortgage broker.
7. Mr. Campagna knew his registration as a sub-mortgage broker was expiring on May 31, 2017 and knew or ought to have known that he could not work as a mortgage broker without renewing his registration.
8. Mr. Campagna did not advise borrowers that his registration had expired leaving them with the impression that he was a registered mortgage broker.
9. Following expiration of his registration, Mr. Campagna submitted a Mortgage Application through Filogix on behalf of a borrower and advised borrowers they could remove the Subject to Finance Clause when financing had not been arranged.
10. As a result of Mr. Campagna's conduct borrowers incurred expenses totaling \$13,800 including additional moving and storage costs, additional financing fees, and higher interest rates. One borrower had to forfeit a \$10,000 deposit, which was later refunded by the seller. As a result of Mr. Campagna's conduct, borrowers experienced significant stress and anxiety.

WHAT IS THE APPROPRIATE ADMINISTRATIVE PENALTY?

11. The findings against Mr. Campagna constitute serious misconduct that jeopardizes public confidence in the mortgage industry.
12. Mr. Campagna's conduct was dishonest and intentional. Mr. Campagna had been a registered mortgage broker for a number of years. He knew he was required to be registered to engage in mortgage brokering activity. He knew his registration had expired and yet continued to conduct business as a mortgage broker in flagrant disregard of the requirements of the Act. He knowingly held himself out as a mortgage broker when he knew he was not registered to engage in mortgage brokering activity.
13. Mr. Campagna presented at least one borrower with a false document and made false representations to borrowers respecting his status as a registered mortgage broker and his efforts to obtain financing on their behalf. He provided borrowers with assurances that mortgage financing was or would be arranged when it was not.
14. There is no evidence before me that Mr. Campagna has ever been disciplined in the past. Nor is there evidence that he incurred financial gain from his mortgage brokering activities following expiration of his registration. Mr. Campagna's

conduct, however, put members of the public in significant financial risk and caused financial harm and emotional distress.

15. Mr. Campagna has taken no responsibility for his conduct. He did not participate in the hearing and has not provided any submissions with respect to penalty despite being given the opportunity to do so. He has conducted himself with deliberate disregard of the requirements of the *Act*, the financial risk he was knowingly exposing borrowers to, and the potential emotional harm of his actions on borrowers. He continues to practice avoidance.
16. I am satisfied that a financial award is warranted based on the impact of Mr. Campagna's conduct on three borrowers, the significant risk to which he exposed them, his apparent disregard for that risk evident from his knowingly false representations to them, and his continued failure to acknowledge responsibility for his actions. Mr. Campagna's conduct attracts significant disciplinary consequences and must send a message to both him and others that conduct of this nature will not be tolerated in an effort to uphold and protect the public interest.
17. Having considered various other penalty decisions of the Registrar and the specific circumstances of this case, I find an administrative penalty of \$20,000 is appropriate.
18. Further, I find that Mr. Campagna should not be permitted to re-apply for registration as a submortgage broker for a period of 2 years from the date of this decision.

INVESTIGATIVE AND HEARING COSTS

19. Pursuant to section 6(9) of the *Act*, Staff seeks recovery of \$13,100 in investigative costs as set out in the Certificate of Costs marked in evidence at the hearing on the merits, as well as costs of the hearing. An award against Mr. Campagna of investigative and hearing costs is appropriate.
20. Given Mr. Campagna's lack of engagement in this process, rather than leave the amount of hearing costs to be agreed as would be the normal practice, I will fix hearing costs at \$2,000, an amount within Scale B for a two day hearing with court reporter.

ORDERS

21. Michael Alexander Campagna must immediately cease acting as a submortgage broker as that term is defined in the *Act* until and unless he becomes registered under the *Act*.
22. Michael Alexander Campagna must pay an administrative penalty of \$20,000 pursuant to section 8(1.4) of the *Act*.
23. Michael Alexander Campagna must pay the costs of the investigation in the amount of \$13,100 pursuant to section 6(9) of the *Act*.
24. Michael Alexander Campagna must pay hearing costs which I fix at \$2,000 pursuant to section 6(9) of the *Act*.
25. Michael Alexander Campagna shall not apply for registration as a submortgage broker until all payments required to be made under this Order are paid in full, and in any event not prior to two years following the date of this Order.
26. All payments must be made by cheque, bank draft or money order payable to the Ministry of Finance and all amounts outstanding 30 days following the execution of this Order will represent a debt owing and be subject to interest pursuant to the *Financial Administrations Act*, RSBC 1996, c. 138.

Issued March 18, 2019
at Vancouver, British Columbia



Cheryl Vickers
Appointee of the Registrar of Mortgage Brokers
Province of British Columbia