

**IN THE MATTER OF THE MORTGAGE BROKERS ACT**

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

**-AND-**

**JAY KANTH CHAUDHARY**

**SUSPENSION ORDER**

**(Pursuant to section 8(2) of the *Mortgage Brokers Act*)**

**I AM ADVISED** and am of the opinion that:

**Background**

1. Jay Kanth Chaudhary ("Chaudhary") has been registered in British Columbia as a licensed real estate representative since January 30, 2008 and has been working as a licensed real estate representative with Century 21 Apex International (Bby) since that time.
2. Chaudhary has been registered in British Columbia as a submortgage broker since April 25, 2007, and has been a registered submortgage broker with Finder Financial Services Ltd. ("Finder") since January 4, 2008.
3. The designated individual for Finder is Lawrence Daniel Smith ("Smith").
4. On June 16, 2008, the office of the Registrar of Mortgage Brokers (the "Registrar") received a telephone complaint from an anonymous individual alleging that her colleague, Chaudhary, was involved in fraudulent real estate and mortgage transactions which included provision of false Canada Revenue Agency ("CRA") documents, such as Notices of Assessment ("NOA"s), T4s and T1 General forms.
5. On June 17, 2008, staff of the Registrar (the "Staff") received an email from [REDACTED] Senior Investigator at TD Canada Trust advising that he had received information from an unidentified source who stated that Chaudhary was committing fraud by paying bank employees secret cash in exchange for deals.
6. Staff has seized a number of mortgage files in which Chaudhary has acted as submortgage broker. The file review done to date has been preliminary

in nature, and limited to examining documents submitted in support of borrowers' mortgage applications. Ten of those files containing suspicious documents are reviewed in more detail below.

**False and/or fraudulent employment and/or income information**

7. In reviewing the mortgage files, Staff identified inconsistencies and/or discrepancies in documents filed in support of many of the mortgage applications. Details of the issues identified are set out below:

[REDACTED] mortgage

8. In April 2008, Chaudhary submitted a mortgage application to First National Financial LP ("First National") on behalf of [REDACTED] which indicated that [REDACTED] had been a self-employed, full time, recorder for [REDACTED] for the past three years, earning \$95,000.
9. In support of the mortgage application, Chaudhary submitted copies of [REDACTED]'s 2005 NOA (dated May 30, 2006), showing income of \$77,446, and a 2006 NOA (dated April 26, 2007), showing income of \$87,772, as well as [REDACTED] personal bank statements for a three month period from January-March, 2008.
10. In reviewing the mortgage file, Staff noted the following discrepancies:
- (a) Both NOA's appear on the letterhead of "Canada Customs and Revenue Agency". The Canada Customs and Revenue Agency changed its name to "Canada Revenue Agency" on December 12, 2005, which change ought to have been reflected in the NOAs submitted.
  - (b) The bank statements did not confirm steady employment income of \$95,000/year. In fact, the deposits made between January 2, 2008 and March 31, 2008 total only \$7,650.
  - (d) There is no additional information in the file confirming or supporting stated income in the amount of \$95,000/year.

- [REDACTED]
11. In March, 2008, Chaudhary submitted a mortgage application to First National on behalf of [REDACTED] which indicated that [REDACTED] had been self employed as a general construction worker for [REDACTED] Construction for three years, one month, earning \$74,189.
  12. In support of the mortgage application, Chaudhary submitted copies of [REDACTED] 2005 NOA (dated May 22, 2006), showing income of \$60,180, and a 2006 NOA (dated May 10, 2007), showing income of \$68,842.
  13. In reviewing the mortgage file, Staff noted the following:
    - (a) Both the 2005 and 2006 NOAs appear on the letterhead of "Canada Customs and Revenue Agency". The Canada Customs and Revenue Agency changed its name to "Canada Revenue Agency" on December 12, 2005, which change ought to have been reflected in the NOAs submitted.
    - (b) The mortgage application shows [REDACTED] address as being [REDACTED] Street, Burnaby British Columbia. When Staff attended that address on October 3, 2008, they were advised by the building manager that the 13<sup>th</sup> floor of the building is generally referred to as the penthouse. The building manager further advised that he had been working at that address for 18 months and did not know anyone by the name of [REDACTED] or [REDACTED].
    - (c) [REDACTED] Construction is not a business which is listed in the Telus directory, nor is it a company registered in British Columbia.

