

BC FINANCIAL SERVICES AUTHORITY

**IN THE MATTER OF THE *MORTGAGE BROKERS ACT*
RSBC 1996, c. 313 as amended**

AND

IN THE MATTER OF

**CHI YOUNG (NORRIS) YU
(REGISTRATION NO. 501366)**

Decision on Penalty and Costs

[This Decision has been redacted before publication.]

Date of Hearing: October 13, 2022

Counsel for BCFSA: Amandeep Sandhu
Catherine Davies

Counsel for the Respondents: Owais Ahmed

Hearing Officer: Andrew Pendray

Introduction

1. On February 12, 2020, a Notice of Hearing was issued alleging that Chi Young (Norris) Yu had, in his capacity as a submortgage broker, conducted mortgage business in a manner prejudicial to the public interest contrary to section 8(1)(i) of the *Mortgage Brokers Act* (the “MBA” or the “Act”).
2. The allegations against Mr. Yu relate to three mortgage applications, occurring in 2016 and 2017, in which Mr. Yu is alleged to have misled lenders by failing to disclose that borrowers were seeking concurrent financing for the purchase of another property; stating that a property would be owner occupied when he knew it would not be; and submitting a false residential tenancy agreement.
3. On September 12, 2022, Mr. Yu entered into an Agreed Statement of Facts with the BC Financial Services Authority (“BCFSA”) in which he admitted to the allegations set out in the Notice of Hearing.
4. This decision relates to the appropriate orders to be issued against Mr. Yu in respect of those admissions.
5. BCFSA seeks an order that Mr. Yu be suspended from registration under the MBA for a period of two years, pursuant to section 8(1)(a) of the MBA. BCFSA further seeks an order that Mr. Yu pay investigation expenses of \$6,384.89, as well as hearing costs of \$15,283.74, pursuant to section 6(9) of the MBA.

6. Mr. Yu submits that a suspension of four months duration would be an appropriate order in the circumstances, along with an order of costs of \$10,000. In Mr. Yu's submission, the penalty sought by BCFSa is punitive and unreasonable.

Issues

7. The issue is the appropriate orders to be issued in respect of Mr. Yu's conduct, as provided for by section 8(1) of the MBA.
8. Additionally, there is the question of whether Mr. Yu should be required to pay investigative and hearing costs pursuant to section 6(9) of the MBA.

Jurisdiction

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

Notice of Hearing

10. The Notice of Hearing set out the following allegations against Mr. Yu:
 1. In his capacity as submortgage broker, Mr. Yu conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the Act when:
 - a. In respect of the mortgage application of [Borrower A] and [Borrower B] dated February 24, 2016 [Mr. Yu] submitted a mortgage application to a lender which he knew was misleading in that:
 - i. The application failed to disclose that the borrowers were seeking concurrent mortgage financing for the purchase of another property; and
 - ii. The application stated that the property would be owner occupied when [Mr. Yu] knew or ought to have known that the property would not be owner occupied;
 - b. In respect of the mortgage applications of [Borrower C] and [Borrower D] dated March 24, 2017 and April 5, 2017, [Mr. Yu] submitted mortgage applications that were misleading in that they contained false residential tenancy agreements on behalf of the borrowers and those tenancy agreements were submitted to lenders as if they were genuine; and
 - c. In respect of the mortgage application of [Borrower C] and [Borrower D] dated March 24, 2017, [Mr. Yu] submitted a mortgage application that was misleading in that it failed to disclose that the borrowers were seeking concurrent mortgage financing for the purchase of a rental property.

Background

11. The evidence and information before me consists of the Agreed Statement of Facts (the “ASF”), as well as the evidence provided at the hearing by [Investigator 1], BCFSA investigator, and Mr. Yu. Additionally, there were a number of documents which were entered into evidence.
12. Much of the following is taken from the ASF.

Registration

13. Mr. Yu was originally registered as a submortgage broker in February 2015. He is currently registered with Elite Lending Corporation/Dominion Lending Centres Elite Lending (“Elite Lending”).
14. At the time of the mortgage applications described in the Notice of Hearing, Mr. Yu worked on a team with submortgage brokers, [Broker 1] and [Broker 2], who were also registered with Elite Lending. [Broker 1] and [Broker 2] would generate clients and collect information, and Mr. Yu would operate as a licensed assistant to them.
15. Mr. Yu would generally follow up with clients as necessary, and submit some mortgage applications through Filogix, an online mortgage application platform. Mr. Yu also prepared and submitted mortgage applications on behalf of some of his own clients.

[Borrower 1] Mortgage Applications

16. [Borrower A] and [Borrower B] (the “[collectively Borrower 1]”), in 2016, resided in a property located at [Property 1], in Vancouver (the “[Property 1]”). They were looking for a new home to live in with a rental suite for income purposes. At the same time, they sought the services of [Broker 1] for the purposes of refinancing [Property 1].
17. On February 10, 2016, Mr. Yu created a mortgage application for the refinancing of [Property 1].
18. On February 21, 2016, [Borrower 1’s] realtor informed [Broker 1] that [Borrower 1] [was] going to present an offer to purchase on a home located at [Property 2], Burnaby (the “[Property 2]”). On February 23, 2016 [Borrower 1’s] realtor provided a copy of that offer to [Broker 1], who forwarded that offer to Mr. Yu.
19. On February 23, 2016, at 11 pm, [Borrower 1’s] realtor provided [Broker 1] with a copy of the accepted contract of purchase and sale for [Property 2], which indicated a completion date of June 15, 2016. The contract contained a subject to financing clause to be removed by February 26, 2016.
20. On February 24, 2016, at 9:48 am, the [Property 2] contract of purchase and sale was uploaded onto [Borrower 1’s] file at Elite Lending.
21. On that same date, at 10:49 am, Mr. Yu copied the [Property 1] mortgage application to create a new mortgage application for the financing of [Property 2].
22. Again on February 24, 2016, at 1:34 pm, Mr. Yu submitted the [Property 1] mortgage application to [Lender 1] (“[Lender 1]”). That application stated that:
 - [Borrower 1] [was] refinancing their existing residence located at [Property 1];
 - The outstanding mortgage on [Property 1] totaled \$268,000;
 - [Borrower 1] [was] seeking funds in the amount of \$800,000;
 - Half the funds would be used for investment purposes, and half would be given to a relative for a down payment; and
 - [Property 1] would be owner-occupied.
23. On February 26, 2016, at 12:05 pm, [Lender 1] approved the [Property 1] mortgage application in the amount of \$800,000. The mortgage commitment letter included a condition that [Lender 1] reserved the right to decline or amend the commitment if the property was not being occupied as [Borrower 1’s] personal residence.

