

FINANCIAL SERVICES TRIBUNAL

FST Appeal #08:040

GET ACCEPTANCE CORPORATION and KEITH BRYAN WESTERGAARD and FRANK IANTORNO and EVERGREEN MORTGAGE CORPORATION v. REGISTRAR OF MORTGAGE BROKERS

March 6, 2008

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RE: Procedural Decision: FST Appeal Case #08:040

On February 19, 2008 GET Acceptance Corporation and Keith Brian Westergaard appealed the decisions dated January 25, 2008 and February 18, 2008 of Lynda A. Wrigley, acting in her capacity as Registrar's designate, pursuant to section 9(1) of the *Mortgage Brokers Act*.

On February 20, 2008 Evergreen Mortgage Corporation (d.b.a. Get Acceptance – BC) and Frank Iantorno appealed the same decisions.

The appellants generally appeal different aspects of the decisions although it is acknowledged that there is a least one common issue. The matter was heard together at first instance, there is one record and transcript and a single decision on the merits and a single penalty decision.

By correspondence dated February 21, 2008 the Financial Services Tribunal ("Tribunal") proposed to combine the appeals pursuant to section 37(1)(a) of the *Administrative Tribunals Act*. The parties were invited to make submissions concerning the same and both the Appellants and Respondents made initial written submissions and replies. All parties were in agreement that the appeals should be based on one record.

In the letters appealing the decisions the appellants copy each other. In the submissions before the Registrar's designate the appellants in places adopted each other's submissions. In the submissions before me the appellants agreed there is a common issue but with respect to some other aspects they disagree with each other.

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It is apparent the appeal involves a complex underlying factual matrix. That matrix gave rise to many hearing days, witnesses, and, in due course, an extensive record. The parties are in agreement that there is a least one common issue although they differ as to the importance of that common issue.

I am not satisfied, at this stage, that the proposed order of the Chair, that the appeals be combined, should be varied. I agree with the submission of counsel for the Staff of the Registrar that administrative efficiency and consistency of decision making will best be served by combining the appeals.

However, perhaps more importantly, it seems to me that the interests of justice require that all of the parties receive and have the opportunity to review and comment on the submissions, especially as they might relate to the evidence. They may choose not to do so, which is their prerogative, but it seems to me that they should have that opportunity.

In the circumstances, the appeals are combined pursuant to section 37(1)(a) of the *Administrative Tribunals Act*. It follows that the appeal will be based on one record.

The Appellants are, of course, at liberty to tailor their submissions as they see fit and I will be open to receiving submissions regarding any procedural matters that might arise from this decision.

A handwritten signature in black ink, appearing to be 'John Savage', with a long horizontal flourish extending to the right.

John Savage
Tribunal Member