Citation: Aaltonen (Re), 2023 BCRMB 16
Date:2023-12-14
File No.: INV20.304.59125

BC FINANCIAL SERVICES AUTHORITY

IN THE MATTER OF THE *MORTGAGE BROKERS ACT*
RSBC 1996, c. 313 as amended

AND

IN THE MATTER OF

BILLIE AALTONEN
(146202)

Decision on Penalty and Costs

[This Decision has been redacted before publication.]

Date of Hearing:	June 5, 6 & 9, 2023
Counsel for BCFSA:	Laura Forseille
Counsel for the Respondents:	Tam Boyar
Hearing Officer:	Andrew Pendray

Introduction

1. On October 14, 2022, a Notice of Hearing was issued alleging that Billie Aaltonen had, in her capacity as a submortgage broker, conducted mortgage business in a manner prejudicial to the public interest contrary to section 8(1) of the *Mortgage Brokers Act* (the "MBA") by:

    a. Failing to use reasonable due diligence when verifying the accuracy of income and documentation that she submitted to lenders;

    b. Submitting inaccurate information in support of borrowers' income when she knew or ought to have known that the documents were altered or did not represent the borrowers' true income;

    c. Providing misleading or false information to lenders when

        i. Stating that the property would be owner-occupied when it would not;

        ii. Providing conflicting rental information;

        iii. Providing conflicting income information; and

    d. Failing to keep books and records necessary for the proper recording of business transactions and financial affairs, contrary to section 6(a) of the [Mortgage Broker Act Regulations].

2. On June 6, 2023, pursuant to the information set out in a June 5, 2023 Agreed Statement of Facts and Liability reached between BCFSA and Ms. Aaltonen, I issued a decision on liability in this matter.
3. In that decision, I found that Ms. Aaltonen had conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1) of the *Mortgage Brokers Act*, by submitting inaccurate information in support of a borrower's income, in two mortgage applications in 2020.
4. Allegations (c) and (d) from the October 14, 2022 Notice of Hearing were withdrawn by BCFSA.
5. This decision relates to the appropriate orders to be issued against Ms. Aaltonen in respect of those admissions.
6. The hearing of this matter proceeded by way of an oral hearing at which both parties, BCFSA, and Ms. Aaltonen through her legal counsel, provided submissions.
7. BCFSA seeks an order that Ms. Aaltonen pay an administrative penalty of $40,000 pursuant to section 8(1.1) of the MBA, as we all an order that Ms. Aaltonen pay investigative costs in the amount of $4,740.45 pursuant to section 6(9) of the MBA.
8. Ms. Aaltonen takes the position than an administrative penalty in the range of $5,000 would be appropriate. She further submits that the amount of investigative costs should be reduced in order to account for the fact that a number of the allegations against her were ultimately withdrawn by BCFSA.

Issues

9. The issue is the appropriate orders to be issued in respect of Ms. Aaltonen's conduct, as provided for by section 8(1.2) of the MBA.
10. Additionally, there is the question of whether Ms. Aaltonen should be required to pay investigative and hearing costs pursuant to section 6(9) of the MBA.

Jurisdiction

11. BCFSA Hearing Officers are appointed to act for the Registrar of Mortgage Brokers (the "Registrar") in respect of orders under section 8 and 6(9) of the MBA, pursuant to a May 16, 2023 Acting Capacity Instrument.

Background

12. The evidence and information before me in this hearing included an Agreed Statement of Facts and Admissions of Liability, dated June 9, 2023[1] (the "ASF"), a Book of Documents, and a June 8, 2023 Affidavit from Ms. Aaltonen.
13. The following is not intended to be a recitation of all of the documentary evidence and information before me. Rather, it is intended to provide context for my reasons.

Registration History

14. Ms. Aaltonen was originally registered as a submortgage broker on October 1, 2010. At the time of the September 2020 transactions at issue in this matter, Ms. Aaltonen was registered as a submortgage broker with Verico Compass Mortgage Group Corporation ("Verico").
15. Ms. Aaltonen continued to be registered as a submortgage broker with Verico until September 29, 2022. She has not been registered since that date.

[1] I note that the ASF was initially signed by Ms. Aaltonen on June 5, 2023 for the purposes of the liability hearing of this matter, but was subsequently signed again by Ms. Aaltonen and counsel for BCFSA on June 9, 2023.

The Transactions

16. In the Fall of 2020, Ms. Aaltonen filed two mortgage applications on behalf of [Client 1] and [Client 2] (the "Applications"). Those are the transactions for which Ms. Aaltonen was found to have conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary to section 8(1) of the *Mortgage Brokers Act*.

17. On September 6, 2020, [Client 1] sent a mortgage application to Verico in which he indicated that he was an arborist and that he earned $42,000 per year. In that September 6, 2020 application [Client 1] did not list a current employer. He did indicate, however, that he had previously worked for one year as an arborist for [Employer 1], where he had earned $29,034 in annual income.

18. The September 6, 2020 application further indicated that [Client 2] was employed at [Employer 2], earning an income of $78,000 per year.

19. On September 12, 2020, Ms. Aaltonen sent an email to [Client 1] which stated that:

> …Might need a job letter and stub from the tree place…I'm waiting on some calls back about your [business for self] income. Ideally we use a 23 [sic] year average…Otherwise plan B.

20. Ms. Aaltonen subsequently filed a mortgage application to [Lender 1] on behalf of [Client 1] and [Client 2] on September 23, 2020. That application indicated that [Client 1]'s annual income was $72,800.

21. Ms. Aaltonen included in the September 23, 2020 application to [Lender 1] a letter of employment from [Employer 1] which indicated that [Client 1] had been employed with [Employer 1] on a part-time basis the previous year at a rate of $38.50 per hour, and that [Client 1] had been working full-time in the same position for all of 2020 at the same rate. That letter further indicated that [Client 1]'s annual gross earnings would be approximately $75,000 at full-time hours.