[REDACTED] mortgage

14. In May 2008, Chaudhary submitted a mortgage application to First National on behalf of [REDACTED], which indicated that [REDACTED] had been self employed as a contractor with [REDACTED] Building Ltd. for the past three years, earning \$104,525 per year.
15. In support of that mortgage application, Chaudhary submitted a single NOA for 2005, dated May 22, 2006, showing income of \$87,203.
16. In reviewing the file, Staff noted the following:



- (e) [REDACTED] also advised Staff that he does not work for, nor does he have a business called, [REDACTED] Courier Enterprise. [REDACTED] advised that he has always been employed by Canada Post, and that any additional income he does receive is derived from guitar lessons or overtime work with Canada Post.

[REDACTED] mortgage

20. In May 2008, Chaudhary submitted a mortgage application to Bridgewater Bank on behalf of [REDACTED] which indicated that [REDACTED] had been a self-employed electrical designer with [REDACTED] Designs Enterprise for the past two years, earning \$118,000. According to the mortgage application, she had been previously employed as an engineering assistant with [REDACTED] Engineering Inc., earning \$54,000.
21. In support of the mortgage application Chaudhary submitted T1 General forms, as well as Statements of Business Activities for [REDACTED] Designs Enterprise" for 2006 and 2007.
22. In reviewing the mortgage file, and in its further investigation, Staff noted the following:
- (a) Both the T1 General for 2006 and 2007 were prepared on forms where the words "Canada Revenue Agency" appeared on the upper left hand corner. The Statements of Business Activities for 2006 and 2007, however, were on forms labeled "Canada Customs and Revenue Agency."
- (b) The T1 General forms had been prepared by [REDACTED] & Taxation. Neither a 411 telephone search, nor Google internet search located a company bearing that name.
- (c) The Statements of Business Activities submitted with the T1 General forms were for "[REDACTED] Designs Enterprise", whereas the mortgage application identified [REDACTED] business as "[REDACTED] Designs Enterprise."
- (d) A corporate records search for "[REDACTED] Designs Enterprise" disclosed no such corporate entity.
- (e) On August 28, 2008, Staff made a pretext call to [REDACTED] Engineering Inc., which was identified on the mortgage application as being [REDACTED] former employer. The receptionist who answered the call identified herself as [REDACTED].

- (f) On October 3, 2008, Staff placed another call to [REDACTED] Engineering Inc., where the receptionist identified herself again as [REDACTED]. Staff advised that they were calling from the Registrar's office, and [REDACTED] confirmed the following:
- (i) she had purchased the property which was the subject of the Bridgewater Bank mortgage; and
  - (ii) the submortgage broker in the transaction had been Chaudhary.

[REDACTED] mortgage

23. In May 2008, Chaudhary submitted a mortgage application to First National on behalf of [REDACTED] which indicated that [REDACTED] had been self-employed as a stock trader/financial advisor for the past five years, and earned \$132,410.
24. In support of that mortgage application, Chaudhary submitted a single NOA, for the 2005 taxation year, dated May 19, 2006.
25. In reviewing the mortgage file, Staff noted the following:
- (a) the 2005 NOA dated May 19, 2006 was on letterhead which read "Canada Customs and Revenue Agency." The Canada Customs and Revenue Agency changed its name to "Canada Revenue Agency on December 12, 2005, which change ought to have been reflected on the NOA submitted.

[REDACTED] mortgage

26. In February 2008, Chaudhary submitted a mortgage application to First National on behalf of [REDACTED] and [REDACTED] which contained the following information:
- (a) [REDACTED] who was identified as a woman, was stated to have been a registered nurse with the Fraser Health Board for the past thirty years, earning \$54,000.

