

Please note that the decision of the Registrar below was stayed pending appeal.

The Registrar's decision was upheld by the British Columbia Court of Appeal [[Westergaard v. Registrar of Mortgage Brokers 2011 BCCA 344](#)] on August 11, 2011.

The registration suspension period of Keith Westergaard shall now be effective from August 11, 2011 to August 11, 2016.

IN THE MATTER OF THE MORTGAGE BROKERS ACT

R.S.B.C. 1996, C313

And

GET ACCEPTANCE CORPORATION (“GET”) and
EVERGREEN MORTGAGE CORPORATION dba
GET ACCEPTANCE – BRITISH COLUMBIA (“GET BC”) and
KEITH WESTERGAARD and FRANK IANTORNO

DECISION ON PENALTY

Before Lynda A. Wrigley, acting as the authorized representative of W. Alan Clark,
Registrar of Mortgage Brokers.

Financial Institutions Commission of B.C.
#1200 – 13450 – 102nd Avenue, Surrey, British Columbia V3T 5X3

Written submissions made Feb. 8 and 15, 2008
Decision: February 18, 2008

Counsel:

Richard Fernyhough, for the Staff of the Registrar of Mortgage Brokers

Gordon Phillips, for Evergreen Mortgage Corporation doing business as GET British
Columbia and Frank Iantorno

Duncan Manson, for GET Acceptance Corporation and Keith Westergaard

INTRODUCTION

On June 15, 2007, an Amended Notice of Hearing was issued pursuant to the Mortgage Brokers Act ("the Act") with the following allegations which were proven after a 13 day hearing which began September 10, 2007 and concluded on November 16, 2007.

1) That Get BC disclosed to lenders that the mortgages they were purchasing from GET were current and that there were no prior arrears, when in fact the mortgages were not current and had prior arrears, and thereby made a statement provided under the Mortgage Brokers Act ("the Act") that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact. Those lenders were Bob and Margaret Guy, Clarke and John Eusanio, Karen Degraaf and Pacific Asset Fund Inc.

2) That Iantorno, as the Designated Individual for GET BC, failed to ensure that the lenders referred to in paragraph #1 were provided with accurate disclosure pursuant to section 17.1 of the Act, and thereby conducted business in a manner prejudicial to the public interest.

9) That GET and Westergaard as the Designated Individual, employed Iantorno as a submortgage broker. Iantorno was not registered as a submortgage broker with GET, contrary to section 21(1)(d) of the Act.

10) GET BC carried on business as a mortgage broker elsewhere than at or from GET BC's registered address, contrary to section 21(1)(b) of the Act.

11) That Iantorno, as the Designated Individual for GET BC, allowed GET BC to carry on business as a mortgage broker elsewhere than at or from GET BC's registered address, and thereby conducted business in a manner prejudicial to the public interest.

12) That Westergaard is not suitable for registration and his proposed registration is objectionable.

I found that allegations # 3, 4, 5, 6, 7 and 8 in the Amended Notice of Hearing, involving disclosure requirements, were not proven.

My decision regarding all the allegations and suitability for registration was issued on January 25, 2008. It includes lengthy background information, legislation, evidence, analysis and conclusions and should be referenced in reading this Penalty Decision.

Written submissions on penalties with case authorities, as well as costs, were submitted by the staff on February 8, 2008 and by counsel for GET BC and Iantorno on February 15, 2008. Also on February 15, counsel for GET and Westergaard provided submissions on penalty and costs, without authorities.

Section 8 of the Act, which provides for penalties, states:

8 (1) After giving a person registered under this Act an opportunity to be heard, the registrar may suspend or cancel the person's registration if, in the opinion of the registrar, any of the following paragraphs apply:

- (a) the person would be disentitled to registration if the person were an applicant under section 4;*
- (b) the person is in breach of this Act, the regulations or a condition of registration;*
- (c) the person is a party to a mortgage transaction which is harsh and unconscionable or otherwise inequitable;*
- (d) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact or omitted to state a material fact, the omission of which made the statement false or misleading;*
- (e) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest.*

(1.1) After giving a person registered under this Act 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 paragraphs (b) to (e) of subsection (1) apply.

There is also a provision to order costs:

6 (9) If the inquiry discloses a contravention of this Act or the regulations or orders or directions of the registrar, the registrar may order the costs to be paid by the person.

Having concluded that Mr. Westergaard's registration will not be renewed, it is also appropriate to decide what would be an appropriate length of time before he can reapply for registration.