22. On October 6, 2020, Ms. Aaltonen filed a mortgage application to [Lender 2] ("[Lender 2]") on behalf of [Client 1] and [Client 2].

23. The October 6, 2020, application also included a letter of employment from [Employer 1]. That letter of employment again indicated that [Client 1] had been employed with [Employer 1] full time throughout 2020, at a rate of $38.50 per hour, with an annual gross income of $75,000.

Complaint

24. On October 16, 2020, BCFSA received a complaint from [Lender 2]. In that complaint form [Lender 2] indicated that its credit underwriter had reviewed the application and had called the bookkeeper at [Employer 1] and asked if [Client 1] worked for them, and that the bookkeeper had informed [Lender 2] that [Client 1] did not.

Investigation

25. In March of 2021 BCFSA staff sent a summons to [Employer 1]. On April 8, 2021, [Employer 1] responded to that summons and indicated that it did not have any records indicating that [Client 1] had been employed there in 2020. [Employer 1] further indicated that the owner of [Employer 1] did not recall writing a letter of employment for [Client 1] in September 2020.

26. In an interview with BCFSA investigators conducted on April 22, 2021, [Client 1] indicated that [Employer 1] had provided him with the letter of employment indicating that he had been working full time at a salary of $38.50 per hour during 2020 at his request. [Client 1] admitted that he had not been working at [Employer 1] in September 2020 when he had requested that letter of employment.

27. [Client 1] provided BCFSA investigators with emails between himself and [Employer 1]. In a September 21, 2020 email [Client 1] wrote to [Employer 1] and requested a letter indicating that he was working full-time for 2020 and earning $38.50 per hour.

28. [Client 1] also provided BCFSA investigators with a copy of a September 23, 2020 email from [Employer 1] which attached an employment letter indicating that [Client 1] had been working full-time throughout 2020 with a yearly gross income of approximately $75,000.

Admissions

29. Ms. Aaltonen admitted, in the ASF, that at the time she submitted the September 23 and October 6, 2020 mortgage applications, which included the employment letter from [Employer 1], she was aware that [Client 1] had not in fact been employed on a full-time basis with [Employer 1] throughout 2020, and that she knew that [Client 1]'s annual income from [Employer 1] was not $75,000.

30. Ms. Aaltonen also admitted in the ASF that that she had advised [Client 1] that his mortgage application ought to list full-time employment with [Employer 1] throughout 2020 and an annual income of $75,000.

Registration Conditions and the FST

31. On October 5, 2022, the Registrar imposed certain conditions on Ms. Aaltonen's mortgage broker registration pending her disciplinary hearing. Those conditions were reconsidered and revised by the Registrar on January 18, 2023.

32. Ms. Aaltonen appealed the conditions placed on her registration to the Financial Services Tribunal (the "FST"). That appeal was allowed in part[2].

33. In her initial submissions to the FST (contained in a December 5, 2022 email), Ms. Aaltonen took the position that BCFSA's actions in placing conditions on her registration had imposed a significant financial hardship upon her.

34. With respect to BCFSA's investigation into the Applications, Ms. Aaltonen indicated that:

> I asked him for 3 months stubs and deposits. That killed the deal anyway. Why is the "issue" the fact that I sent in the letter? I've sent in so many letters over the years that are incorrect in some way, and the lenders just send it back?

35. With respect to the allegation in the BCFSA investigation report that Ms. Aaltonen had sufficient experience arranging mortgages to understand the importance of the information and documentation being submitted to and relied upon by lenders, Ms. Aaltonen indicated that:

> …you could say that I have sufficient experience dealing with these situations in the best way possible. Just let it take its course. And there's a point where the borrower won't be able to produce the required document.

[2] *Billie Aaltonen v. Registrar of Mortgage Brokers,* 2023 BCFST 2

> That's how you professionally handle the situation. So I don't have to go around accusing people of lying, making us all look awful. I also have enough experience to know that people lie on mortgage applications all the time.

36. Ms. Aaltonen further wrote in her submissions to the FST that:

> …the only reason this is a big deal is because [Lender 2] is embarrassed. If I want to let this play out, and fall apart naturally, instead of causing a big scene, then I can do that.
>
> You cannot hold me to an unreachable standard of income verification…

37. Ms. Aaltonen concluded by indicating that:

> What if I had called [Employer 1] and they verified the LOE, and then it still ended up being false? Would you then say that I "ought to have known". I think you need to focus on the fact that I have NEVER funded a deal with false information before. Nor have I ever had to go through this kind of hell for a false LOE. Its usually just a quick decline – no big deal.
>
> Accusing clients of Fraud is NOT the way to build a business or create faith in the industry. It's better to let it play out slowly.
>
> …
>
> If I start accusing clients of lying to me before I work on their files, I will be murdering my career. And if you guys have this standard of care and due diligence, you need to be consistent across all platforms, and you need to TELL US WHAT THE STANDARD IS.

Ms. Aaltonen's Affidavit

38. In her June 8, 2023 affidavit Ms. Aaltonen noted that at the time she had submitted the applications at issue in this case, she had recently [experienced some personal family issues]. Ms. Aaltonen indicated that this, combined with the COVID-19 pandemic, had created an "incredibly stressful and chaotic time".

39. Ms. Aaltonen stated that she knew that the Applications were unlikely to fund, and that she had been of the view that it would be easier to blame the lender than to tell her client that she was unable to get him a mortgage.

40. Ms. Aaltonen indicated that she had made a mistake in submitting the Applications and that she took full responsibility for her conduct:

> Over the past few months, I have reflected on my conduct and regret having submitted the two applications. I understand that I have a professional responsibility to ensure that the information I provide to lenders is accurate and that it is never appropriate to provide inaccurate information to lenders to avoid having difficult conversations with my clients.