- (b) [REDACTED], who was also identified as a woman, was stated to have been employed by [REDACTED] Autobody & Sales Ltd. as a senior sales manager for the past three years, earning \$76,800.
27. In support of the mortgage application, a letter of employment was submitted for [REDACTED] on [REDACTED] Auto Body & Sales Ltd. letterhead. The letter was signed by [REDACTED], the President, and confirmed that Ms. [REDACTED] was hired on February 4, 2004, and that she earned \$76,800/year plus bonuses.
28. In the course of investigating this mortgage, Staff determined the following:
- (a) On October 6, 2008, Staff attended [REDACTED] Auto Body & Sales Ltd. A repairman at the shop advised that the only manager of [REDACTED] was the owner, [REDACTED]. The shop is quite small, having only three auto body workers.
- (b) Staff spoke with [REDACTED] who advised that he did not know a [REDACTED] and, further, that he did not pay anyone an annual salary of \$76,800.
- (c) On October 6, 2008, Staff attended at the residential address provided for [REDACTED] on the mortgage application. The residence is the home of an employee of [REDACTED] Auto Body & Sales Ltd. The occupant advised that [REDACTED] was a male tenant (and not a female as indicated on both the mortgage application and in the employment letter) who had left the premises several months earlier after damaging the suite.
- (d) On October 6, 2008, Staff attended the address which appeared on a bank statement of [REDACTED]. The address on the bank statement housed a vacant office formerly occupied by a property management company.
- (e) On October 6, 2008, Staff contacted Fraser Valley Health and learned that [REDACTED] had been employed as a nursing aide since 1979, and not as a registered nurse, and that her hourly wage was \$21.37/hour. Based on 40-hour week, this would equate to a yearly salary of \$44,450 and not the \$54,000 recorded on the mortgage application.

[REDACTED] mortgage

29. In March 2008, Chaudhary submitted a mortgage application to MCAP on behalf of [REDACTED] which indicated that [REDACTED] had been a self-employed contractor with [REDACTED] Construction for the past five years, earning \$108,000.
30. In support of that application, Chaudhary submitted a T1 General 2006 for [REDACTED] which included a Statement of Business Activities for [REDACTED] Construction, prepared by [REDACTED] Accounting Services, as well as a 2006 NOA, dated May 8, 2007, indicating income of \$67,025.
31. In reviewing the mortgage file, and in investigating this mortgage further, Staff determined the following:
  - (a) On October 6, 2008 Staff attended the business address for [REDACTED] Construction, and spoke with [REDACTED] who identified himself as the owner. [REDACTED] advised that [REDACTED] Construction only had two employees, neither of whom was named [REDACTED].”
  - (b) [REDACTED] Accounting Services address was given, simply, as “North Vancouver” on the T1 General 2006. Staff could find no listing for a business with that name in British Columbia.
  - (c) The 2006 NOA, which was dated May 8, 2007, was on letterhead which read “Canada Customs and Revenue Agency.” The Canada Customs and Revenue Agency changed its name to “Canada Revenue Agency” on December 12, 2005, which change ought to have been reflected on the 2006 NOA.

[REDACTED] and [REDACTED] mortgage

32. In February 2008, Chaudhary submitted a mortgage application on behalf of [REDACTED] and [REDACTED] which included the following information about them both:
  - (a) [REDACTED] was described as being the self-employed president/owner of [REDACTED] Italian Fashion for the past seven years, earning \$94,662; and



- (b) [REDACTED] was described as being a self-employed executive administrator with [REDACTED] Italian Fashion for the past seven years, earning \$86,200.
33. Chaudhary obtained a single NOA in support of the mortgage application. Specifically, he submitted a 2005 NOA for [REDACTED], dated May 30, 2006, which showed an income of \$51,766.
34. In the course of reviewing the mortgage file, and in investigating the mortgage further, Staff determined the following:
- (a) The 2005 NOA dated May 30, 2006 for "[REDACTED]" appears on "Canada Customs and Revenue Agency" letterhead. Canada Customs and Revenue Agency changed its name to "Canada Revenue Agency" on December 12, 2005, which change should have been reflected on the 2005 NOA submitted. In addition, Ms. [REDACTED] name is incorrectly spelled.

[REDACTED] mortgage

35. In February 2008, Chaudhary submitted a mortgage application to First National on behalf of [REDACTED], which indicated that [REDACTED] had been self-employed as a drywaller for the previous four years, earning \$78,456.
36. In support of the mortgage application, Chaudhary submitted a 2005 NOA dated July 10, 2006 (showing income of \$64,110) and a 2006 NOA dated April 27, 2007 (showing income of \$72,336).
37. In the course of reviewing the mortgage file, Staff noted the following:
- (a) Both the 2005 and 2006 NOAs, dated July 10, 2006 and April 27, 2007 respectively, are on Canada Customs and Revenue Agency letterhead. The Canada Customs and Revenue Agency changed its name to "Canada Revenue Agency" on December 12, 2005, which change ought to have been reflected on the NOAs submitted.

