

**Please note that each of the Respondents has appealed this decision of the Registrar to the Financial Services Tribunal.**

**Please also note that Section 9 of the *Mortgage Brokers Act* provides that:**

Appeal to tribunal

9 (1) A person affected by a direction, decision or order of the registrar under this Act may appeal it to the tribunal, and, unless otherwise provided for in this Act, sections 242.2 and 242.3 of the *Financial Institutions Act* apply.

(2) Despite section 242.2 (2) of the *Financial Institutions Act*, **an appeal under subsection (1) of this section operates as a stay unless an order is made under section 242.2 (10) (a) of the *Financial Institutions Act*.**

Also please note that the Respondent Verico is no longer a franchisee of the Verico Financial Group Inc. and any reference to “Verico” in the decisions of the Registrar do not refer to the Verico Financial Group Inc.

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

**R.S.B.C. 1996, C313**

**- AND -**

**0707543 BC LTD. dba Verico 1<sup>st</sup> Landmark Mortgage  
and Lee Douglas Bussey**

**DECISION ON PENALTY**

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

**Date:** March 27, 2008

**Place:** Surrey, British Columbia

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

- and -

R. Pelletier and M. Tarmen for  
0707543 BC LTD. dba Verico 1<sup>st</sup> Landmark Mortgage  
and Lee Douglas Bussey

**Introduction**

On March 14, 2007, a Notice of Hearing was issued pursuant to the Mortgage Brokers Act ("Act") alleging that 0707543 BC LTD dba Verico 1<sup>st</sup> Landmark Mortgage ("Verico") and Lee Douglas Bussey ("Bussey") committed a number of breaches of the Act.

After a hearing, I found the following allegations as contained in the hearing notice were proven:





*\$50 000 if, in the opinion of the registrar any of paragraphs (b) to (e) of subsection (1) apply.*

Section 6 states (in part):

*(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.*

**Submissions:**

Both counsel made written submissions accompanied by authorities.

**A) Counsel for the Registrar's Staff**

Counsel for the Registrar's staff made written submissions on penalty. The salient points of these submissions were:

- The Registrar was directed the purpose of sentencing (in administrative hearings) as articulated in:
  - James Casey, "Regulation of Professionals in Canada", Ch. 14.2 Purpose of Sentencing.

It was pointed out that Mr. Casey states the primary purpose of legislation regulating professionals is the protection of the public.

- It was submitted that:
  - "As a whole, the mortgage broker industry relies on maintaining the public's confidence. If either lenders or borrowers did not have confidence in mortgage brokers and submortgage brokers to act as honest and professional intermediaries, the industry would not exist."
  - Mr. Bussey has not conducted himself in the manner required of a registered submortgage broker. His actions put lenders and borrowers at risk.
- It was pointed out that:
  - ██████████/██████ could not meet the mortgage obligations and the lending institution was forced to foreclose on the property and Bussey ended up purchasing the property in foreclosure.
  - The attempt to fraudulently alter a contract can:
    1. Mislead other buyers into overpaying for similar houses nearby; and

2. Give owners of nearby houses an exaggerated notion of their home equity.
  - That Bussey engaged in a sophisticated scheme on two occasions to deceive lending institutions as to the actual value of property and to the indebtedness of clients.
- It was further submitted that:
  - Bussey's registration ought to be cancelled pursuant to section 8(1) of the Act and he ought to be precluded from reapplying for a significant period of time;
  - An administrative penalty is appropriate as Bussey involved innocent third parties, and some not so innocent in his efforts to deceive lenders. He attempted to convince the [REDACTED] and [REDACTED] to inflate the purchase price on a contract of purchase and sale. He convinced [REDACTED] and [REDACTED] to make a false gift letter and involved [REDACTED] parents in the process. Bussey appeared to be completely unconcerned about involving others in his fraudulent schemes;
  - Bussey ought to be required to successfully complete the Mortgage Brokers Course, including an ethics course, applicable at the time of his proposed re-registration as a condition of his re-registration; and
  - It is appropriate to order costs be paid by Bussey and Verico pursuant to 6(9) of the Act.

A number of cases in support of the position of the staff were referred to.

### **B) Counsel for Verico and Bussey**

Counsel for the Verico and Bussey made written submissions on penalty. The salient points of these submissions were:

- In twelve years of being a submortgage broker, Bussey has not been the subject of any prior complaints or disciplinary hearings and there is no evidence that any of the other submortgage brokers employed by Bussey were ever the subject of prior complaints of disciplinary hearings.
- With respect to the [REDACTED] transaction, Bussey admitted he should not have done those things and he had never done something like this before and would certainly not do something like this again.