41. Ms. Aaltonen also explained that Verico's designated individual had declined to agree to the conditions placed upon her registration by BCFSA in September 2022. Those conditions included requiring that Ms. Aaltonen have a supervisor review and approve any work she performed, and that Verico's designated individual perform monthly checks to ensure that the supervisor was completing those reviews and approvals.

42. Ms. Aaltonen stated that the practical effect of the conditions on her registration was that she had been unable to work as a submortgage broker since October 2022. She described having had to significantly deplete her personal savings in order to cover the monthly expenses of her family. Ms. Aaltonen noted that she would need to use her remaining savings in order to pay her lawyer, pay any administrative penalty imposed by this decision, and continue to cover her monthly expenses. Ms. Aaltonen estimated that she had lost well in excess of $150,000 by not being able to work as a submortgage broker since October 2022.

43. Ms. Aaltonen described the effect of the hearing process under the MBA as having been profound, with her financial stability having been shattered, her business having suffered irreparable damage, and her relationships ruined. She indicated that even upon completion of the hearing process, she was concerned as to her ability to repair relationships with lenders, such that her ability to earn income may be impacted for years to come.

Applicable Law and Legal Principles

The MBA

44. Section 8 of the MBA addresses the orders that the Registrar may make in respect of registration and compliance with the Act.

45. Section 8(1) and section 8(1.1) address the sanctions or actions the Registrar may take against a person who is registered under the MBA.

46. Specifically, section 8(1) provides that:

> **8** (1) After giving a person registered under this Act an opportunity to be heard, the registrar may do one or more of the following:
>
> (a) suspend the person's registration;
>
> (b) cancel the person's registration;
>
> (c) order the person to cease a specified activity;
>
> (d) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
>
> if, in the opinion of the registrar, any of the following paragraphs apply:
>
> (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 this Act, the regulations or a condition of registration;
>
> (…)
>
> (i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;
>
> (…)

47. Section 8(1.1) further provides that after giving a person registered under the MBA an opportunity to be heard, the Registrar may order the person to pay an administrative penalty of not more than $50,000, if, in the opinion of the Registrar, any of the paragraphs (f) to (i) of section 8(1) apply.

48. Although Ms. Aaltonen was registered under the MBA in September 2020, as set out above, she is no longer registered.

49. Section 8(1.2) of the MBA provides the following:

> 8(1.2) After giving a person who was formerly registered under this Act an opportunity to be heard, the registrar may do one or both of the following:
>
> (a) order the person to carry out specified actions that the registrar considers necessary to remedy the situation;
>
> (b) order the person to pay an administrative penalty of not more than $50,000,
>
> if, in the opinion of the registrar, any of paragraphs (f) to (i) of subsection (1) applied to the person while the person was registered.

50. As Ms. Aaltonen is no longer registered, I consider it is section 8(1.2) of the MBA that applies in determining what actions can be taken by the Registrar in terms of sanctions, rather than section 8(1) or 8(1.1).

Sanction Principles

51. As the Supreme Court of Canada indicated in *Cooper v. Hobart*, 2001 SCC 79, the regulatory scheme governing mortgage brokers provides a general framework to ensure the efficient operation of the mortgage marketplace (para. 49). This efficient operation of the mortgage marketplace requires the Registrar to balance a number of interests, including the instillation of public confidence in the mortgage system, with a view to the protection of the public as a whole.

52. The issuing of sanctions in the professional regulatory context is done with a view to achieving the overarching goal of protecting the public. I agree with previous decisions of the Registrar which have contemplated this purpose and concluded that:

> The purpose of sanctioning orders is fundamentally to ensure protection of the public by promoting compliance with the MBA, thereby protecting the public from mortgage brokering activity that is non-compliant, not in the public interest, and that may result in loss of public confidence in the mortgage industry.[3]

53. I consider that sanctions may serve multiple purposes, including:

    (a) denouncing misconduct, and the harms caused by misconduct;

    (b) preventing future misconduct by rehabilitating specific respondents through corrective measures;

    (c) preventing and discouraging future misconduct by specific respondents through penalizing measures (i.e. specific deterrence);

    (d) preventing and discouraging future misconduct by other registrants (i.e. general deterrence);

    (e) educating registrants, other professionals, and the public about rules and standards; and

    (f) maintaining public confidence in the industry.

54. Administrative tribunals generally consider a variety of mitigating and aggravating factors in determining sanctions, largely based on factors which have been set out in cases such as *Law Society of British Columbia v. Ogilvie*, 1999 LSBC 17, and *Law Society of British Columbia v. Dent*, 2016 LSBC 5. In *Dent*, the panel summarized what it considered to be the four general factors, to be considered in determining appropriate disciplinary action:

    (a) **Nature, gravity and consequences of conduct**

[3] *Allan (Re), Decision on Penalty and Costs*, May 11, 2020 (BCFSA).

[20] This would cover the nature of the professional misconduct. Was it severe? Here are some of the aspects of severity: For how long and how many times did the misconduct occur? How did the conduct affect the victim? Did the lawyer obtain any financial gain from the misconduct? What were the consequences for the lawyer? Were there civil or criminal proceedings resulting from the conduct?

(b) Character and professional conduct record of the respondent

[21] What is the age and experience of the respondent? What is the reputation of the respondent in the community in general and among his fellow lawyers? What is contained in the professional conduct record?

(c) Acknowledgement of the misconduct and remedial action

[22] Does the respondent admit his or her misconduct? What steps, if any, has the respondent taken to prevent a reoccurrence? Did the respondent take any remedial action to correct the specific misconduct? Generally, can the respondent be rehabilitated? Are there other mitigating circumstances, such as mental health or addiction, and are they being dealt with by the respondent?

(d) Public confidence in the legal profession including public confidence in the disciplinary process

[23] Is there sufficient specific or general deterrent value in the proposed disciplinary action? Generally, will the public have confidence that the proposed disciplinary action is sufficient to maintain the integrity of the legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

55. While the factors set out above are not binding on me, I find them to be of use in considering the appropriate penalty to be issued.