24. Later that evening, at 7:52 pm, [Broker 1] wrote to [Borrower A] by email, copying Mr. Yu. In that email [Broker 1] indicated that he was confident that they would be able to get the financing done, in the amount of \$810,000, for the purchase of [Property 2]. The following day, [Borrower 1] signed an addendum removing the financing subject on the purchase of [Property 2], and that addendum was sent to [Broker 1].
25. On February 27, 2016, [Borrower 1] entered into a residential tenancy agreement for the rental of [Property 1], to commence on July 1, 2016. That tenancy agreement provided an address for [Borrower 1] as the [Property 2] address, and the tenancy agreement was uploaded onto the [Borrower 1's] file at Elite Lending.
26. The February 27, 2016 tenancy agreement for [Property 1] was not provided to [Lender 1] in respect of the mortgage application for [Property 1].
27. On March 8, 2016 Mr. Yu submitted the mortgage application for [Property 2] to [Lender 2]. That application stated that:
 - [Borrower 1] [was] seeking financing to purchase [Property 2] as a primary residence;
 - [Property 2] would be owner occupied and rented;
 - The down payment of \$710,000 for [Property 2] would come from equity of [Property 1] and the borrowers had a commitment for that financing; and
 - A lease agreement had been signed for [Property 1].
28. [Lender 2] approved the [Property 2] mortgage application on March 8, 2016, in the amount of \$900,000.
29. In the ASF Mr. Yu agreed that, by February 26, 2016 at the latest, the Property 1] mortgage application was misleading in that it should have contained the following information:
 - [Borrower A] and [Borrower B] were seeking concurrent financing to purchase another property, namely, [Property 2];
 - the funds from the mortgage would not be used for investing and to give to a relative, but instead would be used to finance the purchase of [Property 2];
 - [Property 1] would no longer be owner-occupied.
30. Mr. Yu admitted that he did not provide [Lender 1] with information to correct the misleading information referred to above, and that [Lender 1] paid lower commissions to submortgage brokers in respect of mortgage applications for rental properties than for owner occupied properties.

[Borrower 2] Applications

31. In March of 2017 [Borrower C] and [Borrower D] (the “[collectively Borrower 2]”) sought to refinance their residence at [Property 3], New Westminster (the “[Property 3]”). [Borrower 2] explained to [Broker 1] that they intended to use the funds from the refinancing to purchase an investment property.
32. On March 21, 2017 [Broker 1] introduced Mr. Yu to [Borrower C] by email.
33. On that same date, Mr. Yu created a mortgage application for [Borrower 2's] refinancing of [Property 3] (the “[Property 3] Refinancing Application”), using [Broker 2's] Filogix account.
34. On March 23, 2017 [Borrower C] indicated to [Broker 1], by email, that [Borrower 2] [was] seeking to purchase a one bedroom condo and that approval of financing for a \$580,000 mortgage would be sufficient.
35. [Broker 1], on March 24, 2017, forwarded Mr. Yu the above noted email exchange with [Borrower C].

36. Mr. Yu replied within that email exchange to [Borrower C] that same day, introducing himself and indicating that he was working with [Broker 1] in respect of their mortgage application. Mr. Yu noted that he was about to send in the application to the lender but that he required further information regarding both of [Borrower 2's] employment.
37. Subsequently, on March 24, 2017, Mr. Yu submitted the [Property 3] Refinancing Application to [Lender 3] (“[Lender 3]”). The application stated that:
 - [Borrower 2] [was] seeking to refinance [Property 1] and to pay off an existing mortgage at [Lender 4], which totalled \$452,000;
 - The total mortgage being sought was \$600,000;
 - [Property 3] would be owner occupied and rented; and
 - [Property 3] generated \$1,000 per month in rental income.
38. On March 27, 2017, [Lender 3] approved the [Property 3] Refinancing Application. [Lender 3] approved a change in the amortization period on the approval on March 29, 2017.
39. Pursuant to [Lender 3]'s approval conditions requiring a copy of the most recent tenancy agreement for the basement of [Property 3], Mr. Yu submitted a residential tenancy agreement to [Lender 3], dated July 5, 2016, which indicated that the basement of [Property 3] was rented to a tenant, [Tenant 1], for \$1,000 per month (“[Tenant 1] Tenancy #1”).
40. The [Tenant 1] Tenancy #1 agreement was false. Mr. Yu created that agreement from a blank residential tenancy agreement and inserted fictitious information and signed the agreement himself by imitating the signatures of [Borrower C] and [Tenant 1].
41. In fact, the basement suite of [Property 3] was rented on a monthly basis, with separate rooms rented out individually at a rate of \$425 to \$520 per month, on a month to month basis. [Tenant 1] was renting one of those rooms for \$425 per month.
42. Mr. Yu admitted that the [Property 3] Refinancing Application was misleading in that:
 - it failed to disclose that [Borrower 2] intended to partially use the refinanced amount as a downpayment for the purchase of a second property;
 - it failed to disclose that [Borrower 2] [was] seeking concurrent financing for the purchase of another property;
 - it contained a residential tenancy agreement that was not genuine.
43. On April 4, 2017, [Borrower 2] entered into a contract for the purchase and sale of a property located at [Property 4], Vancouver (the “[Property 4]”). Mr. Yu created and submitted a mortgage application for [Property 4] on April 5, 2017 (the “[Property 4] Application”).
44. In the [Property 4] Application, Mr. Yu indicated that:
 - [Borrower 2] [was] seeking financing to purchase [Property 4];
 - The down payment of \$125,000 would come from existing equity of [Property 3] through the [Lender 3] mortgage;
 - The total mortgage amount being sought was \$386,250;
 - [Property 3] generated \$1,500 in monthly rental income;
 - [Property 4] would be used as a rental property; and
 - [Property 4] would generate \$2,000 in monthly rental income.
45. On April 10, 2017, [Lender 5] approved the [Property 4] Application. That approval required either an appraiser’s schedule, appraiser’s market rent estimate, a T1 General Statement of

Real Estate Rental income, financial statements, or copies of the lease agreements to support the income generated from the [Property 3] and [Property 4] properties.

46. In order to comply with that requirement, Mr. Yu created a second false residential tenancy agreement for [Property 3]. On this occasion, that agreement stated that [Property 3] was rented to [Tenant 1] for \$1,500 per month (“[Tenant 1] Tenancy #2”). Mr. Yu inserted fictitious information into that document, and then had [Borrower C] sign it, after which he placed a false signature on the agreement for [Tenant 1].
47. Mr. Yu also created a false residential tenancy agreement for [Property 4] (the “[Property 4] Tenancy”), dated April 16, 2017, which indicated that [Property 4] was rented for \$2,000 per month. Mr. Yu created the [Property 4] residential tenancy agreement from a blank form which he had [Borrower C] sign after entering the fictitious information regarding the amount of rent and date of the agreement. Mr. Yu then placed a false signature on the agreement for a fictitious individual, [Tenant 2].
48. In fact, [Property 4] was not rented out at the time Mr. Yu prepared the false residential tenancy agreement for that property, and was never rented to an individual named [Tenant 2]. [Property 4] was rented out by [Borrower 2] before the close of purchase, for just under \$1,900 per month.
49. Mr. Yu sent the [Tenant 1] Tenancy #2 and the [Property 4] Tenancy documents to [Borrower C] to sign on April 27, 2017.
50. Mr. Yu admitted that the [Property 4] Application was misleading in that it contained two residential tenancy agreements that were not genuine.