- It is an obvious inference that Bussey was simply trying to help [REDACTED] and [REDACTED].
- Bussey's evidence was that he believed that [REDACTED]/[REDACTED] could afford to make mortgage payments and this evidence was never challenged.
- Bussey's conduct was not motivated by greed or personal profit; he was simply trying to help them.
- Bussey did advance \$14,000 and this amount was never repaid to him, thus both [REDACTED] and [REDACTED] benefited from his actions.
- TD Canada Trust did not suffer any losses. After the loan went into default, Bussey took steps to purchase the property and pay out TD Canada Trust, including their legal fees. Therefore, the only party who lost money in the [REDACTED] transaction was Bussey.
- There is some confusion and uncertainty with respect to the rental agreement and there is no clear evidence the bank was actually misled with respect to the rental agreement.
- With respect to the [REDACTED] transaction, it was submitted that Bussey admitted to offering to lend money to [REDACTED] as interim bridge financing and, as the application was refused, the lending institution was not misled and no consequences flowed from Bussey's actions.
- With respect to carrying on business from an unregistered office, it was submitted that there is no suggestion there was any attempt to mislead the Registrar's staff and, at the highest, there was a clear misunderstanding. At all times reasonable efforts were made to ensure files were properly kept for audit purposes which is one of the purposes of the Act.
- With respect to failure to provide Form 10s to borrowers and lenders, it was submitted that the disclosure would give a borrower or lender no meaningful information that would influence either in making a decision. Bussey's evidence was that a Form 10 was not required unless receiving a fee from a borrower and there were no member bulletins (on this issue) until August 2007. The failure to provide Form 10s was, in this case, a mere technical breach.

It was further submitted that the factors from *RE Eron Mortgage Corp., 2000 LNBCSC 34* are relevant in determining the sanction imposed in this case and the totality principle, which is legislated for sentencing in the criminal context as articulated in 718.2 (c) should also be born in mind when considering a penalty for multiple infractions of the Act.

A number of cases in support of the position of the Bussey/Verico were referred to.

Counsel for both parties then filed reply submissions which, after examining, I would summarize as follows:

- Counsel for the Registrar's staff made comments with respect to the points made by opposing counsel; and
- Counsel for Bussey/Verico made comments on the cases relied upon by opposing counsel and submitted three more cases to support his position.

I make the following comments with respect to the submissions made by counsel for Bussey/Verico:

- I do not agree there was an obvious inference that Bussey was simply trying to help [REDACTED]. If he was truly helpful he would have advised the couple they could not afford the house they were contemplating purchasing. Instead, Bussey tried a number of manipulations of their mortgage application to make it appear they could. Additionally, it is noted he did get a fee for the deal and there is no evidence he waived the said fee.
- I do not agree Bussey's advancement of \$14,000 was never repaid and I also reject the argument that the only person who lost money in the transaction was Bussey. The facts are:
  - Bussey received a fee;
  - Bussey ended up with the house in question; and
  - In doing so, benefited from any equity that had accrued.
- I would also like to make comment on the submissions that [REDACTED] benefited from his actions. Clearly, they did not. Having a bank foreclose for non-payment of a mortgage is a stigma that affects their ability to receive credit for some period of time.
- I do not agree with the statement there was no clear evidence that the bank was actually misled with respect to the rental agreement. Testimony indicated that 50 percent of the rental income was included by the bank in [REDACTED] income which ultimately determined the amount of mortgage they qualified for. Bussey also testified the income would be used for debt servicing.



- I do not agree the [REDACTED] transaction was bridge financing. I rejected this argument in making a finding of fault for this allegation and do not intend to revisit that decision during the penalty phase of this hearing.
- I do not agree there was a misunderstanding with respect to where Ivers was carrying on business. It was clear there was no business being conducted from the Kelowna office. Based on the evidence, I agree that upon conclusion of a matter the files could be found at the main office in Vernon, however, during the period the file was active it was kept at the residence of [REDACTED] and beyond the ability of the staff of the Registrar to review.
- Finally, I strongly disagree that a Form 10 would give a borrower or lender no meaningful information that would influence a decision. I can think of a number of ways it would, in fact too numerous to reduce to writing in this matter. One of the primary purposes of the Act is to ensure that borrowers and lenders are provided with accurate information so that informed decisions can be made.

