



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

-AND-

**KULWINDER SINGH DHALIWAL
AKA KELLY DHALIWAL**

(Corrected decision: paragraphs 16, 17 and 25 were corrected for spelling and format)

Decision

1. Kulwinder Singh Dhaliwal, aka Kelly Dhaliwal, (Mr. Dhaliwal) has applied to the Registrar to become licensed as a sub-mortgage broker.
2. Staff of the Registrar submit that Mr. Dhaliwal is unsuitable for registration based on a pattern of dishonest behavior that meets the test provided in the legislation, making his registration objectionable.
3. Mr. Dhaliwal accepts that he has made mistakes in the recent past but argues those mistakes do not represent a pattern of behavior but rather an isolated incident for which there were extenuating circumstances. Mr. Dhaliwal further argues that he has demonstrated recompense and rehabilitation adequate to make him suitable for registration as a sub-mortgage broker.
4. Mr. Dhaliwal has requested a hearing on the matter and through his counsel, agreed to a hearing by submissions only.

Relevant Legislation

5. Section 4 of the Mortgage Brokers Act provides that:

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 the 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.*

Agreed Facts

6. Mr. Dhaliwal graduated from the University of British Columbia's Faculty of Commerce in 2004 with a Bachelor of Commerce. Following his graduation he moved to his home community of Penticton, British Columbia.
7. Mr. Dhaliwal was unable to secure work related to his field of study and therefore chose, in 2006, to accept a job with [redacted] working in one of their retail outlets. Mr. Dhaliwal worked for this employer for approximately four years and during that time had a good record of performance and was given increased responsibilities.
8. In 2010 Mr. Dhaliwal left his job at [redacted] when he accepted a position with [redacted] Bank as a Mobile Mortgage Specialist (MMS). This position required him to source new mortgage business for the bank. In this role Mr. Dhaliwal was paid by commissions rather than salary.
9. In early 2013 Mr. Dhaliwal submitted a mortgage application to [redacted] Bank for Ms. V and Mr. D (the Clients).
10. The Clients were referred to Mr. Dhaliwal by their realtor, Ms. K who was also the girlfriend of Mr. Dhaliwal. This personal relationship was disclosed to the Clients at the outset of the transaction.
11. The Clients entered into a conditional offer to purchase that was subject to conditions including securing financing, which needed to be met by March 1, 2013. The closing date was March 7, 2013. This aggressive timeline was made clear to Mr. Dhaliwal.
12. Mr. Dhaliwal submitted an application for financing to the [redacted] Bank and on March 1, 2013, Mr. Dhaliwal advised Ms. K in writing that the Clients' mortgage would be approved by the end of the day and she could proceed to remove the conditions.
13. Subsequently Mr. Dhaliwal became aware that final approval for the Clients mortgage would not be made by the end of the day on March 1, 2013. Mr. Dhaliwal advised Ms. K on the evening of March 1, 2013 that the mortgage approval was delayed.
14. Both Mr. Dhaliwal and Ms. K recognized that this situation put the Clients at risk. Ms. K contacted the seller's agent and requested an extension to the closing date. The seller's agent declined the request. Ms. K was angry and demanded that Mr. Dhaliwal rectify the situation.