GET BC & FRANK IANTORNO

ALLEGATIONS 1 & 2 – FAILURE TO DISCLOSE PRIOR ARREARS

I found that Mr. Iantorno, as Designated Individual, caused his mortgage broker company GET BC, to be in breach of section 17.1 of the Act by making a false and misleading statement on the investor/lender information statement (Form 9), by stating that the mortgage investments he was selling had not been in arrears, when in fact they had been in arrears. The difficulty arose because he was immediately selling re-financed and re-registered mortgages which had previously been in arrears, on behalf of his employer, GET. He checked the "NO" box in section E of Form 9 - "Mortgage Investment", to the question, "Have there been any prior arrears?" He should have checked the "YES" box.

Counsel for the staff submits that Iantorno made a mistake of law which, although not a defence, was not unreasonable. He testified that he did not believe he was required to disclose prior arrears on a re-financed mortgage, on Form 9. Further, there was no evidence at the hearing that anyone had been misled to their economic detriment as a result of the non-disclosure.

There is now a ruling that on the business model GET is operating, prior arrears on a mortgage that it re-finances and re-registers must be disclosed on Form 9. Henceforth, such disclosure must be made by GET and any other mortgage broker which may be using a similar business model.

Consequently, there will only be a reprimand noted against GET BC and Iantorno. A reprimand has been recognized as a declaration of a breach of the Act with no attached penalty, in the case of *Robert Matick v. Registrar of Mortgage Brokers and the Financial Services Tribunal, BCSC, Vancouver Registry, S-067931*.

ALLEGATIONS #10 & 11 – CARRYING ON BUSINESS ELSEWHERE THAN REGISTERED ADDRESS

Mr. Iantorno was employed by Mr. Westergaard as general manager of his mortgage broker company, GET. While working in GET's office, Iantorno also brokered some loans being offered to borrowers by GET and he handled all the sales of GET's mortgage investments. He did this, using the name GET BC, the business name of his own company Evergreen, to which he was the sole registered submortgage broker and its Designated Individual. Iantorno was not registered to GET. The mortgage broker, Evergreen, was carrying on business as GET BC, at the office of another mortgage broker, GET, in contravention of s. 21(1)(b) of the Act.

In seeking a suspension of 60 days for both GET BC and Iantorno, counsel for the staff points out that Iantorno had made enquiries seeking to have GET BC's registered address at the same location as GET's registered address, but the Registrar's office informed him that he could not do so, due to the confusion that would be created with the public as to which company they were dealing with, particularly given the similarity in names. Evidence at the hearing bore this out. Counsel has referred me to the February 23, 2005 *Consent Order* signed by the Registrar, *Ralph Collins and Brokers Financial* involving numerous breaches of the Act which resulted in a three month suspension, \$10,000 administrative penalty and costs.

Counsel for Iantorno urges me to note a reprimand only, or alternatively, a reasonable administrative penalty. I have considered the two Consent Orders to which he has referred me and which involve administrative penalties: *Clover Holdings, July 20, 2005* and *Alpine Credits, May 28, 2007*. Consent orders have limited use as precedents but I do find them of some assistance herein providing direction.

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Despite Iantorno being advised by the staff he could not have GET BC's registered office at the same location as GET's because of the confusion of names issue, he chose to carry on business there under the name of GET BC anyway. There is need to provide both specific and general deterrence when deciding upon an appropriate penalty. I find here that a brief, but not insignificant suspension, is appropriate. Iantorno's and GET BC's registration will be suspended for 30 days, effective February 29, 2008.

GET and WESTERGAARD

ALLEGATION #9 – EMPLOYMENT OF UNREGISTERED SUBMORTGAGE BROKER

Further to the fact summary above, GET & Westergaard were found to be in breach of s.21(1)(d) of the Act by employing a submortgage broker who was not properly registered. Mr. Iantorno was not registered to GET when he should have been, as he was involved in an essential way on a daily basis, in arranging mortgages for his employer, GET. Over and above Iantorno's role in brokering GET's mortgages to investors using GET BC, and among his many other duties under the direction of Westergaard, he made decisions on fees and interest rates and he had the ultimate authority as to whether the mortgage loan to borrowers, being handled by other submortgage brokers, would be approved or denied. It should be noted that Iantorno was a qualified, registered submortgage broker, but to his own company GET BC, and not to GET. It was still incumbent on GET and Westergaard as Designated Individual, to ensure that a submortgage broker who was involved in such an essential way in arranging mortgages, was properly registered to GET.