Discussion

The Misconduct

56. BCFSA takes the position that the misconduct in this case, in that it involved facilitating the fraudulent activities of a borrower with a view to earning a commission on the transaction, was serious in its nature.

57. In taking that position, BCFSA acknowledges that there was no evidence of significant impact to either [Client 1] or to the lenders to whom the Applications were sent as a result of Ms. Aaltonen's conduct.

58. Ms. Aaltonen acknowledges that the nature of the misconduct was serious.

59. Based on Ms. Aaltonen's admissions, as well as her submissions to the FST as noted above, I consider it to be clear that Ms. Aaltonen knew that she was, in each of the Applications, submitting information regarding [Client 1]'s employment that was not accurate, and did not represent [Client 1]'s true income.

60. I further consider it to be clear that a mortgage broker who submits inaccurate information to a lender in respect of a prospective borrower's income is creating a risk to the public. That risk can be seen in the fact that the provision of inaccurate information regarding income could serve to place borrowers at risk of entering into mortgages they cannot afford, and also could serve to place lenders at risk of making loans they would not otherwise have made. Overall, the provision of inaccurate information in a mortgage application completed by a submortgage broker undermines public confidence in the submortgage industry: See *Kia (Re)*, Decision on Merits, October 3, 2017 (Registrar of Mortgage Brokers) (*Kia)*, para, 30.

61. Given the risk to the public created by the provision of inaccurate information in general, as well as the fact that Ms. Aaltonen specifically knew in this case that the income information was inaccurate but specifically chose to submit that information in order to avoid, as she puts it, having a difficult conversation with her client, I consider Ms. Aaltonen's misconduct in this case must be considered to be serious in its nature, and to require some degree of specific deterrence.

62. I further consider that the circumstances of the misconduct in this case require general deterrence, in that it must be made clear to mortgage brokers in general that they have a responsibility to the public as a whole, including lenders, and that the provision of inaccurate income information on a mortgage application, when it is known to that mortgage broker (as in this case) or even where it ought to have been known that the information was inaccurate, is not an action that can be tolerated under the MBA.

63. I note in particular in reaching this conclusion that Verico's Policy and Procedure Manual, which Ms. Aaltonen would have been aware of through her employment at Verico, sets out that Verico required that all mortgage applications forms were accurate, and that in the mortgage application process the broker was to ensure to obtain the "actual guaranteed and true rate of pay if salaried; and guaranteed hours if paid hourly", and to "make sure that age, income, occupation, years of work and credit utilization are consistent and realistic". Finally, that manual notes that if a broker were to find inconsistencies on an application, the broker was to:

> …follow up with the applicant for an explanation and/or supporting documentation prior to submitting to lender.

64. I consider it to be clear that Ms. Aaltonen had a professional responsibility in this case to ensure that she provided accurate information to the prospective lenders, rather than the inaccurate information that she knowingly provided.

65. As result, I consider that general deterrence is required in order to maintain public confidence that registrants under the MBA will not be able to ignore their professional responsibilities without facing proportionate consequences.

66. I note, in reaching this conclusion, that I have considered and accept the fact that there is no evidence that any specific or significant harm resulted from Ms. Aaltonen's misconduct in submitting the Applications. I consider this to be a mitigating factor, although I note that I do not consider that factor to be entitled to significant weight, given that, absent the lender at [Lender 2] identifying the inaccurate income information and making a complaint, a mortgage may well have been issued which [Client 1] could not afford, and which would have placed the lender in a position of having made a loan they would not otherwise have made had they been provided with accurate income information.

Other Relevant Factors

Character and Professional Conduct Record

67. Ms. Aaltonen had no discipline history over the course of approximately ten years in the mortgage industry prior to September 2020. She further submits that her case does not demonstrate a pattern of misconduct. I accept this fact.

68. While I accept that Ms. Aaltonen has a long history of work in the mortgage industry without any prior discipline, I agree with the concern expressed by BCFSA that, despite her experience in the industry, Ms. Aaltonen did not take her professional responsibilities seriously. This was indicated, for example, in her December 5, 2022 email to the FST that she had sent to lenders "so many letters over the years that are incorrect in some way". While the nature of those "incorrect" letters is not in evidence before me, I consider Ms. Aaltonen's response to the FST in that regard to demonstrate that she did not adequately consider her responsibility to ensure that the information she was providing to prospective lenders was accurate.

69. I consider that the mitigating impact of Ms. Aaltonen's lack of a discipline history is limited.

Motivations/Financial Gain

70. Ms. Aaltonen argues that in submitting the inaccurate information she was not motivated by financial gain, and notes that she did not benefit from the transaction in any way. Rather, Ms. Aaltonen submits that I should accept that she simply submitted the mortgage applications in order to avoid having to tell her client that she was unable to get him a mortgage.

71. I have some difficulty accepting that submission.

72. I note in particular in this respect the fact that Ms. Aaltonen sent [Client 1] an email on September 24, 2020 which attached a September 24, 2020 commitment letter from [Lender 1] for the September 20, 2020 mortgage application. In that email Ms. Aaltonen wrote:

> CONGRATS!
>
> Please read the terms and conditions of your financing (attached). This is a standard funding package with lots of information.
>
> We should go through together soon!

73. In my view, that email is difficult to reconcile with Ms. Aaltonen's current submissions and evidence, which is that she knew the deal was unlikely to fund.

74. I note, in this respect, that a September 17, 2020 email from [Client 1] to Ms. Aaltonen indicates that Ms. Aaltonen was in receipt of the inaccurate employment letter from [Employer 1] by that date. If Ms. Aaltonen was in fact of the view that the deal was unlikely to fund due to the inaccuracy of that employment letter and the income information contained therein, it is difficult to understand why she would have been congratulating her client on successfully receiving a mortgage commitment letter just one week later.