15. In an effort to rectify the situation Mr. Dhaliwal then sought out an alternate financing arrangement through an independent mortgage broker with [redacted]
16. On March 4, 2013, Mr. Dhaliwal contacted the Clients and advised them of the fact that there was a delay with the [redacted] Bank mortgage. The Clients were irate. Mr. Dhaliwal also advised that he had located an alternative financing option with [redacted] through an independent broker and requested the Clients permission to submit their application to [redacted] via the independent broker. The Clients provided that permission.
17. Mr. Dhaliwal requested from the Clients letters from their respective employers for the purposes of verifying their income. The Clients had previously submitted a letter dated February 6, 2013 from Ms. V's employer for the [redacted] Bank application (the Original Employment Letter). However, this letter did not contain sufficient detail for [redacted] underwriting purposes so a new letter, containing additional details, was required. The Clients agreed to get a second letter.
18. As of March 7, 2013, the closing date for the sale agreement, the Clients had not yet provided the second letter.
19. On the morning of March 7, 2013, Mr. Dhaliwal took it upon himself to alter the Original Employment Letter provided by Ms. V's employer to include additional information he gathered from Ms. V's T4 and paystub. He submitted the altered employment letter to [redacted] without the knowledge of, or permission from, the Clients.
20. Later on March 7, 2013 Mr. Dhaliwal was advised by [redacted] Bank that the Clients' mortgage was approved. The Clients' mortgage was ultimately funded by the [redacted] Bank.
21. The altered employment letter was never provided to the [redacted] Bank.
22. Concurrent to final approval by [redacted] Bank, [redacted] was proceeding with the Client's application and in so doing contacted Ms. V's employer and as a result, both [redacted] and the employer identified the altered employment letter as a fabrication.
23. [redacted] declined the mortgage and Ms. V was placed on un-paid leave by her employer while an investigation was conducted into the source of the altered employment letter.
24. Mr. Dhaliwal became aware of Ms. V's situation on March 13th and on March 14th contacted her employer and advised them that Ms. V had no role in or knowledge of the creation of the altered employment letter and that the letter had been created by his assistant. The employer requested Mr. Dhaliwal's supervisor's contact information at [redacted] Bank which he provided.

25. Ms. V's employer contacted the [] Bank who then suspended Mr. Dhaliwal and initiated its own investigation.
26. On April 12, 2013 Ms. V filed a complaint with the Financial Institutions Commission (FICOM) against Mr. Dhaliwal relating to the circumstances of the altered employment letter. FICOM staff initiated an investigation into the complaint.
27. It was clear to Mr. Dhaliwal at this point that his job with [] Bank was in jeopardy. He and Ms. K discussed the situation and together decided that Ms. K would take responsibility for the altered employment letter.
28. Soon after they put this plan in place it became clear to Mr. Dhaliwal that Ms. K would face penalty from the Real Estate Council of British Columbia (REBC) who had also initiated an investigation. Mr. Dhaliwal then chose to write to Ms. K and to the RECBC in June 2013 taking full responsibility for creation of the altered employment letter.
29. On June 24, 2013 Mr. Dhaliwal resigned his position with the [] Bank.
30. In July 2013 Ms. V initiated a small claims action against Mr. Dhaliwal which was ultimately settled out of court with Mr. Dhaliwal agreeing to compensate Ms. V. Ms. V subsequently withdrew her complaint with FICOM.
31. Over the next six months, following his resignation from [] Bank, Mr. Dhaliwal enrolled in mortgage broker training at UBC and on December 16, 2013 successfully completed his licensing examination.
32. On January 6, 2014 Mr. Dhaliwal applied to the Registrar of Mortgage Brokers to become licensed as a sub-mortgage broker.
33. Staff contacted Mr. Dhaliwal on multiple occasions requesting additional information in satisfaction of his application to become a sub-mortgage broker. In an effort to assess Mr. Dhaliwal's suitability for registration staff asked Mr. Dhaliwal for additional information surrounding the circumstances of the complaint by Ms. V and the circumstances surrounding his departure from [] Bank.
34. Throughout this period of time Mr. Dhaliwal was uncooperative and despite efforts by staff to accommodate his personal circumstances, he declined to be interviewed. Mr. Dhaliwal retained counsel during this period and communication between Mr. Dhaliwal and staff was primarily through his counsel.
35. In addition to being uncooperative Mr. Dhaliwal also provided information to staff that can reasonably be considered misleading.

36. On July 31, 2014, Staff advised Mr. Dhaliwal, via his counsel, that unless he was willing to provide them with the additional information they were seeking, they were unable to recommend his registration to the Registrar. They further advised that he had the option of either withdrawing his application or proceeding to a hearing.
37. Mr. Dhaliwal opted to proceed to a hearing and as a result this decision is before me.
38. Mr. Dhaliwal subsequently retained new counsel for the purposes of preparing his submissions for this Hearing.