Mr. Yu

51. Mr. Yu testified that he had graduated from university in 2009 with a major in economics and business. He noted that in September 2022 he had obtained a Masters in Business Administration.
52. Mr. Yu was employed by [Lender 3] from 2008 to 2012. While he commenced his work there as a customer services representative, he eventually became a financial services representative, a customer service manager, and then a mortgage specialist in November 2011.
53. Mr. Yu described his role as a mortgage specialist as a mobile position in which he met clients where it was convenient and easy. He indicated that he was engaged in that role for approximately eight or nine months, and that he had not completed any deals during that time period. Mr. Yu indicated that he realized he wanted to continue in management, and as a result moved to [Bank 1] (“[Bank 1]”) as an assistant branch manager.
54. Mr. Yu worked at [Bank 1] as an assistant branch manager for approximately three years prior to becoming registered as a submortgage broker. Mr. Yu indicated that he was primarily involved with customer service, and that he had very little involvement with mortgages in that role.
55. In describing how he moved to becoming a submortgage broker, Mr. Yu indicated that he had met [Broker 1] at Simon Fraser University, and that they had continued to connect from time to time while Mr. Yu was working for [Bank 1]. Mr. Yu indicated that [Broker 1] had informed him that he and another individual, [Broker 2], had formed a team to work together as mortgage brokers under the name [Group 1]. Mr. Yu indicated that [Broker 1] had informed him that they needed someone who could act as a licensed assistant, put deals together, collect documents with their instructions, and submit deals to lenders.
56. Mr. Yu stated that he had taken a leap of faith and joined [Broker 1] and [Broker 2] in February 2015. He noted that he had been able to challenge the mortgage broker training course due to his previous banking experience. Mr. Yu described having engaged in self study and passing the registration examination on his first attempt.

57. After being registered, Mr. Yu indicated that he began working at Elite Lending Corporation. He described having received very minimal mortgage industry training when he commenced working there, and that he generally learned how to do the job through on-the-job learning. Specifically, Mr. Yu indicated that if he had questions, he would ask [Broker 1], [Broker 2], or any of the other more experienced brokers in the office.
58. Mr. Yu stated that in 2016 and 2017 he was acting mostly as a licensed assistant, where he would help package applications. Mr. Yu stated that [Broker 1] and [Broker 2] would send emails with documents, and he would try to put things together. Mr. Yu indicated that under the instructions he received from [Broker 1] and [Broker 2] he would submit applications to lenders.
59. Mr. Yu acknowledged that, at that time, he did have contact with clients in situations in which there was information that was missing, or where [Broker 1] and [Broker 2] were busy.
60. When asked about his understanding of his professional obligations as a mortgage broker regarding concurrent applications, Mr. Yu stated that he was relatively new to the industry at the time, did not work on any of his own files, and generally did not appreciate the importance of concurrent applications. Mr. Yu specifically indicated that he did not understand the importance of updating lenders before something funded if something with respect to the applicants' financial situation had changed.
61. Regarding the residential tenancy agreements submitted in [Borrower 2's] mortgage applications, Mr. Yu indicated that he had taken a shortcut.
62. He explained that he had spoken with a real estate appraiser who had informed him that the entire unit at [Property 3] could be rented out for \$1,500. Mr. Yu stated that at that time many banks would accept an appraiser report based on market rent estimates, and that he had wanted to save time in not waiting to obtain and pay for such a report. Mr. Yu indicated that he had suggested to [Borrower 2] that a lease agreement would work as well in providing proof to the banks that the unit could be rented for a certain price, and, with their agreement, he created the lease agreements. Mr. Yu indicated that he did this for each of [Borrower 2's] properties.
63. Mr. Yu stated that the "shortcut", as he described it, was that rather than doing things properly and obtaining a market rent report, which would have taken a few more days and involved a cost to his clients, he had created the lease agreements based on what the appraiser had told him the units would rent for.
64. Mr. Yu acknowledged that he deeply regretted his actions, and reiterated that his intention had been to save his client time and money.
65. Mr. Yu denied that [Borrower 2's] applications would not have been accepted without the false lease agreement, reiterating that he could have obtained a market rate report from an appraiser which would have indicated that the properties would bring in the amount of rental income claimed on the false agreements. However, when it was pointed out to him that the Mortgage Commitment letter from [Lender 3] for [Property 3] specifically required a tenancy agreement confirming \$1000 per month rental income, Mr. Yu acknowledged that a tenancy agreement was required for that property, and that an appraiser report would not have sufficed.
66. Mr. Yu explained that he was much more experienced and confident in his role as a mortgage broker at the time of the hearing than he had been in 2016 and 2017. He stated that he was much more familiar with applicable rules and policies, and that as he now generally had more client interactions than he did at the time of the subject applications, he was able to avoid communication issues.
67. Mr. Yu noted that the proceeding of this matter had caused him a significant amount of stress as well as concerns that certain banks or lenders may not want to work with him. He noted that after the Notice of Hearing was issued in 2020 certain lenders had ceased working with him and their team, and noted three specifically. He noted that there was further concern that other lenders would cease working with him after the issuing of the decision in this matter.

68. In cross examination Mr. Yu was taken to the 2014 Mortgage Brokerage in British Columbia Course Manual. Mr. Yu acknowledged that he had used that manual to study for his mortgage broker examination. He acknowledged that there was a section in that manual which was entitled “Misleading Lenders” and which described that mortgage brokers were required to be conscientious in not providing lenders with false or misleading information about borrowers.

Discussion

Findings On Liability

69. As set out above, Mr. Yu has admitted to each of the allegations at items 1(a), 1(b), and 1(c) of the Notice of Hearing.
70. I accept that Mr. Yu's admissions and actions of:
- Providing misleading information to lenders by failing to disclose that [Borrower 1] [was] seeking concurrent mortgage financing for the purchase of another property;
 - Providing misleading information to lenders by stating that [Property 1] would be owner occupied when he knew that it would not;
 - Providing misleading information to lenders by creating false residential tenancy agreements and submitting those as if they were genuine; and
 - Providing misleading information to lenders by failing to disclose that [Borrower 2] [was] seeking concurrent mortgage financing for the purchase of a rental property;
- constitutes the conduct of mortgage business in a manner that is prejudicial to the public interest, contrary to section 8(1)(i) of the MBA.
71. Simply put, I consider that when a submortgage broker submits false or misleading information to a lender, the submortgage broker is creating a risk to the public.
72. In reaching this conclusion, I note that the Registrar has previously concluded that a person submitting incorrect or false information on a mortgage application to a lender amounts to the conducting of business in a manner that is prejudicial to the public interest contrary to section 8(1)(i): *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia*).
73. The risk to the public that is created through the provision of misleading information of the type that Mr. Yu has admitted to in this case could serve to place borrowers at risk of entering into mortgages they cannot in fact afford, and could serve to place lenders at risk of making loans they would not have otherwise made. Overall, the provision of this type of inaccurate information by submortgage brokers undermines public confidence in the submortgage industry: *Kia*, page 30.
74. I agree with the comments in *Kia* that, in maintaining public confidence in the submortgage industry through the administration of the MBA, the Registrar must consider the “public as a whole”, which is broad, and ought to be taken to include:
- ...lenders, borrowers, public and private mortgage insurance companies like CMHC, the mortgage broker industry, and numerous other interested stakeholders.
- Kia*, page 25**
75. In order for the public, which includes lenders, to have confidence in the industry, the Registrar expects that submortgage brokers provide fulsome and accurate information on borrowing applications submitted to lenders. I consider that allowing brokers to submit mortgage applications to lenders which contain false information, or which fail to contain information that is clearly relevant to that application (such as a concurrent application for financing), would cause public confidence in the mortgage system to be lost. I find that a broker who undertakes such an action should be found to have conducted business in a manner that is prejudicial to the public interest contrary to section 8(1)(i) of the MBA.