75. I note further that in her February 2, 2022 interview with BCFSA investigators Ms. Aaltonen did not point to the inaccuracy of the information submitted regarding [Client 1]'s income as being the reason the mortgage with [Lender 1] did not fund. Rather, Ms. Aaltonen indicated that her recollection was that [Lender 1] had wanted an increased down payment amount, and that as a result she had sent the October 6, 2020 application to [Lender 2].

76. Given her emailed response to [Client 1] after receiving the September 20, 2020 [Lender 1] commitment letter, as well as the fact that she attributed the subsequent application to [Lender 2] as being due to [Lender 1] requesting an increased down payment rather than an issue with the income information, I am not convinced that Ms. Aaltonen was in fact simply waiting for a lender to reject the Applications as she has subsequently indicated.

77. Having considered the circumstances, I am of the view that it is more likely than not that Ms. Aaltonen was in fact seeking to obtain a mortgage for her clients. Such a mortgage would, of course, have provided Ms. Aaltonen with a financial benefit.

Personal Circumstances and Consequences Experienced

78. I accept that Ms. Aaltonen, over the course of the compliance process that has taken place under the MBA, has come to acknowledge her responsibility for her conduct, and did ultimately admit liability in respect of the Applications. I consider this to be a mitigating factor, although I note that Ms. Aaltonen's initial position after the Notice of Hearing was issued was to suggest, largely, that she had not done anything wrong and that the Registrar was seeking to hold her to an unreachable standard. This initial position, in my view, limits the amount of weight to be given to this mitigating factor.

79. I note further Ms. Aaltonen's submission that she was under considerable personal stress at the time she submitted the Applications. Having reviewed Ms. Aaltonen's affidavit, I have no doubt that her personal family situation in September 2020 was a stressor in her life.

80. Once again, however, I do not consider that significant weight can be placed on those personal stresses as a mitigating factor.

81. While Ms. Aaltonen now submits that her personal stresses "contributed to her decision-making at the time she submitted the two mortgage applications", the reality is that more than two years later, in December 2022, Ms. Aaltonen wrote in response to BCFSA's investigation of the matter that she had sent "so many letters over the years that are incorrect in some way" and that:

> …I have sufficient experience dealing with these situations in the best way possible. Just let it take its course. And there's a point where the borrower won't be able to produce the required document.
>
> That's how you professionally handle the situation. So I don't have to go around accusing people of lying, and making us all look awful. I also have enough experience to know that people lie on mortgage applications all the time.

82. In my view, those comments, more than two years after the Applications were filed, demonstrate that Ms. Aaltonen's decision to submit the Applications with inaccurate information in fact reflected her view on the appropriate manner to proceed in such a situation, rather than decision-making affected by her personal stresses at the time.

83. Turning to Ms. Aaltonen's description of her current financial circumstances, I accept that as a result of the fact that she has not worked in the mortgage industry since October 2022, Ms. Aaltonen has lost income, and has had to use some of her savings to pay for her ordinary living expenses.

84. While I accept that Ms. Aaltonen's financial circumstances may be considered in determining the appropriate sanction, I do not consider that change in financial circumstances to warrant significant weight as a mitigating factor. The paramount factors to be considered in applying a sanction, in my view, are the protection of the public, through both specific and general deterrence. Ms. Aaltonen's current financial circumstances, which she attributes as being brought about by the effects of her admitted misconduct, should not attract much weight as a mitigating factor: see *Law Society of BC v. Faminoff*, 2017 LSBC 4, para. 104.

Submissions on Previous Cases

85. As set out above, in determining the appropriate sanction, consideration should be given to disciplinary action that has been issued in similar cases. While prior disciplinary decisions and consent orders are not binding on me, they can be of assistance in determining a penalty that the public will have confidence in.

86. The parties have referred to a number of previous decisions in their submissions, and I have reviewed them all.

87. BCFSA has referred to the following cases:

- *Hensel (Re)*, Decision, February 11, 2016 (BCRMB): Mr. Hensel was a submortgage broker who altered an industry alert from the Registrar by replacing the names of the actual subjects of the regulatory enforcement actions described in the alert, and sent it to another individual with whom Mr. Hensel had business dealings. Mr. Hensel's position was that he had done this as a joke, and to warn the recipient that he did not think the individuals he named in the altered industry alert were trustworthy.

  Mr. Hensel also had an interest in the second mortgage on the recipient's property (which had been foreclosed on by a Trust Company), and was in fact the listing agent for the property while in foreclosure. The Registrar concluded that Mr. Hensel was motivated by a desire to frustrate the recipient's efforts to secure financing he was seeking in order to discharge the mortgages registered against the property, including the mortgage in which Mr. Hensel held an interest.

  Although no specific harm was experienced by the recipient or the named individuals, the Registrar suspended Mr. Hensel's registration for a period of 24 months, concluding that Mr.

Hensel had demonstrated contempt for the regulator, a distinct lack of remorse, and had disregard for the recipient's interests while himself being in a conflict of interest.

- *Lee (Re)*, Consent Order, November 8, 2017 (BCRMB): This was a consent order in which Mr. Lee agreed that he would not be eligible for registration for a period of two months, and that he would pay investigation costs in the amount of $3,195.53.

  Mr. Lee admitted to having altered a letter of employment provided by his client's employer to make it appear that his client was a permanent employee. Mr. Lee admitted to having done so without the knowledge or consent of the client or the employer, and to having then submitted that employment letter to a prospective lender as if it were genuine.

  When the letter was identified as false shortly after the application was submitted, Mr. Lee admitted to having altered the letter and his employment with his brokerage was terminated.

  It was agreed that Mr. Lee had been excluded from practicing as a submortgage broker for just over 7 months at the time of the consent order directly because of his misconduct, and that the total exclusion from the industry would amount to nine months.