**Concerns raised by lenders**

38. At least two lenders have expressed concerns regarding Chaudhary's dealings as a mortgage broker.

39. In early August 2008, First National contacted Staff advising of some "bad deals" for which Chaudhary was the mortgage broker.
40. Staff met with representatives of First National on August 6, 2008 and were advised that First National had reviewed all of Chaudhary's files and discovered a number of suspicious NOAs.
40. On September 4, 2008, Staff received a letter of complaint about Chaudhary from [REDACTED] Regional Vice-President of MCAP. In his letter, [REDACTED] advised as follows:
- "During my final audit prior to funding I discovered several mortgage files from this broker that I had concerns with.
- The first file for Mr. [REDACTED] the employment letter, pay stub and bank statements seemed suspicious. The company listed as his employer was not listed in directory assistance, answered hello when phoned on the number provided and a drive by of the company address reveled [sic] a residential home. Also the broker's comments indicated the property was to be owner occupied when on a MCAP declaration form signed at the lawyers office the client crossed off this clause. This file was subsequently cancelled.
- The second file for [REDACTED] had similar concerns on his employment letter, pay stub etc. This file was also subsequently cancelled prior to funding."
41. On September 5, 2008, [REDACTED], Manager, Mortgage Investigations with MCAP wrote Mr. Chaudhary, terminating MCAP's broker relationship with him. In her letter to Mr. Chaudhary, [REDACTED] writes as follows:
- "Please be advised that effective immediately MCAP is no longer prepared to accept or approve any mortgage transactions from you.
- Based on an internal investigation, the mortgage transactions that we receive from you do not meet MCAP's standards. There are many inconsistencies in the documentation and we are not prepared to incur additional risk associated with processing these mortgage transactions.
- Furthermore, in the event that you are directly involved in a future mortgage transactions that comes to our office by way of another mortgage broker we will hold you personally responsible for any losses that we may incur..."
42. [REDACTED], one of the principals of Finder, advised Staff that he had contacted Ms. [REDACTED] in light of her September 5, 2008 letter and was told that 24 of the 27 mortgage applications Chaudhary had submitted to MCAP contained questionable documents.
43. On October 3, 2008, Staff received an email from Ms. [REDACTED] (formerly Ms. [REDACTED]) indicating that a high number of Chaudhary's mortgage applications had been declined by MCAP. Specifically, she provided the

following statistics in relation to mortgages submitted by Chaudhary to MCAP:

(a)	Total Deals Submitted	25
(b)	Deals Cancelled	5
(c)	Deals Declined	16

44. In addition to the concerns raised by MCAP, ██████ advised Staff that he had received a complaint from First National relating to questionable documents Chaudhary had submitted with his mortgage applications.

### **General**

45. To date, the office of the Registrar has not received Chaudhary's submortgage broker registration.

### **Applicable sections of the Mortgage Brokers Act and Bulletins**

47. Relevant sections of the *Mortgage Brokers Act*, RSBC 1996, c. 313 (the "Act") are set out below:

#### **Suspension or cancellation of registration**

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 that 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;

(f) the person is in breach of a provision of Part 2 or 5 of the *Business Practices and Consumer Protection Act* prescribed under section 9.1(2).

...

(2) If the length of time that would be required to give the person an opportunity to be heard under subsection (1) would, in the registrar's opinion, be prejudicial to the public interest, the registrar may suspend registration without giving the person an opportunity to be heard.

(3) If under subsection (2) the registrar suspends registration without giving the person an opportunity to be heard, the registrar must promptly send written notification of the suspension to the person and to the tribunal.

48. The Registrar periodically issues Bulletins for the information of mortgage brokers and submortgage brokers registered in BC. Portions of relevant Bulletins are set out below:

**Bulletin Number MB04-005 – Misleading Information (October 2004)**

"Increasingly this office is being made aware of occasions where mortgage brokers are failing to verify client information that is being passed on to lenders. As a result, instances where lenders are receiving misleading or false information is becoming more frequent...

Mortgage brokers need to recognize that lenders rely on the information they receive regarding potential borrowers. Mortgage brokers cannot say that it is not their responsibility to verify the information being given to them during the application process. Lenders indicate they assume that mortgage brokers have verified the information before forwarding it on. This office takes the position that a mortgage broker has a duty to ensure the information being sent to a lender has been verified.

