

**FINANCIAL SERVICES TRIBUNAL**

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

BETWEEN:

ROBERT MATICK

**APPELLANT**

AND:

THE REGISTRAR OF MORTGAGE BROKERS

**RESPONDENT**

**PENALTY DECISION**

**BEFORE**

ROBERT J. HOBART

PRESIDING MEMBER

**DATE OF LAST  
SUBMISSION:**

SEPTEMBER 8, 2006

**APPEARING:**

DEREK A. BRINDLE, Q.C.

FOR THE APPELLANT

LYNDA WRIGLEY

FOR THE RESPONDENT

**INTRODUCTION**

In June 2006, the Registrar of Mortgage Brokers (“Registrar”) released his decision in the matter of Mr. Robert Matick (“Matick”). The decision of the Registrar was the result of a hearing on November 17, 2005, and a number of written submissions from the respective counsels for Matick and the Registrar received in December, 2005.

In his Decision, the Registrar found that Matick had breached Section 17.3 of the *Mortgage Brokers Act*. Specifically, the Registrar found that Matick failed to provide conflict of interest disclosure statements in the prescribed manner disclosing that Kim Matick had a direct or indirect interest in the transaction in a number of transactions with clients who had been referrals of Kim Matick.

The Registrar also found that Matick received confidential information which he was not entitled to receive and therefore conducted business in a manner prejudicial to the public interest.

It was noted in the Decision that Matick had left the mortgage broker industry. In light of this, the Registrar imposed the following penalties:

1. That Matick pay an administrative penalty of \$1,500; and,
2. Before being re-registered, Matick be required to take and pass the mortgage brokers course and an ethics course which is acceptable to the Registrar.

A Notice of Appeal was received by the Financial Services Tribunal (“Tribunal”) on June 22, 2006. This Notice was subsequently amended on July 20, 2006. The amended grounds for appeal were as follows:

1. The Respondent’s finding that the Appellant breached s. 17.3 of the *Mortgage Brokers Act* by failing to provide to his client borrowers conflict of interest disclosure statements, in Form 10 disclosing that his wife, Kim Matick, had an interest in the client’s mortgage transactions is unreasonable, is patently wrong and constitutes an error in law;
2. The Respondent’s finding that the Appellant’s receiving documents from a Canada Trust employee containing personal information which he was not entitled to receive and thereby conducted himself in a manner prejudicial to the public interest, contrary to s. 8(1)(e) of the *Mortgage Brokers Act*, is unreasonable and patently wrong.

In a decision dated October 13, 2006, the Tribunal upheld the Registrar’s finding that Matick breached Section 17.3 of Act for failure to disclose that Kim Matick had a direct or indirect interest in transactions with clients that she referred to Matick. However, the Registrar’s finding that Matick conducted business in a manner prejudicial to the public interest by receiving confidential information was reversed. In light of the partial success of the appeal, the parties were invited to make submissions on penalty. Submissions were received from the Appellant and Respondent on October 20, 2006 and October 25, 2006 respectively. A reply from the Respondent was also received on October 26, 2006.

**ARGUMENTS****(a) Appellant**

Counsel for Matick has raised a number of arguments in support of setting aside the Registrar's penalty:

- Although the Tribunal found that Matick was required to disclose that Kim Matick had an interest in the transactions in question, Section 17.3 of Act is far from clear on this requirement;
- The Registrar has never issued any information bulletins indicating that both sub-mortgage brokers and mortgage brokers have a duty to disclose information under Section 17.3 of the Act;
- There is no evidence to suggest that the conduct of Matick was the result of an ethical failure or a failure to appreciate information available in bulletins or course materials;
- No evidence has been put forward that any borrower suffered a loss as a result of Matick's lack of disclosure; and
- No evidence has been put forward that the public interest was adversely affected as a result of Matick's lack of disclosure.

Counsel for Matick argues that the penalty imposed in this case should be limited to a reprimand.

**(b) Respondent**

Counsel for the Registrar has noted the importance of adequate disclosure of conflicts of interest if the protection on the public is to be upheld. In this instance sufficient disclosure did not take place. It is further argued that the main issue is not related to the interpretation of Section 17.3 of the Act. Rather the main issue is that there was a lack of understanding by Matick that conflicts of interest must be disclosed.

Counsel for the Registrar also contends that of the two issues under appeal, the issue regarding disclosure was the most important. For this reason, it is argued that the fine imposed by the Registrar should only be reduced from \$1,500 to \$1,000 and that the requirement that Matick take and pass the mortgage brokers course and an ethics course which is acceptable to the Registrar be upheld. Although no cases were provided, Counsel for the Registrar indicates that the Registrar's penalty in this case was at the low end of the range of penalties that have been imposed with respect to previous infractions in the mortgage broker industry

**DECISION**

It is clear that full disclosure of conflicts of interest is an important component of public protection in the mortgage broker industry and that Section 17.3 of the Act is in place to require this disclosure.

While it is my opinion that it is reasonable to conclude that the disclosure requirements of Section 17.3 of the Mortgage Brokers Act apply to both mortgage brokers and sub-mortgage brokers, I can appreciate that this section of the Act is somewhat ambiguous. Further it is noted, that information bulletins clarifying regulatory expectations have not been issued.

Finally, there has been no evidence put forward that suggests that Matick does not have an adequate understanding of ethics or of general requirements in the mortgage broker industry. Therefore, the decision that he be required to complete an ethics course and the mortgage broker course does not appear reasonable.

I am of the opinion that the penalty to Matick in this case should be in the form of a reprimand.

DATED AT SURREY, BRITISH COLUMBIA, THE 6<sup>th</sup> DAY OF NOVEMBER, 2006.  
FOR THE FINANCIAL SERVICES TRIBUNAL

A handwritten signature in cursive script, reading "Robert J. Hobart", with a long horizontal flourish extending to the right.

ROBERT J. HOBART  
PRESIDING MEMBER