  Of note, in addition to admitting his misconduct, Mr. Lee had taken steps to address the harm that his misconduct had caused (his client had been fired by his employer, but rehired when Mr. Lee indicated that he had altered the employment letter without the client's knowledge).

- *Sadeghi (Re)*, Consent Order, September 11, 2013 (BCRMB): In this consent order Mr. Sadeghi agreed that he would not be eligible to re-apply to be registered under the MBA for a period of five years. Mr. Sadeghi specifically admitted to having authored an employment letter and submitting that letter to a lender as if it were genuine, while knowing that the information contained in that letter was untrue.

- *Sarrazin (Re)*, Consent Order, November 6, 2006 (BCRMB): In this consent order Ms. Sarrazin agreed to the cancellation of her registration, that she would not be considered for registration for a period of 18 months, and to complete further education and pay enforcement costs.

  Ms. Sarrazin admitted to knowingly signing a false employment letter for a colleague in support of a loan that the colleague, also a mortgage broker, was seeking.

- *Ramsay (Re)*, Consent Order, November 6, 2006 (BCRMB): In this consent order Mr. Ramsay agreed to the cancellation of his registration as a submortgage broker, that he would not be considered for registration for a period of two years, and that he would complete further education and pay enforcement costs.

  Mr. Ramsay had created the false employment letter referred to above in *Sarrazin*, for his own benefit, and had submitted it to a lender as part of a loan application.

- *Andersen (Re)*, 2023 BCRMB 3 and *Nielsen (Re)*, 2023 BCRMB 4: In a March 2, 2023 consent order Ms. Andersen agreed to pay an administrative penalty of $45,000, as well as to restrictions on her registration for a period of 24 months.

  Ms. Andersen admitted to having collaborated with another individual (F.N.) and to have facilitated F.N. in the conduct of unregistered mortgage broker activity. Ms. Andersen further admitted to having obtained documents related to borrower income from F.N., which documents showed income that was substantially higher than the borrower's reported earnings, to having failed to take any steps to confirm that those documents were accurate or authentic, and to having submitted those altered documents to lenders.

Ms. Andersen self-reported her conduct when she learned that the income documents submitted in one of the mortgage applications she had facilitated on F.N.'s behalf were not genuine. Ms. Andersen had continued to operate as a registered submortgage broker, under the supervision of a designated individual, for nearly four years subsequent to self reporting and prior to the signing of the consent order.

Mr. Nielsen agreed to pay an administrative penalty of $45,000, as well as enforcement expenses of $15,000.

88. Ms. Aaltonen, in her submissions, referred to *In the Matter of Dennis Pervical Rego, Shank Capital Systems Inc. and Arvind Shankar*, Decision, January 15, 2018 (BCRMB).

89. Ms. Aaltonen submits that *Rego* demonstrates that it is only in very rare cases that registrants are both suspended and ordered to pay an administrative penalty. Ms. Aaltonen notes that Mr. Rego was found to have submitted documents that he knew were fraudulent to multiple lenders, submitted multiple mortgage applications that he knew were misleading, failed to verify information on mortgage applications, and taken direction from an individual when he knew that individual was not registered. Mr. Rego also benefited in excess of $52,000 from the transactions in question.

90. Mr. Rego was issued a maximum $50,000 administrative penalty, and required to pay investigation costs.

91. In *Rego* Mr. Shankar was found to have committed unregistered mortgage broker activity, and to have actively engaged in arranging mortgages based on false information and forwarding false contracts to lenders. Mr. Shankar received commissions of approximately $25,000, and was ordered to pay the maximum administrative penalty of $50,000.

Decision on Sanction

92. At the outset, I note that I accept the submissions of Ms. Aaltonen that penalties must not be imposed purely for the purpose of being retributive or denunciatory. Rather, penalties may be imposed with the intention to encourage compliance with regulations in the future, with a view to specific or general deterrence, and with the intention of protecting the public: See *Thow v. BC (Securities Commission)*, 2009 BCCA 46, at para. 38.

93. As the court noted in *Thow*, however, the fact that a penalty imposes a burden, even a very heavy burden, on an offender, does not mean that penalty is necessarily punitive in nature, as long as the penalty is designed to encourage compliance with regulations in the future.

94. I consider that, in light of the fact that Ms. Aaltonen knowingly sent inaccurate income information to lenders on two different occasions, thereby putting the public at risk, a significant penalty is warranted in order to ensure the protection of the public, and in order to provide both specific and general deterrence.

95. In my view, the facts of this case are relatively straightforward: Ms. Aaltonen directed her client to obtain an employment letter; she directed him to ensure that the letter indicated that he earned a specific amount in annual income, which amount Ms. Aaltonen knew to be false; upon receiving that letter Ms. Aaltonen, again knowing the information contained in that letter was false, submitted that employment letter as part of two separate mortgage applications.

96. While I accept that the circumstances of this case do not involve Ms. Aaltonen having direct involvement in the production of the false document as was the case in *Lee*, *Sadeghi,* and *Ramsay*, I note that in the present case the employment letter, was submitted not in just one, but in two separate applications. Further, although she did not draft the employment letter in this case, Ms. Aaltonen has admitted to having directed her client to include a false income on their mortgage applications, supported by a letter of employment she knew was false, and to having known that [Client 1] was not in fact employed at [Employer 1] in 2020. In my view, Ms. Aaltonen's admissions and actions in the instant case do not differ substantially from those of an individual who in fact created the false document on their own.

97. I note that I consider the nature of Ms. Aaltonen's misconduct to be more significant than that described in *Sarrazin*, which led to the cancellation of registration and no consideration of registration for a period of 18 months. Although Ms. Aaltonen did not sign a document that she knew to be untrue, as the respondent did in *Sarrazin*, Ms. Aaltonen personally directed the contents of the document, knowing those contents to be untrue, and then personally submitted that document to lenders. The actions of the respondent in *Sarrazin*, as admitted to in that consent order did not involve the actual submission of the false document in question.