Reasons

39. When it comes to assessing the suitability of an applicant for licensing under the Mortgage Broker's Act the Registrar's duty requires balancing the rights of an applicant, the rights of the public to be protected from individuals who are unsuitable for registration and the overall efficient functioning of the market.
40. The public expects that individuals holding licenses to provide financial advice, including arranging mortgages in the case of mortgage brokers, to be honest, trustworthy and to always place their client's interests ahead of their own. Assessing suitability necessarily requires some assessment of character.
41. The standard set out by the Mortgage Brokers Act for suitability is that a licensee cannot, in the opinion of the Registrar, be "objectionable". The standard is not perfect or beyond reproach.
42. The act also provides the Registrar the discretion to attach conditions to a registration where there may be concerns or reservations related to suitability that are not significant enough to preclude registration, but where the Registrar wishes to exercise caution.
43. Mr. Dhaliwal, through his counsel, proposes registration conditions including enhanced supervision by a Designated Individual (DI) and a voluntary audit of his files, at his own expense, at a time of staff's choosing, during the first twelve months of his registration.
44. In the case of Mr. Dhaliwal, staff assessed his character and reached the conclusion that his registration was objectionable, owing to:
 - a. His past behaviour in respect of the Ms. V complaint, including altering an employment letter and then subsequently fabricating two different stories to cover-up his dishonesty;
 - b. His failure to be forthright and cooperative in his own suitability review;
 - c. The fact that he provided misleading information in his application to become a licensed sub-mortgage broker.

45. Staff did not view the enhanced conditions as adequately mitigating the risks that Mr. Dhaliwal may once again act dishonestly.
46. I have considered the summary facts set out above and all of the evidence provided to me including the submissions from both counsel, the affidavits and Mr. Dhaliwal's employment file with the [] Bank and I have reached a different conclusion.
47. There is no question that Mr. Dhaliwal acted dishonestly in relation to Ms. V's mortgage. There is also no question that Mr. Dhaliwal compounded this dishonesty in his subsequent attempts to cover it up. Mr. Dhaliwal's handling of that incident can only be described as demonstrating a complete lack of judgement.
48. There is also no question that Mr. Dhaliwal was uncooperative and less than forthright in his dealing with FICOM staff as they attempted to assess his suitability for licensing.
49. On their own these two things could reasonably call into question Mr. Dhaliwal's character and therefore his suitability for licensing.
50. However, in reaching my decision I chose to look at several additional factors:

Aggravating or Extenuating Circumstances

51. Mr. Dhaliwal's lawyer argues that Mr. Dhaliwal found himself in unusually stressful circumstances for which he was unprepared owing to poor training and support from his employer, [] Bank, and later to pressures from a family health crisis.
52. There is little evidence to support the family health crisis Mr. Dhaliwal claims to have been experiencing but I am prepared to accept it on the face of the evidence provided and to accept that such stress can cause people to act out of character.
53. There is; however, considerable evidence provided to support a lack of training and support provided by Mr. Dhaliwal's employer, [] Bank. Mr. Dhaliwal's employment file from the [] Bank was included in evidence and contained detailed "Coaching Notes" (Notes) exchanged between Mr. Dhaliwal and his supervisor at regular intervals throughout his tenure at [] Bank.
54. Staff noted several instances in the Notes where Mr. Dhaliwal is reminded to get client documents filed earlier in the transaction. However, I found those instances were overwhelmed by a focus on the volume of mortgage business Mr. Dhaliwal was bringing to the bank and relentless pressure to sell creditor protection insurance to as many borrowers as possible.