I also would like to comment on the factors regarding sentencing in the *Eron Mortgage Cop.*, 2000 LNBCSC 34 which counsel for Bussey wishes me to consider.

In all, this decision mentions there are 10 factors, although a number of them are clearly securities industry specific, I agree some are important in determining the appropriate penalty in this matter. I note, however, that none of the factors is the protection of the public as James Casey, "Regulation of Professionals in Canada", Ch. 14.2 Purpose of Sentencing, has pointed out as the primary purpose of regulating occupations and I further note that none of these factors takes into consideration ensuring the public continue to have confidence in their financial services registrants.

I would now like to comment on some of the other cases submitted for my consideration.

I reviewed the numerous cases submitted for my consideration by both counsel. Given the volume of cases, I only intend to make comment on a few. My comments are:

I believe a single administrative penalty in this circumstance is appropriate and, as a result, a considerable number of cases submitted by counsel for Bussey/Verico only deal with a portion of the allegations proven in the hearing notice. Other than noting the penalty, I do not intend to comment further on them.

I would like to comment on two cases submitted by counsel for Bussey/Verico which are: Ford and Jurasksi. Given both of these are my decisions, I am especially familiar with the facts. As a result, I do not think the penalties imposed

are relevant to this matter, as in the former “the misrepresentation did not serve to qualify individuals for financing that otherwise would not be eligible for mortgage financing” and in the latter it was clear upon the evidence Jurasksi was misled by his client, also a financial services professional, and the misrepresentation occurred after the mortgage had been funded.

***Decision re Penalty:***

Given that I have made a finding of fault in eleven of the issues in the hearing notice, what then is the appropriate penalty or penalties to be imposed? In considering this, in addition to the relevant acts previously mentioned, I have taken the following factors into consideration:

- Bussey’s previous good character;
- Bussey’s admissions and lack of credibility in other areas;
- The need to maintain public confidence in the province’s financial services sector and in particular the mortgage broker industry;
- The reputation and status of registrants in the mortgage broker industry in general;
- The protection of the public; and
- How Bussey conducted himself in business.

Of all of the cases submitted by counsel, the one that seems to have the most appropriate penalty is the Chand matter, again, one that I am familiar with. The actions of Bussey cannot be described as similarly sophisticated as in the Chand matter but what was lacking in sophistication was more than compensated by sheer audacity.

I was particularly troubled by Bussey’s actions in the following areas:

- His brazen attempts to have the vendor rewrite a contract to reflect equity where none existed;
- After failure to accomplish this, he arranged for a second mortgage and then involved the parents of ██████ in being party to this matter by having them execute two separate phony gift letters;
- His attempt to involve an innocent third party to fund the second mortgage funds and when this fell through, lending his own funds and subsequently ending up with the property;

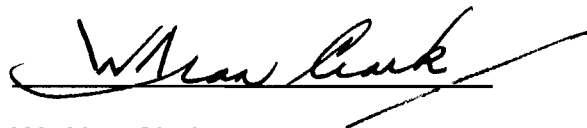
- Involving individuals in creating a phony rental agreement at close to twice what the property would rent for in order to increase the income to debt servicing ratio;
- His willingness to mislead the bank in the [REDACTED] transaction in a number of areas; and
- His total lack of following basic rules in the Act.

In addition, in reviewing all of the factors, I feel the public interest considerations have to be placed above those of Bussey/Verico. As a result I find that:

- I understand Verico is no longer registered. I issue no penalty against Verico;
- Bussey's registration is to be suspended for a period of 5 years from the date of this decision;
- Given the length of suspension before being registered again, he must first complete the education requirements in effect for a new applicant at the time of the lifting of this suspension; and
- Before the suspension is lifted, he must also provide proof he has successfully taken a course where an examination is offered on ethics.

I will now deal with the issue of costs.

Both counsel have agreed costs are appropriate. Counsel for Bussey/Verico has argued costs should not be such that it discourages individuals from requesting hearings. I have considered those remarks in ordering costs, however, it should also be noted that it is also unfair for the vast majority of mortgage professionals to bear the costs of regulating those who choose to disregard the rules. I have balanced those factors and arrived at reduced costs of \$20,000.00 to be paid by April 30, 2008.



W. Alan Clark  
Registrar of Mortgage Brokers  
Province of British Columbia

Dated at Surrey, British Columbia  
This 27th day of March, 2008.

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