98. I note that, in reaching the conclusion that a significant penalty is warranted, as I have set out above, I place limited weight to the mitigating factors identified by Ms. Aaltonen. With the above considerations in mind, I turn to the appropriate amount of an administrative penalty.

99. In submitting that a penalty of $5,000 is appropriate, Ms. Aaltonen submits that she has been effectively suspended from practice as a mortgage broker since October 2022, when the conditions were imposed on her registration. I take Ms. Aaltonen to be submitting that although her conduct may have warranted a more significant administrative penalty, the fact that she has been, in her view, effectively suspended since October 2022 means that a lower administrative penalty is appropriate.

100. I consider Ms. Aaltonen's absence from the mortgage industry should be taken into account in determining the amount of administrative penalty to be imposed, but only to a point.

101. It is important to note that Ms. Aaltonen was not, in fact, suspended by the Registrar. Rather, in October 2022, the Registrar imposed a variety of conditions on Ms. Aaltonen's registration[4], which conditions were revised by the Registrar on January 18, 2023[5], and then again revised on April 5, 2023 in *Aaltonen*.

102. While I accept that Ms. Aaltonen's designated individual was not prepared to support her registration by agreeing to take on the conditions imposed by the Registrar in October 2022, Ms. Aaltonen has provided no evidence as to whether she took steps to seek registration at a different brokerage, or whether she took steps to enquire as to whether the designated individual at Verico would agree to support her registration based on the revised conditions from January 2023, or April 2023.

103. As a result, while I accept that Ms. Aaltonen has missed time in employment in the mortgage industry as a result of the inquiry into her actions, the issuing of the notice of hearing and the imposition of conditions on her registration, I do not consider the evidence to clearly show that Ms. Aaltonen has made much in the way of effort to once again become registered in the mortgage industry. I note in this respect that I would distinguish the circumstances in this case from those in *Lee*, where Mr. Lee's absence from the industry was taken into account in determining the appropriate length of time for which Mr. Lee would not be eligible for registration. There, it was agreed that Mr. Lee's employment was terminated, on two separate occasions, as a direct result of the misconduct at issue. Again, in this case, while I accept that there were conditions imposed upon Ms. Aaltonen's registration, I do not consider the evidence to clearly demonstrate what steps Ms. Aaltonen has taken to return to the industry, and what effect those revised conditions would have had on her ability to do so.

104. In considering the impact the conditions on Ms. Aaltonen's registration should have on my determination of the appropriate penalty in this case, I note that in *Andersen* the respondent registrant agreed to pay an administrative penalty in the amount of $45,000, as well as agreeing to the conditions that:

- She be under the direct supervision of the designated individual (DI) or registered submortgage broker appointed by the DI of the brokerage with which she is registered as a submortgage broker to be her supervisor;

[4] Those conditions are summarized at para 11 of *Billie Aaltonen v. Registrar of Mortgage Brokers,* 2023 BCFST 2.

[5] *Billie Aaltonen v. Registrar of Mortgage Brokers,* 2023 BCFST 2, para. 19.

- The DI or supervisor must review and sign-off on all mortgage transactions the respondent registrant is involved in, including any mortgage transactions with which she is indirectly involved; and
- Staff of BCFSA be at liberty to perform an examination review of the respondent registrant's files at a time of their choosing during the period of supervision.

105. Although I acknowledge that caution must be taken when comparing an agreed upon penalty from a consent order to a penalty imposed by a discipline hearing, given that there may be a myriad of reasons for a respondent to agree to a consent order which are not apparent from a review of that consent order, I consider it to be telling that the circumstances of *Andersen* involved a period of conditions along with an administrative penalty. As Ms. Aaltonen has noted, while it is generally only in the most serious of cases that a period of ineligibility is attached to an administrative monetary penalty, I consider that the overall orders agreed to in *Andersen* supports my view that a period of conditions on registration is not the same as a period of ineligibility.

106. In all of the circumstances, and while I acknowledge that the conditions placed upon Ms. Aaltonen's registration have had an effect on her, I do not consider that effect to negate the importance of protecting the public through both the specific and general deterrence effect that a sanction of significance would have.

107. I do not consider that the public would have confidence in the disciplinary administrative monetary penalty of $5,000 as recommended by Ms. Aaltonen in this case.

108. Rather, I consider that Ms. Aaltonen's actions in this case amounted to serious misconduct.

109. While I acknowledge that Ms. Aaltonen has now indicated that she has remorse, that she has developed an awareness of her professional responsibilities, and her evidence that she knew it was unlikely that the deal would fund and that she had chosen to provide the lender the letter as it would be easier to blame the lender than to tell her client she was unable to get him a mortgage, I note that all of Ms. Aaltonen's actions and views in that regard did not take shape until approximately two years subsequent to her having submitted the inaccurate income information to two different lenders on two different applications in the Fall of 2020.

110. Certainly, I do not consider the evidence to show that Ms. Aaltonen had any remorse, or had developed an appropriate sense of her professional responsibility at the time she provided her submissions to the FST in December 2022, when she essentially indicated that it was common practice for her to send inaccurate letters to prospective lenders.

111. In my view, the seriousness of the misconduct in this case, which involved the intentional and knowing submission of inaccurate information to a prospective lender on more than one occasion, outweighs the mitigating factors identified by Ms. Aaltonen, and warrants a significant administrative monetary penalty.

112. The maximum penalty allowed by the MBA is $50,000. I consider that a penalty at the maximum amount of the administrative penalty scale is generally only warranted in circumstances where the respondent has demonstrated repeated disregard or contempt for the regulatory framework; and/or professional responsibilities in circumstances where the sheer volume of the misconduct makes a maximum penalty necessary in order to impose sufficient specific and general deterrence; or in circumstances where the consequences or seriousness of the misconduct are so significant as to warrant a maximum administrative penalty.

