

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

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

**- AND -**

**IN THE MATTER OF EUGENIO PUGLIESE**

**- DECISION -**

**Before:** W. Alan Clark  
Registrar of Mortgage Brokers

**Place:** Surrey, British Columbia

**Appearing:** Richard Fernyhough for the Staff of the  
Registrar of Mortgage Brokers

Ewen J. Cameron for Mr. Pugliese

## Introduction

Eugenio Pugliese ("Pugliese") was charged and convicted of Conspiracy to Traffic in a Controlled Substance (Cocaine) and Possession of Cocaine for the Purposes of Trafficking. He was sentenced to five years in prison for the Conspiracy charge and two years for the Possession charge. Both terms were to run concurrently. Although he was originally sentenced in 2001, he did not commence his sentence until 2004. Pugliese received full parole in March of 2006 and he will remain on parole until July 1, 2009.

On November 14, 2005, Pugliese applied for registration as a submortgage broker in anticipation of going to work for [REDACTED]. He disclosed his conviction in his application. His conviction raised questions about his suitability to be registered as a submortgage broker and whether or not the proposed registration is objectionable.

Section 4 of the *Mortgage Brokers Act* ("The Act") states:

*The registrar*

*(a) must grant registration or renewal of registration to an applicant if in the opinion of the registrar the applicant is suitable for registration and the proposed registration is not objectionable,*

*(b) must not refuse to grant or refuse to renew registration without giving the applicant an opportunity to be heard, and*

*(c) may, in the registrar's discretion, attach to the registration or renewal of registration terms, conditions or restrictions the registrar considers necessary.*

Before refusing to grant Pugliese registration, he was given an opportunity to be heard which was done in the form of written submissions.

## Submissions:

Counsel for Pugliese submitted that:

- He disclosed his conviction in his application and did not try and hide from his past.
- The offence he was convicted of is "completely unrelated to the responsibilities of a submortgage broker".
- The offence "is completely unrelated to the employment he now seeks and is not a relevant factor on which to deny his registration".

- The application is not objectionable to the reasonably informed public and should not be to the Registrar.
- The object of the Act in respect of mortgage brokers is to ensure that they disclose any potential conflict of interest to their clients and the perspective in which the Act operates is out of concern for the mortgage broker profession and the public.
- If an applicant is serving a sentence for a criminal conviction for an offence that has no bearing on the tasks of a mortgage broker, for example disclosure of fees, costs of borrowing and/or conflicts of interest, then the status of the mortgage broker profession will not be undermined and the public trust not threatened by registration.
- Following the guidelines in the Real Estate License Practice Manual is inappropriate for three reasons:
  1. The difference in the language of the statutes;
  2. The application cannot be fettered by rigid internal policies; and
  3. The Act does not contemplate a period of suspension when an applicant is refused registration.

Counsel also made reference to and made comment about the following cases:

1. Khosla v Real Estate Council of British Columbia;
2. Thomson v The Superintendent of Real Estate; and
3. Rachfall v The Registrar of Mortgage Brokers.

Counsel for the Staff of the Registrar of Mortgage Brokers submitted that:

- Pugliese is not suitable for registration as a result of his criminal conviction for conspiring to traffic in cocaine.
- He should not be considered for registration until at least one year after the completion of his sentence if the Registrar is satisfied that his conviction does not fall into the category of white collar crime, or at least five years after the date of the completion of his sentence if the Registrar is satisfied that his conviction falls into the category of white collar crime.

Counsel also made reference to and made comment on the cases cited by counsel for Pugliese.

## The Decision

One of the most fundamental responsibilities of the Registrar is to protect the public confidence in the province's financial services sector and in particular the mortgage broker industry. Section 4 of the Act contributes to the public confidence in the industry by ensuring all individuals who wish registration are suitable and the proposed registration is not objectionable.

In Rachfall v The Registrar of Mortgage Brokers, suitability as referred to in section 4 of the Act was defined as the inherent characteristics of the applicant such as knowledge or honesty. I would add the reputation of an individual also contributes to or detracts from their suitability to be registered. In fact, the application form for registration calls for the employer or sponsor to certify the applicant has a good business reputation, which is part of determining suitability.

Also in Rachfall, the Registrar stated: "Objectionable suggests that the Registrar can refuse on broader grounds than the inherent characteristics of the applicant". The Thorndike Baranhart Comprehensive Desk Dictionary defines objectionable as: "likely to be object to; unpleasant; disagreeable, undesirable; offensive; and obnoxious".

Pugliese was convicted of a serious criminal offence which, in my opinion, can only be described as a "white collar crime" based on the amount of drugs which was estimated at three million dollars and includes the fact that Pugliese was found to have had three kilograms of cocaine in his home. The view that a serious drug offence is a "white collar crime" was upheld by the Financial Services Tribunal in Thomson v The Superintendent of Real Estate.

At the time Pugliese committed the offences, he was thirty years of age and a mature adult. He had to know the consequences of entering into a criminal conspiracy. Such consequences include the effect on future employment.

After viewing all of the circumstances, I am of the opinion that Pugliese is personally unsuitable to be registered as a submortgage broker. It is my belief that being under parole after conviction for a serious offence has a negative effect on his personal and business reputation that results in being unsuitable to be registered. In addition, it is my belief that his proposed registration is objectionable because to register Pugliese would negatively impact the public and industry confidence in the financial services sector.

When then would Pugliese be eligible for registration? Contrary to the submission by counsel for Pugliese, I believe it is appropriate to look to the guidelines in the Real Estate License Practice Manual for the following reasons:

- The close working relationship between mortgage brokers and the real estate industry is such that it would not be appropriate to have a different entry threshold for what is basically the same industry<sup>1</sup>; and
- The Guideline is (in my opinion) a good common sense document that outlines (under normal circumstances) in what period of time a person regains their reputation.

Under the Guideline, an individual convicted of a “white collar crime” will not be considered for licensing (registration) until at least five years from the date of completion of sentence, parole and/or probation.

As a result, I conclude that the confidence in the financial services sector and the reputation of the many honest ethical mortgage broker registrants can only be preserved by not allowing Pugliese to be registered until he has re-established his suitability and his registration is not objectionable. This can only be done with the passage of time. Consistent with the Financial Services Tribunal, Thompson v The Superintendent of Real Estate, I find that:

- Pugliese is not eligible for registration under the *Mortgage Broker Act* as he is unsuitable and his proposed registration is objectionable;
- The Registrar will not consider an application for registration under the *Mortgage Broker Act* until five years after completion of his sentence, which would be July 2014; and
- The Registrar will not consider an application at that time unless Pugliese can clearly demonstrate he has rehabilitated himself and re-established his suitability.



W. Alan Clark - Registrar of Mortgage Brokers  
Surrey, British Columbia

April 19, 2006.

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<sup>1</sup> As an example, Pugliese took and passed the Real Estate Trading Services Licensing Examination which meets the educational requirements for licensing under the *Real Estate Trading Services Act* and registration under the *Mortgage Broker Act*.