76. Having considered the above principles, along with Mr. Yu's admissions, I find that while registered as a submortgage broker, Mr. Yu conducted business in a manner prejudicial to the public, contrary to section 8(1)(i) of the MBA as follows:
- In respect of the mortgage application of [Borrower A] and [Borrower B] dated February 24, 2016 in relation to a property located at [Property 1], Vancouver, by submitting a mortgage application to a lender which Mr. Yu knew or ought to have known was misleading in that:
 - i. The application failed to disclose that the borrowers were seeking concurrent mortgage financing for the purchase of another property; and
 - ii. The application stated that the property would be owner occupied when Mr. Yu knew or ought to have known that the property would not be owner occupied;
 - In respect of the mortgage applications of [Borrower C] and [Borrower D] dated March 24, 2017 and April 5, 2017, by submitting applications that were misleading in that they contained false residential tenancy agreements on behalf of the borrowers and those tenancy agreements were submitted to lenders as if they were genuine; and
 - In respect of the mortgage application of [Borrower C] and [Borrower D] dated March 24, 2017, by submitting a mortgage application that was misleading in that it failed to disclose that the borrowers were seeking concurrent mortgage financing for the purchase of a rental property.

Findings on Sanctions

Applicable Law and Legal Principles

77. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.
78. Section 8(1) and section 8(1.1) address the sanctions or actions the Registrar may take against a person who is registered under the MBA.
79. Specifically, section 8(1) provides that:
- 8 (1)** After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:
- (a) suspend the person's registration;
 - (b) cancel the person's registration;
 - (c) order the person to cease a specified activity;
 - (d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
- if, in the opinion of the registrar, any of the following paragraphs apply:
- (e) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
 - (f) the person is in breach of this Act, the regulations or a condition of registration;
 - (...)

- (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
- (...)

80. Section 8(1.1) further provides that after giving a person registered under the MBA an opportunity to be heard, the Registrar may order the person to pay an administrative penalty of not more than \$50,000, if, in the opinion of the Registrar, any of the paragraphs (f) to (i) of section 8(1) apply.

81. Having reviewed the applicable legislation, I turn to the general principles to be considered when applying sanctions in the regulatory context.

82. 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.

83. 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.¹

84. 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.

85. 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?

¹ *Allan (Re), Decision on Penalty and Costs*, May 11, 2020 (BCFSA)

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?

86. 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

The Misconduct

87. The parties agree that lenders require full disclosure from a submortgage broker regarding a borrower's assets and liabilities, including future plans regarding assets and liabilities, in order to determine whether the borrower presents an acceptable risk. Specifically, lenders accept information and comments from submortgage brokers in a mortgage application as true and rely on the relationship of trust between lender and broker in making decisions on applications.
88. They further agree that a submortgage broker is required to provide all of the borrower's liabilities including particulars of all of the borrower's mortgage financing, and that if the borrower is concurrently planning on acquiring further real property, the anticipated additional financing obligations must be disclosed as well. Lenders expect brokers to disclose concurrent applications in order to enable the lender to calculate a borrower's ability to service additional debt. The broker's disclosure obligation to the lender is an ongoing one.
89. Finally, the parties agree that lenders consider mortgages on rental properties present a higher risk than on owner occupied properties, and that rental properties attract less favorable interest rates from lenders, lower rental income offsets, lower loan amounts, and may require that a borrower have a larger down payment to complete a purchase.
90. With the above noted context in mind, I turn to the nature of Mr. Yu's misconduct.
91. BCFSa submits that not only was Mr. Yu's misconduct serious in that he misled lenders by not informing them that his clients were seeking concurrent financing, but that the acts of creating the false residential tenancy documents were arguably one of the more serious forms of professional misconduct that a professional can commit.
92. I will consider each of the areas of misconduct in turn.

Concurrent Financing

93. Mr. Yu describes his misconduct in this regard as being “more akin to negligence”. Specifically, he submits that he did not set out to intentionally breach his obligations as a submortgage broker by failing to update the applications.
94. BCFSa takes the position that the omission of information on a mortgage application is not simply negligent. Rather, in BCFSa’s submission, the omission of information such as the seeking of concurrent financing is a material omission and can amount to mortgage fraud.
95. Mr. Yu’s evidence in respect of each of [Borrower 1] and [Borrower 2’s] concurrent applications was that he did not become aware of the change in his clients’ intentions until after the first mortgage application had been submitted and approved.
96. Specifically, in respect of the [Borrower 1] application, Mr. Yu indicated that he did not recall being aware, at the time the application was submitted, of the [Property 2] contract of purchase and sale, and that he did not recall seeing the February 23, 2016 email attaching the accepted contract of purchase and sale for [Property 2].
97. It is clear that on February 24, 2016, Mr. Yu created a new mortgage application for [Borrower 1], with that new mortgage application having ultimately become the mortgage application on [Property 2].
98. It is also clear that later, on that same date, Mr. Yu submitted the application that he had created on February 10, 2016 for [Property 1].
99. While I accept that Mr. Yu may not recall being aware of the accepted purchase and sale contract on [Property 2] on February 24, 2016, I consider it to be more likely than not that given that Mr. Yu took the step of preparing a new mortgage application on that date, he had an awareness that [Borrower 1] [was] seeking some further type of financing.
100. I note, in reaching this conclusion, that regardless of whether Mr. Yu recalled receiving the offer of purchase and sale when he attended for an interview with BCFSa investigators or at the hearing of this matter, I consider it to be more likely than not that he did receive a copy of that offer when [Broker 1] forwarded it to him by email on February 22, 2016. I note further that the accepted contract of purchase and sale on [Property 2] was uploaded into [Borrower 1’s] electronic file at Elite Lending on the morning of February 24, 2016, prior to Mr. Yu having created the new mortgage application that ultimately became the application for [Property 2]. I again consider that, given those facts, it is more likely than not that Mr. Yu knew, when he was creating the second mortgage application on February 24, 2016, that he was doing so in respect of some type of further financing that his clients intended on seeking.
101. In my view, the timing of the creation of the new application on February 24, 2016, which ultimately became the [Property 2] Mortgage Application, and the submission of the [Property 1] mortgage application on that date, combined with the fact that the [Property 2] purchase and sale contract had a subject to financing clause that required removal by February 26, 2016, suggests that the sudden urge to submit the [Property 1] mortgage application on February 24, 2016 was driven by the fact that [Borrower 1] [was] going to be applying for concurrent financing.
102. While [Borrower 1] had not in fact applied for any further financing at the time the [Property 1] mortgage application was submitted, Mr. Yu was aware that [Borrower 1] intended to apply for further financing on another property. I consider the evidence to support a conclusion that there was a degree of intention in not informing the lender of the [Property 2] contract of purchase and sale, and likely concurrent financing application, which makes the misconduct engaged in with respect to February 24, 2016 [Borrower 1] application severe, and more than the mere “negligence” than Mr. Yu attempts to describe.
103. In reaching this conclusion I note that I consider the risk created by Mr. Yu’s misconduct in respect of the February 24, 2016 [Borrower 1] application to have been significant.