113. Although I do not consider the evidence and information before me to indicate that Ms. Aaltonen has demonstrated repeated disregard or contempt for the regulatory framework, I do consider that she demonstrated a disregard for her professional responsibilities on more than one occasion, and, when her responsibility in that regard was brought to her attention through an investigation and ultimately a notice of hearing, her initial response was to deny that she had any such responsibility.

114. Having considered all of the above, I am of the view that the circumstances of this case, which involved the intentional and knowing submission of inaccurate information to prospective lenders

in two separate mortgage applications, requires that an administrative penalty in the amount of $30,000 be imposed in order to provide sufficient specific and general deterrence, and to ensure that the public is protected by promoting the provision of accurate information on mortgage applications going forward.

115. In my view, that amount reflects the seriousness of Ms. Aaltonen's misconduct, while acknowledging that her misconduct was not of the type to warrant a penalty at the maximum end of the scale, and taking into account the limited weight afforded to the applicable mitigating factors, including the fact that she has been out of the mortgage industry for a period of just over a year, at least in part, due to the conditions placed on her registration as a result of this matter.

Costs

116. Section 6(9) of the MBA provides that if an inquiry discloses a contravention of the MBA or the regulations, or orders or directions of the Registrar, the Registrar may order the costs of the inquiry to be paid by the person.

117. The Registrar of Mortgage Brokers does not have its own tariff of costs.

118. I consider that, in the circumstances, it is appropriate to assess legal costs using Rule 14-1 of the BC Supreme Court Civil Rules. Importing the BC Supreme Court Rules method of assessing costs into the administrative tribunal context has been endorsed by the BC Court of Appeal in *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149, where the court held, at paragraph 56, that:

> …where the provisions for costs in the constituent statute, or Rules properly passed pursuant to the statute, do not indicate otherwise, the provisions of Rule 57 [now Rule 14-1] will govern the tribunal's award of costs. In those cases, Rule 57 will define the nature of the costs available, including special costs.[6]

119. Previous decisions of the Registrar have also considered orders for costs. In *Allan (Re)*, Decision on Penalty and Costs, August 19, 2020 (BC Financial Services Authority), the designate of the Registrar noted that:

> Costs are typically awarded to the litigant who has been substantially successful, unless there is some reason why that party ought to be deprived of costs (*Fotheringham v. Fotheringham*, 2001 BCSC 1321). While a costs award is discretionary, the burden of displacing the usual rule that costs follow the event falls on the person who seeks to displace that rule (*Giles v. Westminster Savings Credit Union*, 2010 BCCA 282).
>
> In addition to indemnification of the successful litigant, the courts have identified a number of objectives of a costs award including: deterring frivolous actions or defences; encouraging conduct that reduces the duration and expense of litigation and discouraging conduct that has the opposite effect; encouraging litigants to settle whenever possible; and to have a winnowing function in the litigation by requiring litigants to carefully assess the strength or weakness of their respective case at the start of and throughout the litigation (*Giles*, supra).

120. BCFSA has submitted a Bill of Costs in the amount of $14,026.14 in respect of inquiry expenses into Ms. Aaltonen. BCFSA notes, however, that its inquiry into Ms. Aaltonen involved two other transactions which were not included in the ultimate disciplinary proceeding against her. BCFSA calculated that the investigative costs associated with the Applications relevant to this matter totalled $4,740.45.

[6] Rule 57 is now Rule 14-1.

121. Ms. Aaltonen takes the position that the investigative costs claimed by BCFSA are excessive, and do not properly take into account the reductions that should be made given that she admitted to her conduct.

122. I note in setting out the above, that in her oral submission at the hearing of this matter, Ms. Aaltonen largely withdrew her written submissions on the investigative costs claimed by BCFSA. I consider that Ms. Aaltonen's final submission on costs was that where there were general time estimates, those time estimates ought to be divided into three, as only one of the three matters that were investigated proceeded to a hearing.

123. Having reviewed the Bill of Costs produced by BCFSA, I am of the view that while the costs sought by BCFSA are largely related to the inquiry into Ms. Aaltonen as it related to the Applications, there do appear to be some investigative actions which were general in their nature, as opposed to being specific to the Applications that resulted in this disciplinary hearing. I am prepared to find that a reduction as to those general investigative activities, as suggested by Ms. Aaltonen, is appropriate. Similarly, I accept the submission from Ms. Aaltonen that some of the disbursements claimed were general in their nature, rather than being specific to the investigation at issue in this matter, and again, that a reduction is appropriate.

124. There was no direct testimony as to what portion of each of the more general investigative actions and more general disbursements may have been attributable to the matters at issue in this hearing. Given that an order of costs is discretionary, I have estimated, from my review of the Bill of Costs, that a reduction of $1,500, based on 10 hours of investigative costs and $500 in disbursements, would be appropriate. I therefore order that Ms. Aaltonen pay $3,240.45 for investigative costs.

Orders

125. I make the following orders:

126. Pursuant to section 8(1.2)(b) of the *Mortgage Brokers Act*, Billie Aaltonen is ordered to pay to BCFSA an administrative penalty of $30,000, within 60 days of the date of this order;

127. Pursuant to section 6(9) of the *Mortgage Brokers Act*, Billie Aaltonen is ordered to pay to BCFSA $3,240.45 in investigative costs associated with this proceeding, within 60 days of the date of this order.

128. Pursuant to section 9 of the *Mortgage Brokers Act*, Billie Aaltonen may appeal the above orders to the Financial Services Tribunal within 30 days from the date of the decision: *Financial Institutions Act*, RSBC 1996, ch 141, section 242.1(7)(d) and *Administrative Tribunals Act*, SBC 2004, section 24(1).

Issued at Kelowna, British Columbia, this 14 day of December, 2023.

"Original signed by Andrew Pendray"

_____
Andrew Pendray
Chief Hearing Officer