

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

AND

IN THE MATTER OF
GAGAN DEEP BACHRA

Decision on Penalty and Costs

[This Decision has been redacted before publication.]

Date of Hearing: Written Submissions
Counsel for BCFSA: Laura Forseille
Counsel for the Respondents: Janessa Mason
Hearing Officer: Andrew Pendray

Introduction

1. On July 17, 2019, a Notice of Hearing was issued alleging that Gagan Deep Bachra 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 Notice of Hearing further alleged that Mr. Bachra had failed to disclose a conflict of interest in a mortgage transaction, contrary to section 17.4(1) and 17.4(2) of the MBA.
3. The allegations against Mr. Bachra relate to transactions which occurred in 2015 and 2016.
4. On June 20, 2023, Mr. Bachra admitted liability in respect of the allegations set out in the July 17, 2019 Notice of Hearing.
5. This decision relates to the appropriate orders to be issued against Mr. Bachra in respect of those admissions.
6. The hearing proceeded by way of written submissions.
7. BCFSA seeks an order that Mr. Bachra pay an administrative penalty of \$50,000 pursuant to section 8 of the MBA, as well as an order that Mr. Bachra pay investigative costs in the amount of \$19,067.78 pursuant to section 6(9) of the MBA.

8. Mr. Bachra takes the position that rather than an administrative penalty, the appropriate sanction would be suspension of his licence and registration under the MBA for a period of five years, backdated to 2019, or, alternatively, a two year suspension, effective immediately. Mr. Bachra further takes the position that if an administrative penalty was ordered along with a suspension, such penalty should not exceed \$5,000, and that any stand-alone administrative penalty should not exceed \$10,000.

Issues

9. The issue is the appropriate orders to be issued in respect of Mr. Bachra's conduct, as provided for by section 8(1.2) of the *MBA*.
10. Additionally, there is the question of whether Mr. Bachra should be required to pay investigative and hearing costs pursuant to section 6(9) of the *MBA*.

Jurisdiction

11. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers (the "Registrar") in respect of orders under section 8 and 6(9) of the *MBA*, pursuant to a May 16, 2023 Acting Capacity Instrument.

Background

12. Mr. Bachra was originally registered as a submortgage broker on April 21, 2006. At the time of the transactions set out in the Notice of Hearing, Mr. Bachra was registered as a submortgage broker with Verico FS Capital Inc., doing business as "FS Capital".
13. Mr. Bachra was last registered with Dominion Lending Centres Elite Lending. He has not been registered under the *MBA* since November 2020.
14. As noted above, the allegations set out in the Notice of Hearing relate to Mr. Bachra's involvement in a number of mortgage transactions dating to 2015 and 2016. In each of those transactions Mr. Bachra either prepared a mortgage application, or he submitted a mortgage application to a lender.

Admissions

15. Mr. Bachra has made the following admissions in respect of those transactions:
While registered as a submortgage broker, he conducted business in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the *MBA*, by failing to take sufficient steps to verify the accuracy of information presented to mortgage lenders, when he:
 - a. Submitted documents to lenders in support of borrowers' incomes on seven mortgage applications, which were inaccurate and did not represent the true income of the borrowers, in relation to the following transactions:

- i. [Borrower 1], Filogix files [File 1] and [File 2];
 - ii. [Borrower 2], Filogix files [File 3] and [File 4];
 - iii. [Borrower 3], Filogix files [File 5] and [File 6];
 - iv. [Borrower 4], Filogix files [File 7].
- b. Failed to verify or disclose existing debt obligations of liabilities to lenders in relation to the following transactions:
- i. [Borrower 3], Filogix files [File 5] and [File 6];
 - ii. [Borrower 4], Filogix file [File 7];
 - iii. [Borrower 5], Filogix [File 8].
- c. Submitted inaccurate property occupancy information to lenders in support of borrowers' mortgage applications when he failed to verify whether the borrowers met the primary residency condition in relation to the following transactions:
- i. [Borrower 1], Filogix files [File 1] and [File 2];
 - ii. [Borrower 4], Filogix files [File 5] and [File 6].

He failed to disclose to lenders the interest he had in a transaction, contrary to sections 17.4(1) and (2) of the MBA, when he failed to disclose the nature of his relationship with the borrowers in the transaction [Borrower 4], Filogix file [File 7], in a written disclosure statement in the manner set out in section 17.4(2) of the MBA.

The Transactions

[Borrower 2]

16. On May 15, 2015, Mr. Bachra submitted a mortgage application to [Lender 1] on behalf of [Borrower A] (“[Borrower A]”) and [Borrower B] (“[Borrower B]”).
17. Both [Borrower A and B] were personal acquaintances of Mr. Bachra.
18. The May 15, 2015 application indicated that [Borrower A] was employed as a manager of logistics and driver services at [Company 1], earning \$63,000 annually. [Borrower A]’s 2014 Notice of Assessment, however, indicated that his total income for that year was \$54,431.
19. With respect to [Borrower B], the May 15, 2015 application indicated that [Borrower B] was employed as an accounts technician with [Company 2], with an annual income of \$36,000. [Borrower B]’s 2014 Notice of Assessment indicated, however, that her total income for that year was \$30,027, with \$20,560 of that income being Employment Insurance income.
20. The mortgage sought in the May 15, 2015 application was funded by [Lender 1] on July 31, 2015, and Mr. Bachra received a commission in the amount of \$1,140. That mortgage was cancelled on June 29, 2016.
21. On June 20, 2016 a new mortgage application was submitted on behalf of [Borrower 2] to [Lender 2]. That mortgage application indicated that [Borrower A] had been a full-time driver for [Company 1] for two and a half years, with an annual income of \$82,000. The

June 20, 2016 application also indicated that [Borrower A] was a full-time truck driver and manager for [Company 3], though the application did not state any employment income for [Borrower A] in that regard.

22. [Borrower A]'s 2015 Notice of Assessment indicated that his total income for that year was \$70,420.
23. The June 20, 2016 mortgage application further indicated that [Borrower B] had been employed as a full-time office manager for [Company 2] for one year, with an annual income of \$48,000. [Borrower B]'s 2015 Notice of Assessment indicated that her total income for that year was \$37,924.
24. The second mortgage was funded by [Lender 2] on August 3, 2017.

[Borrower 5]

25. On June 18, 2015, Mr. Bachra prepared a mortgage application for [Borrower C] ("[Borrower C]") and [Borrower D] ("[Borrower D]"), in respect of a property located at [Property 3], Burnaby (the "Burnaby Property").
26. [Borrower D] also co-owned a property located at [Property 4], Richmond (the "Richmond Property"), which had an outstanding [Lender 2] funded mortgage. Mr. Bachra was also a co-owner of the Richmond Property.
27. Mr. Bachra inadvertently failed to ensure that the June 18, 2015 application disclosed that [Borrower D] also owned the Richmond Property.
28. The Burnaby Property mortgage was funded by a private lender on November 4, 2015.

[Borrower 1]

29. On January 30, 2016, Mr. Bachra submitted a mortgage application to [Lender 1] on behalf of [Borrower 1] ("[Borrower 1]"), who was a personal acquaintance of Mr. Bachra. That application was in respect of a property located at [Property 1], in Surrey ("Property 1").
30. The January 30, 2016 application indicated that [Borrower 1] had been employed in a fulltime position as a manager at [Company 1] for nine months, with an annual income of \$42,000. The application also indicated that [Borrower 1] worked full time as a manager at [Company 4], with no mention of [Borrower 1]'s income from that position.
31. The information set out by Mr. Bachra on the January 30, 2016 application to [Lender 1] differed from that provided by [Borrower 1] in her mortgage application to [Lender 3].
32. On her mortgage application to [Lender 3], [Borrower 1] had indicated that her annual income at [Company 1] was \$24,000, not \$42,000. [Borrower 1] also indicated on her mortgage application to [Lender 3] that she worked part-time at [Company 5], and did not provide any income related to that employment.
33. [Borrower 1]'s 2015 Notice of Assessment from Revenue Canada indicated that she had earned a total of \$18,789 that year, \$2,956 of which was Employment Insurance Income.

34. [Borrower 1] signed a March 3, 2016 commitment letter with [Lender 1] indicating that Property 1 would be owner occupied, and, on March 10, 2016, [Lender 1] provided a mortgage for Property 1.
35. Subsequently, on October 25, 2016, Mr. Bachra submitted a mortgage application to [Lender 4] on behalf of [Borrower 1], in respect of a property located in the same unit as Property 1, [Property 2] in Surrey ("Property 2").
36. Like the application for Property 1, the mortgage application for Property 2 indicated that the property would be owner-occupied. Of note, however, the mortgage application for Property 2 also indicated that [Borrower 1] had been residing at [Property 5] in Surrey for four years, rather than at Property 1.
37. In the October 25, 2016 application, Mr. Bachra indicated that [Borrower 1]'s annual income from [Company 1] was \$74,800. Mr. Bachra did not indicate that [Borrower 1] already had an existing mortgage for Property 1.
38. On November 3, 2016, Mr. Bachra submitted a mortgage application for Property 2 to another lender, [Lender 5].
39. In the November 3, 2016 application, Mr. Bachra indicated that [Borrower 1] would be renting out Property 1 and living in Property 2. That application, like the October 25, 2016 application, indicated that [Borrower 1] had an annual income of \$74,800. The November 3, 2016 application further indicated, however, that [Borrower 1] had monthly rental income of \$587, and identified her total income as \$81,849.
40. On November 16, 2016, Mr. Bachra printed out a third version of a mortgage application for Property 2. In that application Mr. Bachra indicated that [Borrower 1]'s annual income was \$72,000, that she had been employed full time at [Company 1] for the previous year and a half, and that she also had monthly rental income from Property 1 in the amount of \$2,000.
41. Despite the income levels identified in the various mortgage applications, [Borrower 1]'s Notice of Assessment for 2016 indicated that her total income for that year was \$27,533.
42. [Borrower 1]'s mortgage for Property 2 was ultimately funded by [Lender 2] on December 15, 2016.
43. Mr. Bachra received a commission payment in respect of the mortgage for Property 1 in the amount of \$1,005.89. He received only a nominal payment in respect of the mortgage for Property 2 as he was not the submortgage broker who submitted the final application to [Lender 2].

[Borrower 4]

44. On February 10, 2016, a mortgage application prepared by Mr. Bachra was submitted to [Lender 1] on behalf of [Borrower E] ([Borrower E]) and [Borrower F], members of Mr. Bachra's family.
45. The February 10, 2016 application indicated that [Borrower E] was employed full-time as an operations manager with [Company 6], earning an annual income of \$60,000. The application did not disclose that [Borrower E] was the director of [Company 6], and that she was operating that company out of her home.
46. Further, [Borrower E]'s T4s, which were in Mr. Bachra's possession at the time the of the February 10, 2016 application, indicated that [Borrower E]'s annual income was \$50,000 for 2014 and \$44,000 for 2015.

47. The February 10, 2016 application also did not disclose to [Lender 1] that [Borrower F] was the owner of another property, which had an attending debt obligation.
48. Mr. Bachra also did not disclose to [Lender 1] that he had a personal relationship to both [Borrower E] and [Borrower F] in the form of a written disclosure statement in the manner set out by the MBA.
49. On March 9, 2016, the February 10, 2016 application was funded by [Lender 1] and Mr. Bachra received a commission in the amount of \$2,368.

[Borrower 3] Files

50. On May 9, 2016 Mr. Bachra submitted a mortgage application to [Lender 6] for a property located at [Property B], Delta ("Property B"), on behalf of [Borrower G] ("[Borrower G]"), [Borrower H] ("[Borrower H]"), and [Borrower I] ("[Borrower G]'s father").
51. The May 9, 2016 application was for the refinancing of Property B, which had been owner-occupied for the previous three years.
52. In the May 9, 2016 application [Borrower G]'s occupation was listed as owner/operator of a custom cabinetry business for the previous twelve years, with an annual income of \$90,000. [Borrower G]'s 2015 Notice of Assessment shows that his total income for 2015 was \$39,193.95.
53. The May 9, 2016 mortgage application did not indicate that [Borrower G]'s father was the owner of another property, [Property A], Delta ("Property A"), which also had a mortgage on it.
54. On June 27, 2016 the [Lender 6] mortgage for Property B was approved and Mr. Bachra received a commission of \$3,412.50.
55. Mr. Bachra was on medical leave from his work as a submortgage broker during the months of June and July 2016. During that time period a re-financing application was prepared for [Borrower G], [Borrower H], and [Borrower G]'s father in respect of Property A.
56. Upon his return to work, on September 30, 2016, Mr. Bachra submitted a re-financing application to [Lender 1] in respect of Property A. That application indicated that [Borrower G] had worked full-time as a general manager at [Company 7] for the previous 12 years, earning \$65,000 per year. The September 30, 2016 application did not indicate that [Borrower G] was self-employed. Nor did the application mention that [Borrower G]'s father owned Property B.
57. The September 30, 2016 application also indicated that [Borrower H] had been a secretary at [Company 7] for the previous six years, earning \$35,000 per year.
58. [Borrower H]'s 2015 T4 indicated that her total employment income for that year was \$23,213.
59. On October 6, 2016 the applicants signed a commitment letter with [Lender 1] confirming that Property A would be occupied as the applicants' principal residence.

Mr. Bachra's Evidence

60. Mr. Bachra provided a September 5, 2023 affidavit as part of his submissions in this hearing.

61. In that affidavit Mr. Bachra explained that in or around 2014 an investment his family had made had gone “horribly wrong”. Mr. Bachra explained that he, his father, mother, grandfather and brother had all experienced complete loss of their principal investment, and that this loss had put a major strain on their finances.
62. Mr. Bachra indicated that he had subsequently sold his home and moved in with his parents to ease the financial burden in August 2015. Mr. Bachra stated that 10 days after moving in with his parents, his father (and his father’s friend) were tragically killed in a boating accident.
63. Mr. Bachra explained that he was left to take care of his mother and the house, and to try to get over the regret he felt over not having attended the boating trip with his father, which he felt would have led to a different outcome.
64. Mr. Bachra stated that he was not able to deal with his overwhelming grief and regret in a healthy manner, and that his feelings of grief and regret had significantly affected his mental, physical, spiritual, and family health:
 - a. I found myself unable to cope and experienced an acute and serious mental health crisis. During this crisis, I admit that I was unable to make sound decisions, and made choices that were out-of-character and harmful...
 - b. This is also the same period in which the core of the complained-of activities occurred.
65. Mr. Bachra went on to describe that he had checked himself into an [redacted] treatment centre, where he spent 42 days working on his “mental, spiritual, and physical health”. Mr. Bachra’s attendance at the treatment centre, according to a letter from the treatment centre, was related to the negative consequences of [name of condition redacted].
66. Mr. Bachra stated in his affidavit that the treatment he received had provided him with strategies to deal with his circumstances in a healthier way and indicated that his judgment and decision making processes were no longer clouded.
67. In the September 5, 2023 affidavit Mr. Bachra also spoke to the consequences the allegations set out in the Notice of Hearing had on his work as a mortgage broker.
68. Specifically, Mr. Bachra described that in 2018 he had earned a six-figure income for the first time. He stated, however, that due to the allegations brought against him by BCFSA in 2019, his then brokerage, Elite Lending Corporation, had decided not to support the renewal of his licence.
69. Mr. Bachra indicated that as a result, his ability to earn an income as a mortgage broker was halted. He stated that he had attempted to renew his licence with other brokerages, but that due to the public nature of the allegations, he was unable to find a brokerage willing to take him on.
70. Mr. Bachra explained that since that time, he had worked in his family business in the janitorial sector in order to make ends meet, with his total income dropping significantly since 2018.
71. Mr. Bachra indicated that as a result of his decreased income, he was unable to pay his income taxes, and that he had an outstanding balance owing to the CRA.
72. Mr. Bachra noted that he has continued to experience reputational damage as a result of the allegations set out in the 2019 Notice of Hearing.

73. Finally, Mr. Bachra indicated that he believed that he was not a risk to cause future harm in the mortgage industry.

Applicable Law and Legal Principles

The MBA

74. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act. I note that the Notice of Hearing refers to the issuing of potential remedies under section 8(1) and 8(1.1) of the Act, and that BCFSA has, in its submissions, referenced those sections in respect of the appropriate sanctions to be issued against Mr. Bachra.

75. 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.

76. 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;
- (...)

77. 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.

78. Although Mr. Bachra was registered under the MBA at the time the Notice of Hearing was issued, he has not been registered since November 2020.

79. Section 8(1.2) of the MBA provides the following:

8(1.2) After giving a person who was formerly registered under this Act an opportunity to be heard, the registrar may do one or both of the following:

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

if, in the opinion of the registrar, any of paragraphs (f) to (i) of subsection (1) applied to the person while the person was registered.

- 80. As Mr. Bachra is no longer registered, I consider it is section 8(1.2) of the MBA that applies in determining what actions can be taken by the Registrar in terms of sanctions, rather than section 8(1) or 8(1.1).
- 81. I do not, however, consider the fact that section 8(1.2) applies to affect in any material way the sanctions sought by the parties in this case.
- 82. Here, as noted above, BCFSA seeks an administrative penalty in the amount of \$50,000. An order for such a sanction is provided for in section 8(1.2).
- 83. Mr. Bachra terms the sanction that he says would be appropriate in the circumstances as a “suspension”, which I consider to be a reference to a potential action that the Registrar could take pursuant to section 8(1).
- 84. While section 8(1.2) does not provide for a suspension, due, of course, to the fact that any respondent to whom section 8(1.2) applies would no longer be registered and as such there would be no licence to suspend, I consider that, when taken as a whole, Mr. Bachra’s submission is that the appropriate sanction would be that there be a period of time in which he was not eligible to be licensed under the MBA.
- 85. In my view, section 8(1.2)(a) is sufficiently broad to conclude that the ordering that a “person carry out specified actions” can be found to include an order that a person not apply for registration under the MBA during a specified period of time. As a result, I consider that the sanction sought by Mr. Bachra is also available pursuant to section 8(1.2).

Sanction Principles

- 86. 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.
- 87. 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

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

88. 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.
89. 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? 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?

90. 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

Findings on Liability

91. Mr. Bachra has admitted that he:

- (a) submitted documents to lenders in support of borrowers' incomes on seven mortgage applications which contained information that was inaccurate and did not represent the true income of the borrowers;
- (b) failed to verify or disclose existing debt obligations or liabilities to lenders in relation to four applications;
- (c) submitted inaccurate property occupancy information to lenders in support of borrowers' mortgage applications by failing to verify whether borrowers met the primary residency condition of the mortgage in relation to four applications;
- (d) failed to disclose to a lender that he had an interest in a transaction in respect of one transaction.

92. In making those admissions, Mr. Bachra has specifically admitted that he:

- (a) failed to take sufficient steps to independently verify the information or documents in [Borrower 1]'s mortgage applications, and therefore submitted inaccurate information to lenders regarding [Borrower 1]'s employment, income, and residence;
- (b) failed to take sufficient steps to independently verify the information or documents in the [Borrower 2] mortgage applications and as a result submitted inaccurate income information to lenders to qualify [Borrower 2] for two mortgages;
- (c) failed to ensure the accuracy of, or take steps to independently verify, the information on the [Borrower 3] mortgage applications, including whether the owner occupied conditions of the mortgage were met;
- (d) failed to ensure that [Borrower D]'s existing debt liability was disclosed to a lender;
- (e) failed to disclose [Borrower F]'s debt obligation to a lender;
- (f) failed to disclose his personal relationship in a written disclosure statement.

93. I have no difficulty finding that the above admissions and actions on the part of Mr. Bachra while he was registered constitute the conduct of mortgage business in a manner that is prejudicial to the public interest contrary to section 8(1)(i) of the MBA.

94. In reaching this conclusion, I note that the Registrar of Mortgage Brokers 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). This includes failing to disclose in mortgage applications to lenders the fact that borrowers owned other properties: *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia*).

95. In my view, there can be no doubt that a submortgage broker's failure to conduct reasonable due diligence with respect to information that the submortgage broker provides to a lender, and the failure to disclose material facts such as the ownership of a property

with a debt obligation, constitutes conducting business in a manner that is prejudicial to the public interest.

96. Simply put, I consider that when a mortgage broker submits information to a lender without conducting due diligence, the submortgage broker is creating a risk to the public.
97. That risk can be seen in the fact that the provision of inaccurate information regarding income, property ownership, or outstanding debt liabilities, could serve to place borrowers at risk of entering into mortgages they cannot afford, and also could serve to place lenders at risk of making loans they would not otherwise have made. Overall, the provision of inaccurate information by submortgage brokers undermines public confidence in the submortgage industry: *Kia*, page 30.
98. As I indicated in *Anderson (Re)*, 2023 BCRMB 11, I agree with the comments in *Kia* that the “public” to whom the Registrar owes a duty in its administration of the MBA 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**

99. In order for the public, which includes lenders, to have confidence in the industry, the Registrar requires that submortgage brokers provide fulsome and accurate information on borrowing applications submitted to lenders. I consider that allowing brokers to submit incorrect or false information on a mortgage application to a lender 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).
100. Having considered the above principles, along with Mr. Bachra’s admissions, I find that while registered as a submortgage broker, Mr. Bachra conducted business in a manner prejudicial to the public, contrary to section 8(1)(i), as follows:
 1. While registered as a submortgage broker, he conducted business in a manner prejudicial to the public interest, contrary to section 8(1)(i) of the MBA, by failing to take sufficient steps to verify the accuracy of information presented to mortgage lenders, when he:
 - a. Submitted documents to lenders in support of borrowers’ incomes on seven mortgage applications, which were inaccurate and did not represent the true income of the borrowers, in relation to the following transactions:
 - i. [Borrower 1], Filogix files [File 1] and [File 2];
 - ii. [Borrower 2], Filogix files [File 3] and [File 4];
 - iii. [Borrower 3], Filogix files [File 5] and [File 6];
 - iv. [Borrower 4], Filogix files [File 7].
 - b. Failed to verify or disclose existing debt obligations of liabilities to lenders in relation to the following transactions:
 - i. [Borrower 3], Filogix files [File 5] and [File 6];
 - ii. [Borrower 4], Filogix file [File 7];

- iii. [Borrower 5], Filogix [File 8].
- c. Submitted inaccurate property occupancy information to lenders in support of borrowers' mortgage applications when he failed to verify whether the borrowers met the primary residency condition in relation to the following transactions:
 - i. [Borrower 1], Filogix files [File 1] and [File 2];
 - ii. [Borrower 3], Filogix files [File 5] and [File 6].

101. I turn to section 17.4 of the MBA.

102. Section 17.4(1) requires that a mortgage broker who acts in a mortgage transaction in which there is an interest that is direct or indirect in the transaction, must provide to every person who is a lender under a mortgage in that transaction a written disclosure statement as prescribed².

103. The prescribed form for section 17.4(2) specifically requires that a mortgage broker describe any direct or indirect interest that a related party of the mortgage broker may acquire in the transaction in question.

104. As Mr. Bachra has admitted that he did not disclose to the lender his personal familial relationship in the [Borrower 4] transaction, I am satisfied that while he was registered under the MBA, Mr. Bachra was in breach of the Act as contemplated by section 8(1)(f) in respect of that failure to disclose.

Sanctions

The Misconduct

105. BCFSAs takes the position that the misconduct Mr. Bachra engaged in as set out above is properly characterized as being severe. It submits that the number of transactions Mr. Bachra was involved in which involved inconsistent and misleading employment income, the failure to disclose debt obligations to lenders, and misleading reported property occupancy ought to be taken to demonstrate a pattern of Mr. Bachra having disregarded his professional obligations.

106. Mr. Bachra, on the other hand, takes the position that although the misconduct involved multiple mortgage transactions, his mental health at and around the time of the transactions ought to be considered to be a mitigating factor in determining the nature of the misconduct.

107. In my view, the misconduct engaged in by Mr. Bachra is appropriately described as being severe.

108. In reaching that conclusion, I note that I consider that the risk created by Mr. Bachra's misconduct was significant.

109. While the evidence before me does not indicate that any specific adverse consequences occurred as a result of Mr. Bachra's misconduct, that does not alter the fact that Mr. Bachra's actions created a significant risk of adverse outcomes on both the applicants (who may not have in fact been able to afford the mortgage they were

² The prescribed form for section 17.4(2) is set out as Form 10 of the *Mortgage Broker Act Regulations*.

approved for based on inaccurate financial information) and for the lenders (who may have funded mortgages based on that incorrect financial information).

110. While I accept, as Mr. Bachra submits, that the evidence and admissions before me do not indicate that Mr. Bachra was “knowingly and deliberately taking steps to actively mislead lenders”, the fact remains that Mr. Bachra’s failures to take steps to independently verify information and documents, and failures to disclose debt liabilities, all created a risk to the system and to the public as a whole.
111. I further consider the fact that Mr. Bachra obtained some financial gain through the receipt of commissions on the approval of mortgages granted on the basis of the inaccurate information provided increases the gravity of the misconduct.
112. I consider that all of the above makes clear that while the misconduct in this case may not be of the most egregious type, in that it may not have been an attempt to deliberately mislead lenders, there can be no doubt that some degree of specific deterrence is required.
113. 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. The failure to disclose client financial liabilities and the failure to conduct due diligence with respect to a client’s financial claims such that inaccurate income information is provided to lenders, are not actions that can be tolerated under the MBA.
114. General deterrence is required in this case in order to maintain public confidence that registrants under the MBA will not be able to ignore their professional due diligence responsibilities without facing proportionate consequences.

Mitigating Factors

115. Regarding Mr. Bachra’s character and professional conduct record, I note that he had been registered as a submortgage broker for nine years at the time of the first [Borrower 2] mortgage application, with no previous record of misconduct.
116. I consider, however, the fact that Mr. Bachra had a significant degree of experience as a submortgage broker ought to have made clear to him the importance of income and employment information due diligence, and what steps such due diligence required. I do not consider Mr. Bachra’s lack of prior instances of misconduct to be a significant mitigating factor.
117. I acknowledge that Mr. Bachra did ultimately admit his misconduct in this case. However, I agree with BCFSA that Mr. Bachra has not provided any evidence to support the bare assertion in his submission that he had demonstrated and accepted full responsibility for his misconduct “throughout the entire investigation and proceedings in this case”.
118. The proceedings in this case were commenced in 2019. Although Mr. Bachra submits that the delay in bringing the proceedings to hearing lies with the BCFSA, he also acknowledges in his submissions that in 2022, BCFSA sought to proceed with the scheduling of the hearing with urgency. I note that despite this apparent fact, Mr. Bachra did not sign an admission of liability until June 2023. While there may well be a myriad of reasons for which Mr. Bachra and BCFSA were not able to reach an agreement on admissions of liability prior to June 2023, the fact remains that the

admission of liability in this case does not appear to have been something that was immediate.

119. I note further that while I consider that an admission of liability can be considered to be a mitigating factor, the context in which that admission occurs must be weighed. I agree with BCFSA's submission that unless a registrant under the MBA self-reports and provides all necessary information to support a finding of misconduct, the Registrar is required to investigate and determine whether a disciplinary proceeding is required.
120. This is not a situation in which Mr. Bachra self-reported misconduct. As a result, I consider his ultimate admission of liability, after an investigation had been completed by BCFSA, is a limited mitigating factor.
121. I turn to Mr. Bachra's submission that as a result of the misconduct he has now admitted to, he ultimately became un-registered as a submortgage broker, and essentially lost his job, and his career, leading to significant financial loss.
122. While I accept that there have already been some consequences to Mr. Bachra, in that it would appear that his brokerage did not want to support the renewal of his registration upon the allegations in the Notice of Hearing being made public, I do not consider that fact eliminates the need for specific deterrence in this case. Nor do I consider Mr. Bachra to submit as much. I do accept the fact that Mr. Bachra did experience some consequences as a result of the publication of the Notice of Hearing can be considered in determining the appropriate sanction to be applied.
123. Finally, I turn to a consideration of Mr. Bachra's mental health issues.
124. I accept that Mr. Bachra experienced some financial distress in 2014 and 2015, and I have no doubt that the sudden loss of his father in August 2015 had a significant impact on him. I accept that Mr. Bachra ultimately sought treatment for [redacted], and that his mental health issues are, to a limited degree a mitigating factor in respect of the misconduct admitted to.
125. I reach the conclusion that Mr. Bachra's mental health issues are only a limited mitigating factor due to the fact that some of the admitted misconduct in this case occurred in advance of the mental health issues related to the death of his father, and subsequent to Mr. Bachra having received the treatment which he claims improved his judgment and decision-making processes.
126. In this regard I note that the initial [Borrower 2] mortgage application, which contained inaccurate information, was submitted by Mr. Bachra in May 2015. This was well prior to the death of his father, which is the incident that Mr. Bachra described in his affidavit as having affected his judgment in all aspects of life.
127. Similarly, the [Borrower 5] application, in which Mr. Bachra has admitted to failing to ensure the disclosure of ownership of a property which had an outstanding mortgage, was completed in June 2015, again prior to the death of Mr. Bachra's father.
128. I note further that both the second [Borrower 1] mortgage application (October 25, 2016), as well as the re-financing application for [Borrower 3] (September 30, 2016), were completed after Mr. Bachra's attendance at the in-patient treatment centre.
129. Given that Mr. Bachra's evidence was that he had left treatment with a new perspective, and the abilities to deal with his circumstances such that his judgment and decision making processes were no longer clouded, I do not consider Mr. Bachra's previous mental health issues can be said to have played a mitigating role in the

misconduct Mr. Bachra has admitted to in respect of transactions that occurred after his attendance at the in-patient treatment centre.

130. Rather, I consider the fact that Mr. Bachra engaged in further misconduct even after undergoing the treatment which, according to his evidence, improved his judgment and decision making processes, can more properly be seen as an aggravating factor.

Submissions on Previous Cases

131. 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.
132. The parties have referred to a number of previous decisions in their submissions, and I have reviewed them all.

BCFSA Submissions

133. In its submissions, taking the position that an administrative penalty of \$50,000 is appropriate, BCFSA refers to three cases.
134. In a consent order dated October 24, 2013, *In the Matter of the Mortgage Brokers Act and Elham Amirmoazami aka Ellie Moazami*, 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.
135. In a consent order dated September 28, 2018, *In the Matter of the Mortgage Brokers Act and Anil Kumar Singh*, the respondent agreed to the cancellation of his registration, with a period of 10 years before he could re-apply for registration. In that consent order, the respondent admitted to having submitted misleading information, including altered CRA documents, in at least 17 mortgage applications.
136. Finally, BCFSA references a consent order dated May 22, 2015, *In the Matter of the Mortgage Brokers Act and W.I. Mortgage Pros Ltd dba Dominion Lending Centres Mortgage Pros and Margaret Schulz*, where the respondent consented to pay an administrative penalty of \$37,500 and not to be eligible for re-application for five years. The respondent admitted that she had failed to provide proper disclosure and information to an unsophisticated client, that she had submitted several mortgage applications without disclosing to the lenders that the client was seeking concurrent financing on other properties, that she submitted mortgages based on what she knew to be inaccurate residency information, and submitted mortgage applications where the client's income varied on different applications to different lenders.

Bachra Submissions

137. Mr. Bachra submits that each of the above cases can be distinguished from his. Specifically, he submits that in both *Moazami and Singh*, the actions taken by the respondents was far more severe that in his case.
138. With respect to *Schultz*, while Mr. Bachra acknowledges that there are some similarities to his case, that similarity does not form a reasonable basis for BCFSA's request for the maximum administrative penalty. Specifically, Mr. Bachra submits that there is no basis for BCFSA to seek a more severe financial penalty against him than that which was imposed in *Schulz*.
139. Mr. Bachra further submits that all of the previous cases in which the maximum administrative penalty has been applied involved conduct that was far more severe than in this case. Mr. Bachra submits that cases in which the maximum penalty was applied involved conduct that was:
- ... high-handed, deceitful and surreptitious conduct by the licensee, deliberate interference with BCFSA investigations, a licensee's failure to accept responsibility, the provision of unregistered services, significant harm to the public, and cases where the licensee was motivated by receiving substantial personal financial gain.
140. In support of his argument in this regard, Mr. Bachra refers to:
- In the Matter of the Mortgage Brokers Act and Danh Nguyen and Express Mortgages Ltd.*, Decision on Penalty dated December 13, 2004 (*Nguyen*)
- In the Matter of the Mortgage Brokers Act and Absolute Rate Mortgage Inc. and Donald Raymond Estrada*, Consent Order dated January 28, 2009
- In the Matter of the Mortgage Brokers Act and GET Acceptance Corporation, et al*, Decision on Penalty dated February 18, 2008
- In the Matter of the Mortgage Brokers Act and Michael Alexander Campagna*, Decision on Penalty and Costs, dated March 18, 2019
141. The cases referred to above involved administrative penalties ranging from:
- (a) a \$20,000 penalty for employing a submortgage broker who, although registered with another brokerage, was not registered with the mortgage brokerage in question while performing mortgage broker work for that company (*Get Acceptance*);
 - (b) a \$20,000 penalty combined with a two-year suspension for continuing to hold oneself out and provide mortgage broker services when the respondent's registration as a submortgage broker had expired (*Campagna*);
 - (c) a maximum \$50,000 administrative penalty combined with a 10-year exclusion order where the respondent was found to have knowingly submitted false documents to lenders, to have failed to provide conflict of interest disclosure statements, to have knowingly arranged mortgages through companies which were carrying on mortgage broker business without being registered to do so under the MBA, and to have employed sub-mortgage brokers who were not registered under the MBA. Further of note is that the respondent was found by the Registrar to have shown complete contempt for the regulatory framework in place to protect the public (*Nguyen*).
142. Mr. Bachra went on to submit that rather than an administrative penalty, previous cases indicated that a "modest suspension" was the appropriate sanction in his case.

143. In support of that submission Mr. Bachra referred to *Kia*. In *Kia* the respondent had submitted false or misleading statements in 10 mortgage applications, had failed to verify client income information in multiple transactions, and had represented that various properties would be owner occupied when he knew they would in fact become rental properties. Mr. Kia received a two-year suspension.
144. Mr. Bachra also points to *In the Matter of Gurdip Chand*, Registrar of Mortgage Brokers, March 13, 2006 (*Chand*). In that case the respondent had: failed to disclose judgments against him in a registration application; prepared a false employment letter and submitted that letter to a lender in order to support the granting of credit; and misled a lender as to a borrower's indebtedness by failing to disclose a second mortgage. The adjudicator determined that a suspension of five years from the date of the decision was appropriate in the circumstances, along with educational requirements.
145. Finally, Mr. Bachra points to the consent order: *In the Matter of Kambiz Ali Mahinsa*, Registrar of Mortgage Brokers, December 22, 2015. In that case, 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.
146. 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.
147. Mr. Bachra says that the nature and circumstances of his case are consistent with those set out in *Kia*, *Chand*, *Mahinsa*. He further submits that his financial circumstances, including his current inability to repay outstanding tax debts, should be considered, and that a sanction in the form of a "suspension" should be issued, rather than an administrative penalty.

Decision on Sanction

148. I am of the view that, having regard to the number of transactions at issue in this case as well as the nature of the misconduct engaged in, a significant sanction is warranted.
149. I note that the parties do not appear to disagree with my view in this regard.
150. Where the parties disagree, however, is as to what form that significant sanction should take.
151. In most discipline cases involving the regulation of professions, discipline in the form of a suspension (or a period in which a person may not work in that regulated profession) constitutes a more severe sanction than discipline in the form of an administrative monetary penalty.

152. As an example, in *Kia*, the Financial Institution Commission (“FICOM”), which is BCFSA’s predecessor, sought a suspension of two to five years in duration, or, in the alternative if a suspension was not ordered, an administrative penalty in the amount of \$40,000 to \$50,000. I consider it to be clear from a review of *Kia* that the adjudicator in that case considered the two-year suspension of Mr. Kia’s registration to be a sanction of greater significance than the alternative administrative penalty proposed by FICOM.
153. In this case, however, the parties appear to take the opposite position from the usual.
154. Here, Mr. Bachra characterizes discipline in the form of an administrative penalty as being the more severe outcome. In Mr. Bachra’s submission, a “suspension” in the range of two to five years, would be more appropriate in the circumstances. Mr. Bachra submits that if an administrative penalty were to be levied, such a penalty ought to be in the range of \$5,000 to \$10,000.
155. BCFSA, on the other hand, does not seek any term of “suspension” in relation to Mr. Bachra’s misconduct. Rather, BCFSA says that the appropriate sanction is an administrative penalty at the maximum end of the scale, \$50,000.
156. I note, in reviewing the previous consent orders and decisions cited by the parties in their submissions, that in the cases involving only an administrative penalty, or only a suspension from registration, the size of the administrative penalty or the duration of the suspension appears to take into account that only one type of sanction has been applied.
157. As an example, in *Moazami*, the consent order did not include a suspension, but the administrative penalty of \$45,000 was near the maximum penalty amount.
158. On the other hand, in *Singh*, the consent order did not include an administrative penalty, but did include the cancellation of Mr. Singh’s registration, as well as a restriction that Mr. Singh would not apply for registration for a period of 10 years. The period of inability to be registered for 10 years was the most significant sanction in that regard in the cases cited by the parties.
159. The only case cited by the parties in which the maximum administrative penalty was issued along with a period of suspension or ineligibility was *Nguyen*, which also contained a 10-year period of ineligibility for registration under the MBA. I consider it to be telling that in *Nguyen*, the Registrar found the respondents to have shown “complete contempt for the regulatory framework put in place to protect the public and increase public confidence in the financial services sector”. In those circumstances, it is not difficult to understand the Registrar’s conclusion that the maximum administrative penalty, along with a significant period of ineligibility, was warranted.
160. I do not consider the circumstances of this case to demonstrate that Mr. Bachra has contempt for the regulatory framework under the MBA. Rather, I consider the admissions made by Mr. Bachra to show that he did not engage in the due diligence that is required of mortgage brokers in completing their work, which diligence is required in order to ensure the protection of the public.
161. In my view, a penalty at the maximum amount of the administrative penalty scale would generally only be warranted in circumstances where the respondent has demonstrated repeated disregard or contempt for the regulatory framework; in circumstances where the sheer volume of the misconduct made a maximum penalty necessary in order to impose sufficient specific and general deterrence; or in circumstances where the

consequences of the misconduct were so significant as to warrant a maximum administrative penalty.

162. In reaching this conclusion, I acknowledge that the penalty consented to in *Moazami* was near the maximum administrative penalty amount, and that this penalty appears to have been consented to in a situation in which none of the above-described general circumstances applied. Rather, the circumstances in *Moazami* appear to have some similarities to those in the instant case.
163. I note, however, the difficulty inherent in comparing a penalty that arises from a consent order to a penalty that is to be issued after a hearing. There could be a myriad of reasons for a respondent and BCFSA to agree to a consent order which are not apparent from a review of that consent order. Readers of the consent order have no ability to know, for example, whether the higher administrative penalty was agreed to in exchange for a concession that no suspension or period of ineligibility be applied. As a result, I place limited value on the amount of the administrative penalty applied in *Moazami*.
164. I note, that for similar reasons I place limited value on the amount of the administrative penalty consented to in *Mahinsa*.
165. I do not consider Mr. Bachra's case to fall into any of the circumstances I have identified above as generally warranting the imposition of a maximum administrative penalty.
166. However, even taking into account the mitigating circumstances I have described above, as well as the fact that Mr. Bachra has experienced a decrease in his financial earnings since ceasing to work as a submortgage broker in 2020, I am not satisfied that the imposition of a period of ineligibility, on its own, will be sufficient to provide both the specific and general deterrence that is required to ensure that the public is protected from the type of misconduct Mr. Bachra has admitted to in this case.
167. In summary, I do not consider that the imposition of only "modest suspension" as suggested by Mr. Bachra, with no administrative penalty, when Mr. Bachra has not worked in the mortgage industry for approximately three years, would provide any real degree of specific deterrence.
168. I acknowledge, in reaching this conclusion, that Mr. Bachra says that his reputation has been irreparably harmed by the publication of the unresolved allegations in the notice of hearing, and that his ability to work in the mortgage industry has been affected by the publication of those allegations such that his income has decreased dramatically since the Notice of Hearing was published.
169. It must be noted, however, that the harm that Mr. Bachra claims to have experienced in this regard is the result of his own actions. Mr. Bachra has admitted to the misconduct set out in the Notice of Hearing. In those circumstances, I do not consider that Mr. Bachra can now reasonably say that the effects his own misconduct has had on his career should be considered to attract much weight as a mitigating factor in a consideration of what sanction is appropriate: see *Law Society of BC v. Faminoff*, 2017 LSBC 4, para. 104.
170. Rather, I consider that in light of the fact that Mr. Bachra is not currently working in the mortgage industry, a "modest suspension" alone will not serve to provide sufficient specific deterrence to Mr. Bachra. Further, I do not consider that a "modest suspension" on its own would serve to provide sufficient general deterrence, in that members of the public would likely reach the conclusion that a period of ineligibility for

an individual who is no longer working in the industry amounts, essentially, to very little sanction at all.

171. Having considered all of the above, I am of the view that the circumstances of this case, which involved repeated failure to engage in due diligence required under the MBA, as well as the failure to disclose a conflict of interest, require a sanction involving both a period of ineligibility and an administrative penalty. I reach this conclusion acknowledging that, in respect of some (but certainly not all) of the transactions at issue in this case, there are mitigating factors at play in respect of Mr. Bachra's mental health.
172. Pursuant to section 8(1.2)(a), I find an order that Mr. Bachra take the specified action of not applying for registration for a period of one year from the date of this decision, along with an order that Mr. Bachra pay an administrative penalty in the amount of \$25,000 pursuant to section 8(1.2)(b) will provide sufficient specific and general deterrence and is appropriate in the circumstances.

Costs

173. BCFSa has submitted a bill of costs in the amount of \$19,067.78 in respect of investigative expenses.
174. 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.
175. The Registrar of Mortgage Brokers does not have its own tariff of costs.
176. 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.³
177. 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

³ Rule 57 is now Rule 14-1.

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).

178. Mr. Bachra takes the position that the investigative costs claimed by BCFSA are excessive. He refers in particular to the amount of hours claimed for activities such as the obtaining of corporate summaries, the drafting and delivery of summons, and in particular the drafting of an investigative report. Mr. Bachra submits that if BCFSA had simply sought admissions to the allegations set out in the Notice of Hearing in 2019, the number of hours required to complete the investigation report in this case could have been drastically reduced.
179. In Mr. Bachra's submission, BCFSA did not diligently pursue this case for a number of years, and that lack of diligence led to unnecessary time spent on investigation when liability would have been readily admitted.
180. BCFSA submits that Mr. Bachra makes only bald assertions that he would have admitted liability at first instance, and notes that Mr. Bachra and BCFSA were only able to come to an agreement on liability after the matter was set down to proceed to hearing in June 2023. BCFSA notes further that it has not pursued legal costs due to the fact that Mr. Bachra admitted liability, and submits that a further reduction in investigative cost is therefore not appropriate.
181. I agree with the submissions of BCFSA. There is no indication in this case that Mr. Bachra self-reported his misconduct, which would have rendered investigation into the allegations against him unnecessary. Rather, I consider that the Registrar was required to investigate the matter. The MBA specifically provides that in circumstances where an inquiry discloses a contravention of the MBA, costs of the inquiry may be ordered.
182. I do consider, as Mr. Bachra has pointed out, that some of the items in the bill of costs do seem to have taken longer than one might expect. I note, as Mr. Bachra has, the cold call attempt which is billed for 1 hour, as well as the 12 hours claimed for the completion of corporate checks.
183. Given that an order of costs is discretionary, I would reduce the amount claimed by \$1,300, and order that Mr. Bachra pay \$17,767 for investigative costs.

Orders

184. I make the following orders:
185. Pursuant to section 8(1.2)(b) of the *Mortgage Brokers Act*, Gagan Deep Bachra is ordered to pay to BCFSA an administrative penalty of \$25,000, within 60 days of the date of this order;
186. Pursuant to section 8(1.2)(a) of the *Mortgage Brokers Act*, Gagan Deep Bachra will not be eligible to apply for registration as a submortgage broker under the *Mortgage Brokers Act* for a period of one year from the date of this decision.

187. Pursuant to section 6(9) of the *Mortgage Brokers Act*, Gagan Deep Bachra is ordered to pay to BCFSa \$17,767 in legal and investigative costs associated with this proceeding, within 60 days of the date of this order.

188. Pursuant to section 9 of the *Mortgage Brokers Act*, Gagan Deep Bachra may appeal the above orders to the Financial Services Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 22st day of November, 2023.

“Original signed by Andrew Pendray”

Andrew Pendray
Chief Hearing Officer