104. The provision of misleading information to a lender creates a significant risk of an adverse outcome for lenders (who may fund mortgages based on that incorrect information). It may also produce significant adverse outcomes for borrowers, who may end up with mortgages that they cannot in fact afford, causing them to experience, potentially, the loss of their home or the destruction of their credit rating.
105. In respect of the [Borrower 2] March 24, 2017 mortgage application, I agree with Mr. Yu's submission that the facts are more straightforward.
106. At the time Mr. Yu submitted the [Property 3] Refinancing Application, on March 24, 2017, [Borrower 2] had not found another property to purchase, and were not seeking concurrent financing. Similarly, at the time the [Property 3] Refinancing Application was approved, on March 27, 2017, [Borrower 2] had not found a property to purchase and were not seeking further financing. In sum, there was nothing for Mr. Yu to disclose to the lender at the time of the March 24 application or the March 27, 2017 acceptance of that application.
107. While it is clear, and Mr. Yu accepts, that he ought to have updated [Property 3] Refinancing Application after [Borrower 2] had entered into the contract of purchase and sale on [Property 4] on April 4, 2017, I accept that Mr. Yu's failure to do so at that time appears to be more in the vein of negligence. There is no evidence before me which would indicate any of the intentionality which I consider the evidence to demonstrate in respect of the [Borrower 1] Applications.
108. I consider that Mr. Yu's misconduct in respect of [Borrower 2's] March 24, 2017 application, while still serious, is not as severe as that in the [Borrower 1] application.
109. I acknowledge, in reaching the above conclusions regarding the severity of his misconduct, that Mr. Yu indicated in his evidence that he did not recall the course material dealing with concurrent mortgage applications, and what would need to be disclosed or not disclosed in such a situation. Further, [Investigator 1], the BCFSA investigator who testified at the hearing of this matter, acknowledged that he was not aware of anything in the 2014 Mortgage Brokers' course material which made specific reference to rules in respect of concurrent mortgage applications. [Investigator 1] also agreed that the Registrar had not, to his knowledge, issued an information bulletin that specifically dealt with the issue of concurrent mortgage applications.
110. However, as BCFSA noted in its submissions, FICOM had issued an industry alert regarding the necessity of disclosing concurrent mortgage financing and changes in use of property in 2015, at a time when Mr. Yu was registered, and which Mr. Yu would have received.
111. I am satisfied, based on the existence of that industry alert, as well as Mr. Yu's admissions in this case, that Mr. Yu knew that he ought to update lenders on the status of applications, including whether concurrent financing was being sought by a borrower, throughout the course of the application process.

Owner Occupied

112. Mr. Yu has admitted that the indication in the February 24, 2016 [Property 1] mortgage application that the property would be owner occupied was misleading. He has further admitted that by at the latest, February 26, 2016, that mortgage application should have contained information that [Property 1] would no longer be owner occupied.
113. I note that by February 27, 2016, [Borrower 1] had entered into a residential tenancy agreement to rent [Property 1]. I also note that that document was uploaded onto [Borrower 1's] file at Elite Lending.
114. While it may not have been a certainty, as of February 24, 2016, that [Borrower 1] [was] not going to be residing at [Property 1], there can be no question that it was a certainty by the time they entered into the residential tenancy agreement on February 27, 2016.
115. Given that the February 26, 2016 mortgage commitment letter from [Lender 1] indicated that [Lender 1] reserved the right to decline or amend the commitment if [Property 1] was not being occupied as [Borrower 1's] personal residence, and Mr. Yu was, at the very least, aware that

[Borrower 1] would not be occupying [Property 1] as a personal residence by February 27, 2016, the failure to provide that further information regarding [Borrower 1's] rental plans for [Property 1] to [Lender 1] was misleading.

116. While this misconduct was serious, I again accept that the evidence before me falls short of clearly indicating the intention to withhold the information from the lender.

Residential Tenancy Agreements

117. Mr. Yu agrees that his misconduct relating to the fabrication of the three residential tenancy agreements was serious.
118. There can be no doubt that the misconduct in creating false residential tenancy agreements with a view to ensuring that his clients were able to obtain financing was severe in nature. Mr. Yu's actions in this regard involved knowingly misrepresenting facts to two lenders. In each case, Mr. Yu took the steps of creating the false residential tenancy agreements on his own accord.
119. While Mr. Yu may have been of the view that he was simply providing the information that he would have been able to obtain from a market appraisal for those properties, the reality is that he did not document having any conversations regarding the likely rental income for those properties with an appraiser. In any event, even if I accept that Mr. Yu did have such conversations, it is clear that Mr. Yu knew, at least in respect of [Property 3], that a market appraisal report was not what was required by [Lender 3] in order to approve the [Property 3] Refinancing Application. As set out above, [Lender 3]'s approval conditions specifically required a copy of the most recent tenancy agreement for the basement of [Property 3].
120. Rather than providing the true information regarding the [Property 3] tenancies, which was that the rooms were rented out individually, which Mr. Yu knew lenders did not view positively, Mr. Yu created a residential tenancy agreement out of whole cloth. In my view, Mr. Yu's activity in this regard can only be described as severe misconduct.
121. While in the case of the [Property 4] Application it is true that the lender would have accepted a market appraisal report, Mr. Yu elected not to provide the same, and rather took the "shortcut" of again fabricating two residential tenancy agreements. I consider it to be particularly telling in respect of Mr. Yu's intentions in creating those false documents that in creating the [Tenant 1] Tenancy #2 document, Mr. Yu in fact increased the amount of monthly rent attributed to the basement [Property 3]. In my view, the fact that he increased the amount of monthly rental income attributed to [Property 3] indicates that Mr. Yu was seeking to mislead the lender as to the likely income from that property on a going forward basis.
122. The fact that Mr. Yu's misconduct in [Borrower 2's] applications was related to knowingly providing information that was false and/or misleading, increases the severity of the misconduct.