Although no one is suggesting that mortgage brokers need to conduct in-depth investigations of every transaction that they process, reasonable due diligence must be undertaken to ensure that the information being passed on to lenders is accurate. Applications containing errors or omissions need additional verification and under no circumstances should brokers be referring applications that have been shown by another mortgage broker or lender to contain false or inaccurate information. If mortgage brokers do not verify the information they are forwarding to lenders, then mortgage brokers should advise the lenders in writing that none of the information has been verified..."

**Bulletin Number MB 07-005 – Due Diligence of Mortgage Brokers Who Arrange Stated Income Mortgages (July 26, 2007)**

"Self employed borrowers may qualify for a stated income mortgage by relying on the income stated in their mortgage application or in a separate declaration form. These borrowers usually do not have to prove the value of their income with supporting documentation, such as income tax returns or bank statements. However, they may have to document the source of their income by providing a business licence to the mortgage broker or lender. Stated income mortgages are intended for self employed

persons, who may write off significant amounts of their gross income with business expenses. The income they are asked to declare is neither their gross income nor their net income, but a "reasonable" estimate of their actual income...

The lack of supporting documentation required for stated income mortgages may lead some borrowers to provide misleading information about the source of their income or the amount of their income...

Please be aware that mortgage brokers must undertake reasonable due diligence to ensure that the information being passed on to lenders is accurate and not misleading, even if it appears that the lender encourages or tolerates misleading statements from borrowers about the source or amount of income on stated income applications. Exercising due diligence for stated income mortgages would require mortgage brokers to ensure that the borrower knows to state only truthful information in the mortgage application. Remember that if a stated income mortgage results in default or foreclosure, the lender may look for evidence of fraud. If there are any misrepresentations about the amount or source of income, lenders may place responsibility for the misrepresentations on the mortgage broker who submitted the application, while borrowers may blame the mortgage broker for counseling them to provide false information.

In addition, the Registrar of Mortgage Brokers may seek to impose regulatory penalties against any mortgage broker who does not exercise due diligence in ensuring that information contained in stated income mortgages is accurate and not misleading..."

I AM THEREFORE OF THE OPINION that Chaudhary has conducted business in breach of the *Act* and in a manner that is prejudicial to the public interest by failing to conduct any due diligence or "know your client" procedures and/or by knowingly submitting false information to lenders for them to act upon as if it were genuine.

I AM THEREFORE OF THE OPINION that the length of time that would be required to give Chaudhary an opportunity to be heard under section 8(1) of the *Act* would be prejudicial to the public interest. Chaudhary has undertaken a course of conduct that undermines the integrity of the mortgage broker industry. Submitting documents in support of a mortgage application which he knows, or ought to know, are false is prejudicial to the public interest, and is conduct from which the public needs immediate protection.

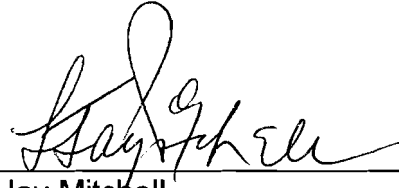
I HEREBY SUSPEND Chaudhary, pursuant to section 8(2) of the *Act*, until the investigation into the conduct and activities of Chaudhary is completed and a determination is made by the Registrar, after Chaudhary has had an opportunity to be heard, as to whether the registration of Chaudhary should be suspended or cancelled pursuant to s.8(1) of the *Act*.

THIS SUSPENSION ORDER will remain in force for a period of one hundred and twenty (120) days from the date of this Order or until the determination referred to above is made by the Registrar, whichever is sooner. In the event that the determination referred to above is not made by the Registrar within one hundred

and twenty (120) days of this Order, the staff of the Registrar may apply for a further Order under s.8(2) of the Act.

TAKE NOTICE that Chaudhary may, under section 9 of the Act, appeal this Order of Suspension to the Financial Services Tribunal.

Dated at the  
City of Surrey,  
Province of British Columbia  
this 16<sup>th</sup> day of October, 2008.



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L. Jay Mitchell  
Acting Registrar of Mortgage Brokers  
Province of British Columbia

TO: Jay Kanth Chaudhary  
[REDACTED]  
[REDACTED] British Columbia  
[REDACTED]

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