55. The Notes contained little-to-no guidance on assessing a borrower's capacity, product suitability, underwriting standards, and absolutely nothing that I could find on professional conduct or ethics.
56. In some cases I found the advice conveyed through these Notes to have been pressuring to the point of encouraging behavior that, while perhaps not unethical, was certainly not transparent and could be considered "pushing the boundaries". It is possible that Mr. Dhaliwal received other forms of training outside that provided by his supervisor, but no such training is mentioned or referenced in the Notes.
57. Given Mr. Dhaliwal entered his role with [redacted] Bank with absolutely no training or background in financial services and, based on the evidence provided to me, I agree that he was poorly trained and as a result ill prepared to deal with the circumstances he found himself in.
58. In my opinion an additional contributing factor to Mr. Dhaliwal's stress was the fact that he had a personal relationship with Ms. K, the Client's realtor. As a result of Mr. Dhaliwal's poor judgement he not only put himself and the Clients at risk, but also Ms. K. I expect this made a difficult situation much worse and the evidence also shows that the fact that Mr. Dhaliwal and Ms. K had a personal relationship contributed to Ms. V's feeling of having been treated dishonestly and unfairly.
59. I note that Mr. Dhaliwal and Ms. K disclosed their relationship to the Clients upfront and I am also aware that mortgage brokers and realtors regularly rely on personal contacts to cultivate their business. This is a practice that has its risks and employers who encourage it should ensure there are clear standards and boundaries and that direction is available to handle problems when they arise, as they undoubtedly will. Again, I saw no evidence of this sort of direction from [redacted] Bank. Instead I saw consistent evidence that Mr. Dhaliwal was encouraged to leverage his personal relationships to increase business for [redacted] Bank.
60. Mr. Dhaliwal's stress arising from family circumstances, his lack of training and support from his employer, and his personal relationship with Ms. K cannot be used in any way to excuse the fact that he was dishonest. But it is my opinion that those circumstances, combined with his inexperience, were contributing factors in his behaviour.
61. The other contributing factor that I considered is that Mr. Dhaliwal received poor legal advice in his initial dealings with FICOM. It is not uncommon for a client to switch lawyers in the course of dealing with a problem and then attribute previous bad strategies or decisions to the advice of his or her previous counsel. In this case; however, there is clear evidence that Mr. Dhaliwal was poorly served by his first lawyer. In his correspondence with Staff, Mr. Dhaliwal's first lawyer advised staff that his client was providing information to Staff against his advice.

62. Mr. Dhaliwal's approach with Staff changed drastically at the point he retained new counsel. He readily accepted full responsibility for his actions, expressed remorse and was forthright in his responses to FICOM's request.

Evidence of Remorse, Rehabilitation and Reconciliation

63. A person's willingness to face their mistakes, to take responsibility and to make restitution for any damage is a measure of their character.
64. In Mr. Dhaliwal's case the evidence shows that he faced his mistake very quickly and demonstrated a willingness to take responsibility. He met with Ms. K as soon as he realized the mortgage approval was delayed, he immediately began to look for alternative arrangements by contacting an independent broker over the weekend and he contacted the Clients on the Monday morning to advise them of the problem. At that time he took personal responsibility for the error and even offered the Clients compensation.
65. Unfortunately Mr. Dhaliwal's desire to find a solution turned to desperation as he ran out of time and he made a very bad decision. He then attempted to deflect the blame for that bad decision twice, making a series of further bad decisions, until he ultimately admitted to having fabricated the employment letter and resigned his employment at [redacted] Bank.
66. I also note that Mr. Dhaliwal subsequently compensated Ms. V through a settlement agreement and Ms. V withdrew her complaint.
67. In his submissions Mr. Dhaliwal appears to now take full ownership of his mistakes and errors in judgement and he also seems genuinely remorseful for the harm he caused others. This ownership and remorse is expressed unconditionally. While his submissions offer information pertaining to the circumstances surrounding his mistakes he also acknowledges that they do not excuse his behaviour.
68. Following his resignation from [redacted] Bank Mr. Dhaliwal chose to undertake additional education on his own initiative and at his own cost to improve his skills related to arranging mortgages. He also enrolled in a university course focused on business and professional ethics. The evidence provided shows that he performed well in the mortgage broker course, demonstrating a conscientious effort to learn and improve.
69. Based on the evidence I consider Mr. Dhaliwal to have demonstrated clear and unconditional ownership of his mistakes, an effort to compensate those impacted by his mistakes, and an effort to improve his skills and judgement to avoid future mistakes.