Other Relevant Factors

123. Mr. Yu was relatively new to the mortgage industry at the time of the misconduct in this case, having been first registered in February 2016.
124. He also had no discipline history prior to BCFSa commencing its investigation, which ultimately led to the issuing of the Notice of Hearing in 2020. I note further that Mr. Yu has continued to work in the mortgage industry as a submortgage broker for a significant number of years, and has had no further disciplinary issues raised.
125. I accept that, since at least 2018, there does not appear to be any pattern of misconduct present in Mr. Yu's work as a submortgage broker. I accept that this fact is entitled to some weight as a mitigating factor.
126. I note, however, that the applications at issue in this hearing occurred more than one year apart, in 2016 and 2017. While I acknowledge that a review of the remaining files that Mr. Yu worked on at that time were not flagged as showing any pattern of misconduct, I also consider

it to be clear that Mr. Yu was comfortable engaging in this type of misleading activity around that time.

127. Mr. Yu cooperated with the Registrar's investigation, including admitting his misconduct during the investigation and in the ASF.
128. Mr. Yu also indicated his remorse for having committed the misconduct, and I accept that remorse as having been sincere.
129. I note, in accepting that Mr. Yu was remorseful, I find it somewhat concerning that he continued to describe, at the hearing of this matter, the creation of false residential tenancy documents as constituting a shortcut towards completing a deal.
130. While I accept Mr. Yu's admission that the creation of the false residential tenancy agreement was misleading and contrary to section 8(1)(i), the fact that he considered that he was, in creating false documents, simply taking a shortcut given that he had spoken to an appraiser who had identified the market rates for those rentals, left me with the impression that he was still, even if perhaps only a minor degree, downplaying the nature of his misconduct. I acknowledge, in expressing the above, that Mr. Yu indicated at the hearing of this matter that he was simply trying to explain what had happened, rather than trying to make an excuse, and that he would not conduct his business in the same manner now as he had then.
131. Mr. Yu also suggests as a relevant factor the fact that he has experienced a degree of hardship, in that as a result of the issuing of the Notice of Hearing, three significant lenders ceased working with him, and that other lenders had advised him that they will likely not work with him in the future if findings are made against him in this proceeding.
132. While I acknowledge that the investigation and the issuing of the Notice of Hearing have likely had some type of negative effect on Mr. Yu's business, Mr. Yu did not suggest in his evidence that the effect has been to produce a hardship on his ability to carry on his business, which he appears to have done throughout this process.
133. While it may well be that further lenders choose not to work with Mr. Yu subsequent to the issuing of the orders in this decision, I do not consider that potential outcome to warrant significant weight as a mitigating factor. The paramount factors to be considered in applying a sanction, in my view, are the protection of the public through both specific and general deterrence. The fact that there may be some negative business consequences applied to Mr. Yu as a result of his misconduct should not attract much weight as a mitigating factor: see *Law Society of BC v. Faminoff*, 2017 LSBC 4, para. 104.

Submissions on Previous Cases

134. As set out above, in determining the appropriate sanction, 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 that the public will have confidence in.
135. The parties have referred to a number of previous decisions and consent orders in their submissions, and I have reviewed them all.
136. I note, in reviewing consent orders, that I consider that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty imposed by 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.
137. The cases BCFSAs has referred to include the following:
 - *In the Matter of the Mortgage Brokers Act and Scott Michael Allan*, May 11, 2020 (Registrar of Mortgage Brokers): Mr. Allan had altered an email sent to him by staff of the Registrar, and redistributed it to two other registrants as if it was genuine correspondence from the Registrar. The email purported to advise that the trade names used by the recipients were

- not registered under the MBA and could not be used. During the course of the investigation Mr. Allan made a false and misleading statement to investigators regarding how one of the registrants had received the email. The panel considered the provision of the false and misleading statement to be an aggravating factor, and concluded that an ineligibility period of two years was appropriate, as well as a \$5,000 administrative penalty.
- *In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v Peter Pak-Hung Lee* (consent order dated November 8, 2017) [Lee]: Mr. Lee altered a letter of confirmation of employment for his client to make it appear that his client was a full-time temporary employee, and submitted that altered letter to a lender as if it were genuine. Mr. Lee admitted to the lender that he had altered the letter shortly after submitting it, and his employment was terminated. The consent order led to a total nine-month exclusion from the mortgage industry, plus investigative costs.
 - *In the Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 v Soheil Arman Kia aka Soheil Armon Kia*, (Decision on Penalty and Costs dated December 14, 2017) [Kia]: The respondent submitted false or misleading statements in nine mortgage applications involving five sets of borrowers, failed to verify client income information in multiple transactions, and represented that various properties would be owner occupied when he knew they would in fact become rental properties. The respondent received a two-year suspension, along with requirements that he complete an educational course, that he consent and cooperate with any audit and bear the costs of such an audit, that he not be eligible to act as a designated individual for a period of seven years, and an order that he pay investigation costs.
 - *In the Matter of the Mortgage Brokers Act, RSBC 1996, c 313 v Jorawar Singh Gosal* (consent order dated April 1, 2016) [Gosal]: The respondent admitted to altering two notices of assessment without a borrower's knowledge or consent in order to secure more favorable mortgage terms. The respondent admitted he had altered the notices of assessment for several other clients. The respondent agreed to an order that the Registrar would not accept an application for registration for a period of 10 years, and to pay partial investigation costs.
 - *In the Matter of the Mortgage Brokers Act RSBC 1996, c. 313 and Shoallah Sadeghi*, Consent Order dated September 11, 2013: In this consent order Mr. Sadeghi agreed that he would not be eligible to re-apply to be registered under the MBA for a period of five years. Mr. Sadeghi specifically admitted to having authored an employment letter and submitting that letter to a lender as if it were genuine, while knowing that the information contained in that letter was untrue.
 - *In the Matter of the Mortgage Brokers Act RSBC 1996, c. 313 and Gурpal Singh (Paul) Beesla*, Consent Order dated January 7, 2008: In this consent order the respondent submortgage broker consented to an eight-year suspension and the payment of investigative costs. The respondent admitted to having submitted a number of employment letters in support of mortgage applications which he knew to be false, as well as made or had made false documents including pay stubs, residential tenancy agreements, income tax documents, and gift letters with the intent that lenders would act on them as if they were genuine. The respondent also admitted to having altered genuine documents, including a property disclosure statement, a contract of purchase and sale, a rental agreement and a job letter with the intent that they be relied upon by lenders as genuine.
 - *In the Matter of the Mortgage Brokers Act RSBC 1996, c 313 and Alissa Lyn Sarrazin* (Consent Order dated November 6, 2006): The respondent consented to an 18-month suspension, completion of further education and the payment of investigative costs. The respondent admitted to having knowingly signed a false employment letter in support of a loan for a colleague.
 - *In the Matter of the Mortgage Brokers Act RSBC 1996, c 313 and Stuart Ramsay* (Consent Order dated November 6, 2006): The respondent consented to a two-year suspension, completion of further education and payment of investigative costs. The respondent had

prepared and submitted a false employment letter to a lender in support of his own loan application.

