



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

-AND-

GORDON STEPHEN LEMON

**DECISION OF THE REGISTRAR OF MORTGAGE BROKERS
(Application)**

Appearances:

For the Applicant: Owais Ahmed

For Staff: Stephen King

The Applicant, Mr. Lemon, applies to the Registrar of Mortgage Brokers (the "Registrar") for:

1. An order that the Notice of Hearing dated January 7, 2015 be amended, such that it provides Mr. Lemon with notice of the specific allegations that are being made against him; and
2. A direction that no final findings have been made against Mr. Lemon, and that he will have the opportunity to be heard at a bifurcated hearing and at such hearing will be entitled to be represented by legal counsel, make representations, cross-examine witnesses and lead evidence.

Staff opposes the application.

This application was heard based on written submissions as agreed to by both Staff and the Applicant.

With respect to the first request I have reviewed the Notice of Hearing dated January 7, 2015 (the "Notice") and find that:

- The Notice makes clear that the purpose of the Hearing is to consider any further orders, in particular, orders on penalty, based on the facts set out in the Order issued on February 11, 2014 (the "Order");

- The Notice clearly references the Order and the Order is attached as an Appendix to the Notice; and
- The Notice provides the specific legislative reference under which it was issued and under which the Order was issued.

In addition to the Notice being fulsome in content, the correspondence provided in the submissions also provides that Staff made clear to Mr. Lemon, through his counsel, that they were proceeding with a hearing on penalty only.

I can think of no amendments I could order to the Notice that would provide Mr. Lemon any further information on the allegations made against him. The first request is therefore denied.

With respect to Mr. Lemon's second request, I interpret the request to be a revisiting, reconsideration, or appeal, of the facts set out in the February 11, 2014 Order. That Order was a Summary Order issued pursuant to section 8(2) of the Mortgage Brokers Act (the "Act"), which provides as follows:

*8(2) - If the length of time that would be required to give a person an opportunity to be heard under subsection (1), (1.2), (1.3) or (1.4) would, in the registrar's opinion, be prejudicial to the public interest, **the registrar may, without giving the person an opportunity to be heard**, suspend a registration under subsection (1) (a) or (1.3) (a) or make an order under subsection (1) (c) or (d), (1.2) (a), (1.3) (c) or (d) or (1.4) (a) or (b). [Emphasis added.]*

The Order contains many findings of fact which led to the order of suspension. In my interpretation of the Act, I do not see that I have jurisdiction to revisit or reconsider the factual findings in the Order. In essence, with regard to the facts found, I am *functus officio*.

In the Order itself it was noted that staff was continuing its investigation. From the terms of the Notice of Hearing it would appear that no new facts relating to the conduct at issue are being alleged, and as such no new findings of fact regarding Mr. Lemon's conduct or suitability are being sought. He will have a full opportunity to be heard with respect to any further penalty sought.

If Mr. Lemon wishes to appeal the facts of the Order his proper course is by way of appeal to the Financial Services Tribunal (the "Tribunal") pursuant to section 9 of the Act. This was noted in the terms of the Order. I acknowledge that the period of time allowed under the statute for such an appeal has long-since expired; however, this fact does not open up other avenues of appeal or review as an alternative. The Tribunal does have the ability to hear and consider new evidence, and to hold oral hearings. The Tribunal may also confirm, reverse, vary, or send the matter back to the Registrar for reconsideration with or without directions.

If there were extenuating circumstances that prevented Mr. Lemon from exercising his statutory appeal rights within the allowable time period it is open to him to communicate this information to the Tribunal and request that it hear his appeal, notwithstanding the time limits provided in statute.

Issued this 6th day of October, 2015
at Vancouver, British Columbia

A handwritten signature in black ink, appearing to read "Carolyn Rogers", followed by a period.

Carolyn Rogers
Registrar of Mortgage Brokers
Province of British Columbia