Probability of Recurrence

70. In assessing character based on past behaviour an important question is the degree to which past behaviour is a reliable predictor of future behaviour.

71. In the case of Mr. Dhaliwal, while it is clear that he made a series of poor decisions and acted dishonestly in the case of the Client's mortgage, I consider these mistakes to be part of a single incident rather than of a pattern of behaviour.
72. Aside from the Client's mortgage, I saw no evidence in the submissions of any other incident of Mr. Dhaliwal acting dishonestly in his three years at [] Bank or in his employment prior to [] Bank.
73. I also place weight on the character references supplied by Mr. Dhaliwal from Mr. F, a [] and by Dr. K of [], and on the fact that Mr. Dhaliwal has the support of a licensed, experienced Mortgage Broker and DI who has agreed to supervise his activities and mentor him should he become licensed.
74. I also considered Mr. Dhaliwal's effort to rectify the conditions he suggests contributed to his lapse of judgement, in particular his lack of education and training.
75. Finally, Staff provided evidence of inconsistent information provided by Mr. Dhaliwal in his licensing application as evidence of a pattern of dishonesty. Upon reviewing this evidence my opinion is that the inconsistencies are more appropriately characterized as errors rather than deliberate attempts to mislead and therefore do not contribute to establishing a clear pattern of dishonesty.
76. Based on the evidence I consider the likelihood that Mr. Dhaliwal will meet the same or similar circumstances in the future and behave in the same way to be very low.

Conclusion

77. The evidence that Mr. Dhaliwal made a serious error in judgement in handling the Client's mortgage is unequivocal. Also unequivocal is the evidence that he was dishonest on more than one occasion in his attempts to repair the damage done by his lapse in judgement.
78. It is also clear that in his initial dealings with staff related to his application to become licensed as a mortgage broker Mr. Dhaliwal was uncooperative.
79. Mr. Dhaliwal does not dispute this evidence and has unconditionally accepted responsibility for his behavior. He has offered evidence of extenuating circumstances that contributed to his poor decisions not for the purpose of excusing the mistakes or diminishing their impact, but as evidence that they represent an isolated incident rather than evidence of poor character that would make him unsuitable for registration as a sub-mortgage broker. I accept this evidence.

80. Mr. Dhaliwal has gone further in proposing specific conditions be placed on his registration that will allow for added oversight of his activities for his initial year of registration. The proposed conditions provide for a reasonable level of oversight to ensure Mr. Dhaliwal upholds his obligations as a sub-mortgage broker.
81. On the basis of the evidence provided my conclusion is that the poor judgement and mistakes made by Mr. Dhaliwal in relation to the Client's mortgage, while serious, were significantly compounded by his inexperience and naiveté and on that basis I am prepared to accept that they represent an isolated incident rather than evidence of poor character. I am therefore prepared to register Mr. Dhaliwal as a sub-mortgage broker subject to the conditions proposed, which are:
- a. That Mr. Dhaliwal's activities and performance as a sub-mortgage broker be overseen by Steven Brouwer (Mr. Brouwer), Designated Individual, for the first 12 months of his registration. This oversight will include a review of all of Mr. Dhaliwal's files and for Mr. Brouwer to promptly identify any concerns and will bring them to the Office of the Registrar's attention.
 - b. In addition to the oversight of Mr. Brouwer as Designated Individual, Mr. Dhaliwal will also have a formalized mentor relationship with Scott Bowland, an experienced sub-mortgage broker.
 - c. That staff of the Registrar will perform a review of Mr. Dhaliwal's files at a time of their choosing, during Mr. Dhaliwal's first year of registration, and the reasonable costs of such review will be paid by Mr. Dhaliwal.

Dated at Vancouver, this 16 day of
February, 2015



Carolyn Rogers
Registrar of Mortgage Brokers
Province of British Columbia