- In the *Matter of the Mortgage Brokers Act and in the Matter of Gurdip Chand* (Hearing Decision dated March 13, 2006): The respondent failed to disclose judgments against him on his application for registration. He also authored a false employment letter and failed to disclose a second mortgage on a property held by a borrower, misleading the lender. The respondent also altered a contract of purchase and sale, counselled a client to submit false information to lenders, and submitted false documents to another mortgage broker in order to mislead them as to who was doing the conveyancing on the second mortgage in order to have that second mortgage registered without the knowledge of the bank. The respondent was given a five-year suspension, subject to re-registration requirements, and required to pay investigation costs.
- In the *Matter of the Mortgage Brokers Act, RSBC 1996, c. 313 and David Ford* (Hearing Decision dated February 1, 2002): The respondent advised a borrower to obtain a false gift letter in support of their application for a mortgage. The respondent prepared a draft letter, and provided it to the borrower, who had his father sign the gift letter. Mr. Ford was aware the gift letter was false, but still submitted it to the lender as part of the borrower's application. Mr. Ford claimed a lack of experience and that he had made an honest mistake. The Registrar ordered a four-month suspension, a \$1,000 administrative penalty and the payment of investigative costs.

138. Mr. Yu referred to the following cases:

- *In the Matter of the Mortgage Brokers Act and Elham Amirmoazami aka Ellie Moazami*, (consent order dated October 24, 2013): The respondent admitted to having submitted eight mortgage applications which included employment, financial and other information that she knew or ought to have known was false, to handling numerous documents used to support mortgage applications that she knew or ought to have known were improperly altered to falsely inflate an applicant's capacity to borrow, and to failing to conduct reasonable due diligence into the financial circumstances of her clients by not confirming financial information which was on its face unusual or suspect in the circumstances. The respondent also admitted to arranging four mortgages and receiving remuneration for arranging those mortgages when she was not registered as a submortgage broker. The respondent agreed to a \$45,000 administrative penalty for carrying on business as a submortgage broker in a manner prejudicial to the public interest, and for carrying on business as a submortgage broker while not registered under the Act.
- *In the Matter of Kambiz Ali Mahinsa*, Registrar of Mortgage Brokers, (consent order dated December 22, 2015): Mr. Mahinsa admitted that he had conducted mortgage business in a matter that was prejudicial to the public interest when he, in six mortgage applications:
 - (a) failed to investigate whether borrowers owned properties in addition to those disclosed in a mortgage application when he knew or ought to have known of such ownership;
 - (b) failed to advise lenders that borrowers were concurrently seeking financing for the purchase of other properties;
 - (c) prepared mortgage applications on the basis that the properties would be owner occupied when he knew or ought to have known that was not the case; and
 - (d) completed and submitted mortgage applications concurrently to different lenders where the borrowers' income and employment history varied significantly.Mr. Mahinsa consented to pay an administrative penalty in the amount of \$13,000, and to be ineligible to be a designated individual at a mortgage brokerage for a period of two years from the date of the consent order.
- *Cook (Re)*, Consent Order dated May 10, 2012 (Registrar of Mortgage Brokers): The respondent submortgage broker admitted to having engaged in conduct prejudicial to the

public interest contrary to section 8(1)(i) of the *MBA* when he submitted several mortgage applications without disclosing that his clients were seeking concurrent financing to purchase other properties; failed to disclose on those mortgage applications that his clients owned other properties that Mr. Cook ought to have been aware of; submitted mortgage applications indicating that homes would be owner-occupied when he knew they would not be; submitted a mortgage application indicating that a client had moved to a location when he knew that the client would not be moving for another seven weeks; failed to amend a disclosure statement given to a lender to disclose a personal conflict of interest; failed to disclose to lenders the existence of a possible conflict of interest when the vendor and borrower's employer were controlled by the same person and/or where the borrower and the employer who verified income were related; failed to meet or speak to a client to verify information found on a mortgage application provided to Mr. Cook by a third party; completed mortgage applications concurrently when the client's income varied on equity and stated income and loan applications. Mr. Cook consented to pay a \$25,000 administrative penalty, as well as \$10,000 in investigative costs.

- *Nevis (Re), Consent Order, November 9, 2015, Registrar of Mortgage Brokers*: The respondent consented to an administrative penalty of \$10,000, payment of partial investigative costs, and restrictions on his registration. The respondent admitted to having, in the case of four borrowers, failed to investigate whether borrowers owned other properties when he knew or ought to have known they did; failed to advise lenders that the borrowers were seeking concurrent financing; prepared mortgage applications on the basis the properties would be owner occupied when he knew or ought to have known they would not; and prepared applications to different lenders for the same borrowers which contained unexplained variations in residency, rental income, and/or ownership of properties.

Decision on Sanction

139. 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.
140. 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 penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.
141. I am of the view that the severe nature of the misconduct engaged in by Mr. Yu warrants a significant sanction.
142. Having considered all of the facts and admissions before me, I am of the view that there was, in respect of portions of both the [Borrower 1] February 24, 2016 application and each of the [Borrower 2] applications, an intention to mislead the prospective lenders. In the [Borrower 2] application, the severity of the misconduct is exacerbated by the fact that Mr. Yu created false documents in support of the applications.
143. I consider this misconduct to be severe, and to require some degree of specific deterrence.
144. I further consider that the circumstances of the misconduct in this case require general deterrence, in that it must be made clear to mortgage brokers that although their role must be to promote the interests of their clients, the promotion of that interest cannot be allowed to take place to the detriment of the public as a whole.
145. The knowing provision of false information regarding issues such as fake tenancy agreements bearing false rental incomes and forged signatures, as well as submitting inaccurate

information regarding concurrent financing and owner occupancy, are simply not actions that can be tolerated under the MBA.