Westergaard and his company Aaron Acceptance Corp. were disciplined for the same breach of the Act in 1994. Westergaard was suspended for 21 days and Aaron for nine days. Costs of \$9,083 were awarded. Westergaard advanced the same defence, that the unregistered person was performing duties which did not require registration. In both cases, they did.

Counsel for the staff submit that a suspension of 60 days should be imposed on Westergaard and an administrative penalty of \$20,000 in lieu of suspension for GET so that there is no hardship for the investors whose mortgages GET administers, and for the other submortgage brokers employed by GET.

I have been referred to consent orders signed by the Registrar in two cases: "*In the Matter of the Mortgage Brokers Act and Invis Inc*", April 1, 2006 where a \$20,000 penalty was imposed and "*In the Matter of the Mortgage Brokers Act and Wells Fargo Financial*

the case before me, it is unknown whether the unregistered submortgage brokers who were employed, were qualified or registered at all.

Counsel for the respondents submit that a reprimand would be appropriate for GET and Westergaard.

I agree with the staff's submission that an appropriate penalty for GET is an administrative penalty of \$ \$20,000 which is to be paid on or before February 29, 2008. Failure to pay this in accordance with my direction will result in the immediate suspension of GET's registration until full payment is paid.

As Westergaard's registration is not being renewed, the matter of suspension is somewhat academic. Had I not denied renewal of his registration, I would have imposed a 60 day suspension for this breach of the Act.

ALLEGATION # 12 – SUITABILITY of WESTERGAARD

I have found that Mr. Westergaard is not suitable for registration and that his proposed renewal is objectionable, for the reasons set out in my decision issued January 25, 2008. The only issue to decide now, is what would be an appropriate length of time before he can reapply for registration as a submortgage broker?

Counsel for the staff submits that an appropriate period of time is five years. He submits the following cases in support, which I have considered:

- *The Matter of the Mortgage Brokers Act and John Carson, July 25, 2005;
- *The Matter of the Mortgage Brokers Act and Eugenio Pugliese, April 19, 2006;
- *The Matter of the Mortgage Brokers Act and Ronald Thomson, June 15, 2005; and
- *The Matter of the Mortgage Brokers Act and Daniel Chan, April 16, 2007.

Counsel for Mr. Westergaard has re-stated some of his previous submissions made during the hearing, urging me to register Westergaard subject to the conditions of his 2003 registration in addition to more conditions. He has not made any submissions regarding an appropriate length of time before any re-application may be made. As I have found that Westergaard is not suitable and his proposed registration is objectionable, these submissions are neither appropriate nor relevant. There is no question of conditions – registration is denied.

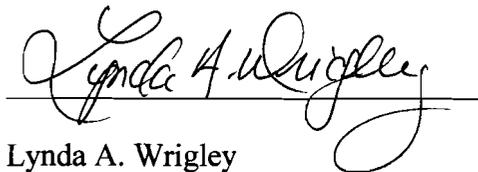
I discussed the reasoning behind denying registration in my decision on the merits. I must reiterate however that I found that Mr. Westergaard attempted to mislead the Registrar in his application and in his testimony. Trustworthiness is one of the most important qualities of a registered mortgage broker if not the most important quality. Fiscal responsibility in one's dealings with clientele and investors is also of extreme importance to maintain the public trust in this regulated industry. Mr. Westergaard requires an extended period of time of cancellation in order to provide the specific

time of cancellation in order to provide the specific deterrence required. Other mortgage brokers must be put on notice that such conduct cannot and will not be tolerated. The findings here are comparable to the facts and circumstance in the cases before me in that the main considerations were trustworthiness and fiscal responsibility. I'm of the view that a five year period is appropriate. Consequently, Mr. Westergaard may not apply for registration until February 18, 2013.

Westergaard's registraton is cancelled effective February 18, 2008.
GET will have to immediately identify a new Designated Individual to the satisfaction of the Registrar.

COSTS:

All counsel agree that there should be an order for costs at Scale B under the Supreme Court Rules. Six out of the 12 allegations were proven against the various four respondents. I think Mr. Phillip's proposal is most reasonable and appropriate. There will be an order for 75% of the assessed costs, allocated 1/3 to GET BC & Iantorno jointly and severally and 2/3 to GET and Westergaard, jointly and severally. An order for costs should be prepared by counsel. If agreement cannot be reached, a costs assessment hearing may be scheduled before the Registrar.



Lynda A. Wrigley
Authorized Representative of the
Registrar of Mortgage Brokers
Province of British Columbia

Dated at Vancouver, British Columbia
February 18, 2008.