146. In reaching that conclusion, I acknowledge that there is no evidence before me that there was any specific harm caused to either the lenders or the applicants Mr. Yu was representing in the applications at issue. Nevertheless, Mr. Yu's actions of knowingly providing misleading and false information had the potential to result in significant financial loss to both lenders and borrowers.
147. Mr. Yu's misconduct relates to the most fundamental and important aspects of being a mortgage broker. In my view, a mortgage broker who engages in the type of misconduct that Mr. Yu did, creates a danger of being able to conceal incorrect or fraudulent mortgage applications, due to the reliance that lenders place on mortgage brokers, as the intermediary, to have ensured that the information they are submitting in an application is accurate, as opposed to false and/or misleading. The danger that such activity creates to the public is, in my view, plain.
148. In setting out the above, I acknowledge that since 2017, Mr. Yu has not demonstrated any ongoing disregard for the MBA's regulatory framework. Rather, Mr. Yu has in fact continued to work in the mortgage industry successfully and without further issue since 2017. I note further that Mr. Yu cooperated with the investigation into this matter.
149. While I acknowledge the mitigating factors present in this case, I do not consider that the brief four-month suspension suggested by Mr. Yu would be sufficient to provide the specific and general deterrence that is required to ensure that the public is protected from the kind of severe misconduct that Mr. Yu has admitted to in this case. While Mr. Yu submits that the *Ford* case, in which a fourth-month suspension was issued, is similar to his in the nature and the degree of the misconduct, I am unable to agree.
150. In *Ford*, there was the creation of only a single false document. While Mr. Yu submits that the misconduct in *Ford* was in fact more serious than Mr. Yu's on the basis that Mr. Ford was of the view that, without the false document, lenders would not have approved the mortgage application, I consider this submission to ignore the fact that in the [Property 3] Refinancing Application, the [Lender 3] commitment letter specifically required a copy of the most recent tenancy agreement for the basement of [Property 3]. Mr. Yu acknowledged in his evidence that the tenancy agreement was required for that application, and the market appraisal report that he indicated he would have been able to obtain would not have been sufficient. In my view, Mr. Yu's admission in this regard makes clear that without the provision of the false residential tenancy agreement, the [Property 3] Refinancing Application may well have been a "bad deal".
151. Further, unlike in *Ford*, Mr. Yu produced two more false documents, and also misled lenders in respect of concurrent financing and owner occupancy. In sum, I consider Mr. Yu's misconduct to be more severe than that of Mr. Ford, and to warrant a more significant period of suspension.
152. Were Mr. Yu not issued a significant suspension for his severe misconduct, I do not consider the protection of the public would be ensured, in that I do not consider there would be sufficient deterrence present to encourage compliance in the future. Similarly, I do not consider that a lesser penalty would be sufficient to ensure confidence in the integrity of the mortgage profession and industry.
153. I note, in setting out the above, that I recognize Mr. Yu's submissions that in formulating a penalty, the Registrar ought to not focus on general deterrence only. I agree. In this case, while it is true that Mr. Yu has continued to work in the mortgage industry with no apparent issues since 2017, I consider that in addition to the general deterrence that is required to ensure the protection of the public, specific deterrence is still required in this case. While Mr. Yu has acknowledged his misconduct and expressed remorse, the fact remains that he created false documents with a view to misleading lenders. Specific deterrence is required in order to ensure that Mr. Yu does not consider such actions again.

154. I similarly acknowledge the impact Mr. Yu says that the investigation and the issuing of the Notice of Hearing has had on him, including some lenders refusing to continue working with him. While there is a specific deterrence aspect to that impact, the reality is that Mr. Yu has been able to continue to have a successful career in the industry with no evidence before me indicating that he has experienced any negative effect to his career path as a result of his severe misconduct.
155. After considering those factors, and the nature of his misconduct, I also do not consider the circumstances of this case to be as severe as those in *Kia*, where the number of false or misleading statements far exceeded those in Mr. Yu's case, and where Mr. Kia was issued a two year period of ineligibility.
156. After considering all of the information before me, and recognizing both the aggravating and mitigating factors at hand, and the need for both specific and general deterrence, I am of the view that a period of suspension of 14 months is appropriate.

Costs

157. 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.
158. The Registrar does not have its own tariff of costs.
159. 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.²
160. 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).
161. The investigation into Mr. Yu resulted from an initial investigation into [Broker 1]'s files. The investigation eventually encompassed not only [Broker 1], but [Broker 2] and Mr. Yu as well. A single certificate of investigative costs was issued in relation to that investigation, for a total of \$24,660.76, based on a rate of \$100 per hour for the investigator. BCFSA also engaged a

² Rule 57 is now Rule 14-1.

third-party investigator in respect of the [Borrower 2] transactions, which submitted a bill of \$1,980.30.

162. BCFSA has submitted that Mr. Yu should pay one quarter of the above noted costs, for a total of \$6,384.89. In addition, BCFSA has submitted a bill of legal costs of \$15,283.74, for a total of \$21,668.63.
163. Mr. Yu submits that a costs award of over \$21,000 is too high for what amounted to a relatively brief hearing. He submits that a total award of \$10,000 would be appropriate.
164. In making that argument Mr. Yu has reviewed the bill of legal costs, and submits that while BCFSA has claimed 89 units, a more appropriate figure would be 39 units. In particular, Mr. Yu takes issue with the number of units claimed in respect of instructions and investigations, which he says should be zero as opposed to the 20 units claimed, given that BCFSA has already made a separate claim for investigative costs. Mr. Yu further submits that the number of units claimed for attendance at the proceeding should be reduced by 10, as the hearing time was reduced.
165. Mr. Yu also objected to payment for certain disbursements claimed by BCFSA, including the cancellation of a court reporter, the serving of a subpoena on an individual who did not attend as a witness, and the printing of a book of documents.
166. BCFSA did not agree with the reductions sought in its bill of legal costs, other than the late cancellation fee of \$892.50.
167. I accept that BCFSA has achieved substantial success in this matter, and that costs should be awarded. However, having considered the submissions of the parties, and having regard that an award of costs is discretionary, I find that a reduction is warranted. In particular I note that I agree with Mr. Yu that given the amount of investigative costs being sought in this matter (more than \$6,000), I do not consider that a further \$1,650 should be sought in terms of the investigation under legal costs. I further agree that the disbursements related to the cancellation of the court reporter and hearing space are not disbursements that should be borne by Mr. Yu.
168. While I have considered Mr. Yu's submissions regarding the remaining units claimed by BCFSA, including things such as process and correspondence with witnesses, and while I acknowledge Mr. Yu's position that some of that time should be reduced given that an agreed statement of facts was reached and no witnesses were in fact called (other than a BCFSA investigator), I accept BCFSA's submission that the preparation and communication was required in advance of the hearing, given that the agreed statement of facts had not yet been reached.
169. After considering the submissions of the parties, I consider that a reduction in the total costs of the inquiry sought by BCFSA is warranted. Taking into account a reduction in the investigative costs claimed in the legal bill of costs, and the reduction associated with disbursements including the cancellation of a day of hearing (\$892.50) and the printing of books of documents that were largely not used in the hearing (\$1,121.45), I consider that an appropriate order is that Mr. Yu should pay a total of \$18,000 for the costs of the inquiry.

Conclusion and Orders

170. Having found that Mr. Yu conducted mortgage business in British Columbia in a manner prejudicial to the public interest contrary to section 8(1)(i) of the MBA, as admitted by Mr. Yu in the Agreed Statement of Fact and as found above at paragraph 76:
 - Pursuant to section 8(1)(a) of the *Mortgage Brokers Act*, I order that Chi Young (Norris) Yu's registration is suspended, effective 60 days from the date of this order, and that Chi Young (Norris) Yu will not be eligible to apply for registration as a submortgage broker under the *Mortgage Brokers Act* for a period of 14 months from the effective date of the suspension;

- Pursuant to section 6(9) of the *Mortgage Brokers Act*, Chi Young (Norris) Yu is ordered to pay to BCFSa \$18,000 for inquiry costs of this proceeding, within 60 days of the date of this order.

Right of Appeal

171. Pursuant to section 9 of the *Mortgage Brokers Act*, Chi Young (Norris) Yu may appeal the above orders to the Financial Services Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 22nd day of January, 2024.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer