Financial Services Tribunal

Citation: *Billie Aaltonen v Registrar of Mortgage Brokers*, 2024 BCFST 2

Decision No.: FST-MBA-24-A001(a)

Decision Date: 2024-08-01

Method of Hearing: Conducted by way of written submissions concluding on April 4, 2024

Decision Type: Final Decision

Panel: James P. Carwana, Panel Chair

Appealed Under: Section 9 of the *Mortgage Brokers Act*, RSBC 1996, c 313

Between:

Billie Aaltonen

Appellant

And:

Registrar of Mortgage Brokers

Respondent

Appearing on Behalf of the Parties:

For the Appellant(s): Carly Peddle

For the Respondent: Laura Forseille

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FINAL DECISION

INTRODUCTION

[1] This is an appeal by Billie Aaltonen (the "Appellant") of *Re Aaltonen*, 2023 BCRMB 16[1] (the "Decision"), which was issued by the Chief Hearing Officer acting as a delegate of the Respondent, the Registrar of Mortgage Brokers.

[2] The Decision, which dealt with penalty and costs, was rendered on December 14, 2023, following a hearing (the "Hearing") concluding on June 9, 2023. Prior to the hearing on penalty and costs, the Registrar had issued a decision on liability dated June 6, 2023, pursuant to information set out in an agreed statement of facts between the Registrar and the Appellant. The Hearing arose from a Notice of Hearing issued by the Registrar on October 14, 2022.

[3] In the Decision, the Appellant was ordered to pay an administrative penalty of $30,000, and $3,240.25 in investigative costs associated with the proceeding. The Appellant is seeking to appeal the administrative penalty only.

[4] The present appeal to the Financial Services Tribunal ("FST") follows earlier appeal proceedings before this tribunal dealing with the conditions which had previously been placed on the Appellant's registration renewal until the Hearing could be held. The most recent of these earlier FST decisions dealing with the matter is *Billie Aaltonen v Registrar of Mortgage Brokers*, 2023 BCFST 2 (the "Conditions Decision"), which recites a number of facts in relation to the proceedings involving the Appellant.

[5] The Registrar of Mortgage Brokers is a regulator housed within the BC Financial Services Authority ("BCFSA"). I will refer to the Registrar of Mortgage Brokers as the "Registrar" or the Respondent. I will refer to the person who made the Decision as the "Delegate". Counsel for the BCFSA will be referred to as "BCFSA Counsel".

BACKGROUND

[6] The Appellant was registered as a submortgage broker under the *Mortgage Brokers Act*, RSBC 1996, c 313 ("*MBA*") on October 1, 2010. In December 2018, she became registered with the mortgage broker Verico Compass Mortgage Group Corporation.

[7] In the Fall of 2020, the Appellant submitted mortgage applications (the "Applications") on behalf of two individuals, TD and DR, to RMG Mortgages and to Interior Savings Credit Union. The Applications contained a letter of employment indicating that

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[1] *Re Aaltonen*, 2023 BCRMB 16 (Registrar of Mortgage Brokers), online: <https://www.bcfsa.ca/media/3554/download>.

TD was a full-time employee with an annual income of $75,000, when the Appellant was aware that TD had not been employed on a full-time basis and that his annual income was not $75,000.

[8] The Applications were never approved, and the mortgages applied for were never funded.

[9] In October 2020, the Registrar received a complaint from Interior Savings Credit Union about the Applications it had received from the Appellant. An investigation was subsequently commenced which involved a review of 24 of the Appellant's mortgage files, as well as 8 interviews, including 2 interviews with the Appellant. Approximately two years later, on September 12, 2022, a report was issued relating to the investigation.

[10] On September 29, 2022, the Appellant applied to renew her registration as a submortgage broker.

[11] As previously noted, on October 14, 2022, the Registrar then issued the Notice of Hearing to the Appellant, and later scheduled the disciplinary hearing for June 5-9, 2023. The Notice of Hearing made allegations against the Appellant as follows:

> 1. Billie Aaltonen conducted mortgage business in British Columbia in a manner prejudicial to the public interest, contrary section 8(1) of 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 Regulations.

[12] On October 25, 2022, BCFSA Counsel sent the Appellant a letter advising the Appellant that the Registrar had "determined that it is necessary to attach conditions" to her registration renewal. There were 23 conditions (the "Conditions") attached to the registration renewal. The Appellant appealed the Conditions to the FST on November 7, 2022, and the FST established a submission process. During the submission process, the Appellant raised allegations that she had not been provided with an opportunity to be heard before the Conditions were imposed.

[13] On November 30, 2022, BCFSA Counsel again wrote to the Appellant and explained the decision to impose the Conditions and offered the opportunity to be heard through a reconsideration. BCFSA Counsel stated, among other things, the following:

> Finally, we also appreciate that you were not provided with an opportunity to make submissions prior to the October 25, 2022 decision to impose the Conditions on your registration at its renewal. Although you have appealed the decision to impose the Conditions to the Financial Services Tribunal, the Registrar or their delegate is best positioned to: (1) hear your submissions on that issue at first instance; and (2) exercise its discretion with respect to whether the Conditions are necessary in light of those submissions.
>
> If you would like an opportunity to make submissions before the Registrar or their delegate, please provide your submissions to the Registrar in writing. Please include all relevant documentary evidence you will rely upon. In the interim, you can continue to be registered, subject to the Conditions, until the Registrar or their delegate makes their final decision.

[14] On December 6, 2022, the Appellant responded by email to the BCFSA Counsel and repeated that she had not been provided with an opportunity to be heard. On December 9, 2022, the Appellant sent another email with a "second official request" to be heard and provided written submissions with respect to the Conditions imposed on her.

[15] On December 14, 2022, the BCFSA Counsel replied to the Appellant. Regarding the Conditions, the Respondent indicated that the Conditions were intended to be in place on an interim basis until the Hearing on the allegations was held. Regarding the reconsideration, the Appellant was provided with an opportunity to make further written submissions, in addition to the Appellant's earlier emails on the matter. The Respondent further indicated that an adjournment of the proceedings which were then before the FST would be sought pending the outcome of the reconsideration.

[16] On December 20, 2022, the Respondent filed an application to adjourn the appeal proceedings before the FST.

[17] After obtaining submissions on the application to adjourn, the FST issued its decision adjourning the appeal proceedings until January 20, 2023, or until the Registrar issued their decision, whichever occurred first (*Billie Aaltonen v Registrar of Mortgage Brokers*, 2023 BCFST 1).

[18] On January 18, 2023, the Acting Registrar issued their decision on the reconsideration. Nine of the Conditions were found to be unnecessary and were removed. The remaining Conditions remained in place on an interim basis pending the full Hearing. Amendments to one of the Conditions were also made.

[19] Following the reconsideration decision, the FST obtained further submissions from the parties regarding the appeal of the revised Conditions. That submission process was completed on March 3, 2023.

[20] On April 5, 2023, the FST rendered its decision on the Appellant's appeal in respect of the revised Conditions: *Billie Aaltonen v Registrar of Mortgage Brokers*, 2023 BCFST 2 (the "Conditions Decision"). Among other things, the FST found "the Registrar's Original Decision to impose the Conditions was procedurally unfair" and varied several of the revised Conditions (Conditions Decision, para 72 and 108).

[21] The Hearing before the Delegate, pursuant to the Notice of Hearing, was held on June 5, 6 and 9, 2023.

[22] On the first day of the hearing, two allegations of misconduct in the Notice of Hearing, being items (c) and (d), were withdrawn. In addition, the Appellant entered into an Agreed Statement of Facts and Admissions of Liability document ("ASF") with the Registrar and BCFSA in which she admitted liability for "submitting inaccurate information in support of a borrower's income when she knew that the documents were altered and did not represent the borrower's true income" (ASF, p 2). The ASF was read into the record on June 5, 2023, and was subsequently signed on June 9, 2023.

[23] Based on the information in the ASF, the Delegate issued the June 6, 2023, decision on liability, which found that the Appellant 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" (Decision, para 3).

[24] The Hearing on penalty and costs then proceeded on the basis of the ASF, a book of documents, and affidavit evidence from the Appellant (the "Affidavit"). At the Hearing, the Appellant cited several mitigating factors to be taken into account regarding penalty. These included:

- the Appellant having accepted responsibility, and shown remorse;
- the Appellant having admitted liability, and saved the tribunal significant time and resources; and
- the impact of the proceedings on the Appellant's life and financial stability, and in particular her having lost work due to the Conditions.

[25] Regarding the impact of the proceedings on the Appellant's financial stability, the evidence from the Appellant's Affidavit indicated that the practical effect of the Conditions was that the Appellant had been unable to work as a mortgage broker from October 2022. In that respect, she had spoken with her employer's designated individual and asked him to agree to the Conditions, however he refused. The evidence was that her estimated loss of income was in excess of $150,000, and that she had only about $30,000 in savings left and she would need those funds to pay for legal fees, pay any administrative penalty, and

cover her family's monthly expenses. (Affidavit, paras 19-20; Hearing transcript, June 9, 2023, p 68)

THE DECISION UNDER APPEAL

[26] In the Decision, a number of determinations relevant to this Appeal were made.

[27] In dealing with the variety of mitigating and aggravating factors considered by administrative tribunals in determining sanctions, the Delegate cited *Law Society of British Columbia v Ogilvie*, 1999 LSBC 17[2] ("*Ogilvie*") and *Law Society of British Columbia v Dent*, 2016 LSBC 5 ("*Dent*"). Quoting from *Dent* at paras 20-23, the Delegate set out, at paragraph 54 of the Decision, the four general factors he considered to be of use in determining appropriate disciplinary penalty:

> **(a) Nature, gravity and consequences of conduct**
>
> [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?
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> **(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

[2] *Law Society of British Columbia v Ogilvie*, 1999 LSBC 17, online: <https://tribunal-dev.e-cubed.biz/CMS/Website/media/pdf/Law-Society-of-BC-v-Ogilvie.PDF>.

legal profession? Specifically, will the public have confidence in the proposed disciplinary action compared to similar cases?

[28] In discussing these factors, the Delegate began by making a number of findings under the heading of "The Misconduct" including:

- the Appellant acknowledged that the nature of the misconduct was serious;
- the misconduct was considered by the Delegate to be serious in nature, and required "some degree of specific deterrence"; (para 61) and
- there was "no evidence that any specific or significant harm resulted from Ms. Aaltonen's misconduct in submitting the Applications" (para 66)

[29] Under the heading of "Other Relevant Factors", the Delegate made a number of findings including:

- The mitigating aspect of Ms. Aaltonen's lack of disciplinary history was limited (para 69);
- It was more likely than not that the Appellant was seeking to obtain a mortgage for her clients which would have provided a financial benefit for her;
- Over the course of the compliance process the Appellant had come to acknowledge responsibility for her conduct and had admitted responsibility in respect of the Applications;
- The Appellant's initial position in response to the Notice of Hearing was to deny wrongdoing and this initial position "limits the amount of weight to be given to this mitigating factor" (para 78);
- The Appellant's personal family situation in September 2020 was a stressor in her life, but the Delegate did not place significant weight on those personal stresses as a mitigating factor (para 79-80); and
- The Appellant's financial circumstances, with her not having worked in the mortgage industry since October 2022, should not attract much weight as a mitigating factor. The Delegate relied on the decision in *Re Faminoff*, 2017 LSBC 4 ("*Faminoff*"), at para 104 as legal authority to support this determination (para 84).

[30] In the portion of the Decision dealing with the "Decision on Sanction", the Delegate made additional findings, including:

- A significant penalty was warranted in order to ensure the protection of the public, and in order to provide both specific and general deterrence;
- The Delegate placed "limited weight to the mitigating factors identified by Ms. Aaltonen" (para 98);
- The Delegate accepted that the Appellant "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" (para 103);

- The Delegate did "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" (para 103);
- "it is generally only in the most serious of cases that a period of ineligibility is attached to an administrative penalty" (para. 105);
- "a period of conditions on registration is not the same as a period of ineligibility" (para 105);
- The Conditions on the Appellant had an effect on her, but that effect did not "negate the importance of protecting the public through both the specific and general deterrence effect that a sanction of significance would have" (para 106);
- The Delegate acknowledged that the Appellant "has now indicated that she has remorse, that she has developed an awareness of her professional responsibilities" (para 109);
- However, the Delegate noted that the Appellant's 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" (para 109);
- The Delegate considered that the Appellant "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" (para 113);
- The Delegate imposed the administrative penalty of $30,000 "in order to provide sufficient specific and general deterrence, and to ensure that the public is protected by promoting the provision of accurate information in mortgage applications going forward" (para 114); and
- The Delegate's view was that the amount of administrative penalty imposed on the Appellant reflected, among other things, "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"(para 115).

[31] The Appellant filed this appeal of the Decision on January 12, 2024.

SUMMARY OF PARTIES' POSITIONS ON THE APPEAL

The Appellant

[32] The Appellant argues that the Delegate committed several reviewable errors. The Appellant says the Delegate erred in law "by concluding that, as a matter of law, financial hardship attracts little weight as a mitigating factor". The Appellant further argues that the Decision was unreasonable both overall and because the Delegate: 1) erred in rejecting Ms. Aaltonen's demonstrated remorse as a mitigating factor; 2) erred in concluding Ms. Aaltonen was acting for personal financial gain; and 3) placed insufficient weight on Ms. Aaltonen's personal circumstances at the time of the misconduct".

[33] The Appellant says the standard of review relating to the alleged error of law is one of correctness, and for the other alleged errors, the standard of review is reasonableness. In reviewing penalty decisions, as in this case, the Appellant relies on the decision of the FST in *Cui Zhu (Danielle) Deng v Real Estate Council of British Columbia*, 2019 BCFST 10 ("*Deng*") and argues that in penalty decisions "the FST is tasked with assessing reasonableness with a higher degree of scrutiny, thereby granting the original decision-maker a lower level of deference".

The Alleged Error in Law Regarding the Appellant's Financial Hardship

[34] The Appellant says that the Delegate "erred in law by concluding financial hardship, as a matter of law, does not attract significant weight as a mitigating factor". The Appellant says the *Faminoff* case relied upon by the Delegate does not relate to financial hardship as a mitigating factor and the Delegate's conclusion about financial hardship is unsupported in law. The Appellant says that "the resultant financial impact from disciplinary proceedings is a relevant mitigating factor, as it relates to specific deterrence, general deterrence, and fairness and proportionality of penalty".

[35] In the present case, the Appellant says that the financial hardship she has experienced as a result of the proceedings "is properly considered a specific deterrent on Ms. Aaltonen to conduct herself in accordance with professional obligations" and will motivate her "to avoid costly misconduct proceedings in the future and conduct herself accordingly". The Appellant cites *Law Society of Upper Canada v. Severin Nkolla Ndema Moussa*, 2010 ONLSHP 107 ("*Moussa*") at paragraph 27 where the Law Society Hearing Panel found the "financial impact of the misconduct process as evidence of specific deterrence". In addition, the Appellant says that the "financial burden of the disciplinary proceedings acts as a general deterrent" and cites *Re Ranspot,* 2022 LSBC 11 ("*Ranspot*") at paragraph 36 as support for the statement that "the financial impact of misconduct proceedings reminds professionals of the 'far ranging consequences' of engaging in misconduct".

[36] The Appellant argues that the financial impact of disciplinary proceedings also relates to the proportionality of the penalty. The Appellant cites *Re Vondette,* 2018 LSBC 36

("*Vondette*"), where a "review panel of the Law Society of BC noted that the individual's limited finances can impact the severity of the penalty".

The Allegations that the Penalty Decision is Unreasonable

[37] The Appellant cites the Supreme Court of Canda decisions in *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21, and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") regarding reasonableness. The Appellant says that "reasonableness is concerned with both the decision-making process and the outcome" (emphasis in original). The Appellant asserts that the Supreme Court of Canada "identified two types of 'fundamental flaws' that indicate that an administrative decision is unreasonable: (1) a failure of rationality internal to the reasoning process, where the decision fails to reveal a rational chain of analysis or the reasoning does not 'add up'; and (2) a failure of justification, given the legal and factual constraints bearing on the decision". The Appellant argues that "the Decision contains both fundamental flaws".

[38] The Appellant says that the Decision is unreasonable in the treatment of her demonstrated remorse. Although the Appellant initially denied liability when the Notice of Hearing was issued, she later acknowledged responsibility for her conduct and admitted liability. The Appellant says it was unreasonable for the Delegate to use her initial denial of wrongdoing in response to the Notice of Hearing to hold that "this initial position… limits the amount of weight to be given to this mitigating factor". (Decision, para 78).

[39] The Appellant argues that the existence of remorse is relevant to deterrence "because it indicates 'the behaviour is unlikely to recur'". The Appellant relies on the decision in *Law Society of Upper Canada v. Gregoropoulos*, 2016 ONLSTH 148 ("*Gregoropoulos*") at paragraph 26 to that effect. The Appellant says no legal authority is cited in the Decision for the conclusion that an initial denial of liability limited a subsequent admission of wrongdoing, and the Decision does not reveal a rational chain of analysis in arriving at this conclusion.

[40] In arguing that the Decision was unreasonable, the Appellant says that "professional disciplinary proceedings can themselves act as a deterrent against future misconduct" and "responding to the Registrar's position with respect to the alleged misconduct can have the effect of educating and rehabilitating the professional in question". In the present case, it was accepted that "over the course of the compliance process", the Appellant "had come to acknowledge responsibility for her conduct and did ultimately admit liability in respect of the Applications" (Decision, para 78). The Appellant acknowledged her professional responsibility to ensure that the information she provided to lenders was accurate (Appellant's Affidavit, para 12), and admitted the facts underlying the misconduct, which the Appellant characterizes as "a powerful expression of remorse and willingness to take responsibility for her actions". In addition, the Appellant notes that the Appellant's admissions saved hearing time and resources by avoiding an evidentiary hearing on liability.

[41] The Appellant says that it was both incorrect in law and unreasonable to conclude that, because the Appellant had not expressed her remorse earlier, this factor did not carry much weight. The Appellant cites the decision in *Re Gilbert*, 2014 IIROC 23 at paragraph 29 to support the statement that "an admission of liability 'even if it was at the very end of the disciplinary process, is also a mitigating factor'".

[42] The Appellant says that in assessing "the nature, gravity, and consequences of the conduct, one consideration is whether the individual 'obtain[ed] any financial gain from the misconduct'". The Appellant argues that if "the individual received money as a result of their misconduct, that ought to be considered in crafting the appropriate penalty, which can account for that improper financial gain". Thus, the Appellant asserts that the question is not whether there was a possible financial benefit, but whether a financial benefit was in fact received.

[43] In the present case, the Appellant says that her motivation in submitting the inaccurate information was not to receive a financial benefit, but to avoid a difficult conversation with her clients. In any event, the fact is that she did not obtain any financial benefit from the misconduct since the institutions did not provide the mortgage funds to her clients. The Appellant argues that it is unreasonable to interpret this factor as only requiring the possibility of a financial gain, since every professional who works in the course of their employment will have the possibility of such a benefit and it would render this consideration meaningless.

[44] The Appellant argues that the Delegate did not consider the stress involved with her personal circumstances in a reasonable manner. While the Delegate accepted that the Appellant "was under considerable personal stress at the time she submitted the Applications" (Decision, para. 79), the Appellant says that the Delegate "failed to appreciate that the impact of these stressors on her decision-making may have carried into the investigation stage, and into her decision-making before admitting liability".

[45] In summary on unreasonableness, the Appellant says that as a result of the Delegate's "errors with respect to Ms. Aaltonen's demonstrated remorse, its unreasonable interpretation of 'financial benefit', and unreasonable assumption regarding the impact and timing of Ms. Aaltonen's personal circumstances, the decision as a whole is unreasonable". The Appellant asserts that the Decision "displays a failure of rationality in the reasoning process", "a failure of justification" regarding the failure to follow case law regarding the financial impact, and an unreasonable interpretation of the factors relevant to sanctioning.

[46] In conclusion, the Appellant "asks that the FST vary the penalty imposed by the [Delegate] and impose an appropriate penalty in the circumstances, or in the alterative, to send the matter back for reconsideration …to determine the appropriate penalty".

The Respondent

[47] The Respondent begins with the applicable standard of review. The Respondent cites the FST decision in *Trunorth Warranty Plans of North America, LLC v Superintendent of Financial Institutions*, 2020 BCFST 2 ("*Trunorth*") and *Stephen Craig Hill v Insurance Council of British Columbia*, 2023 BCFST 4 ("*Hill*"). The Respondent says the following standards of review apply to FST appeals:

a) correctness for questions of law;

b) reasonableness for questions of mixed fact and law; and

c) reasonableness for fact and discretionary decisions.

[48] With respect to penalty matters, the Respondent quotes from *Hill* and *Financial Institutions Commission v Insurance Council of BC et al*, 2018 BCFST 5 ("*Bridge Tolls*"). In *Bridge Tolls* at paragraph 77 the FST noted that "the Tribunal should unapologetically accept that the Legislature expected it to intervene in any penalty appeal where it finds that there has been an error in principle as opposed to an 'error' in line-drawing" and "it is for the Tribunal to determine where an error in principle has occurred".

The Alleged Error Regarding the Appellant's Financial Hardship

[49] The Respondent notes the evidence presented by the Appellant was that her previous employer would not agree to the Conditions, which had the practical effect of the Appellant being unable to work from October 2022 until the hearing. This resulted in the Appellant both losing employment income and depleting her savings. The Respondent notes that the Appellant submitted that "the financial repercussions should be considered a mitigating factor in the Delegate's ultimate sanction decision".

[50] Contrary to the Appellant's submissions, the Respondent says that the Delegate accepted the Appellant had lost income and had to use some of her savings for her ordinary living expenses as a result of the fact that she had not worked in the mortgage industry since October 2022 (Decision, para 83). The Respondent says the Delegate further accepted that "these financial circumstances may be considered in determining the appropriate sanction". However, the Respondent asserts that in the circumstances of this case, "the Delegate declined to assign significant weight to these financial consequences as a mitigating factor".

[51] More specifically, the Respondent says the Delegate took into account the Appellant's argument that she had been effectively suspended from practice as a mortgage broker since October 2022 due to the Conditions. However, the Appellant was not, in fact, suspended and the Delegate said that the Appellant had not clearly shown that she had sought employment elsewhere after the designated individual at her place of employment was not prepared to agree to take on the Conditions. The Delegate said that the Appellant'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"

(Decision, at para 100). The Respondent says that the Delegate considered that "greater emphasis must be given to the public protection goals of sanction, as compared to the financial impact on the Appellant arising from the Conditions". The Respondent says the "Delegate concluded that 'while I acknowledge that the Conditions placed upon [the Appellant'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.'"

Reasonableness of the Penalty Decision

[52] Contrary to the Appellant's position, the Respondent says that the Delegate accepted the Appellant's remorse and admission of liability as a mitigating factor. The Respondent argues that it wasn't just the passage of time before the Appellant's expression of remorse that was taken into account, but also what she communicated to the regulator. The Respondent asserts that it was in this context that the Delegate stated that the Appellant's position "limits the weight to be given to this mitigating factor" (Decision, at para 78).

[53] The Respondent says that "there is a clear 'line of analysis' in the Delegate's assessment of this sanction factor", as per *Vavilov*. The Respondent argues that a sanction factor can be assigned various degrees of weight and it was open to the Delegate to determine the weight to be assigned to the Appellant's expression of remorse as a mitigating factor.

[54] Regarding the Appellant's argument that she did not obtain a financial gain from the misconduct, the Respondent says that it is not only whether a gain was in fact realized, but the potential for such gain. The Respondent cites the decisions in *Ogilvie* and *Faminoff* to the effect that "the relevant sanction factor is 'the advantage gained, *or to be gained*'", by the individual (*Faminoff*, para 81, emphasis added by Respondent). Thus, the Respondent argues that the Delegate was entitled to consider the potential for the Appellant to have earned commission from the transaction. In that respect, the Respondent further says that it was "not unreasonable for the Delegate to reject the Appellant's assertion that she was not financially motivated in her conduct".

[55] In respect of the Appellant's personal circumstances, the Respondent notes that the Delegate "referenced the Appellant's affidavit material and concluded that the Appellant's 'personal family situation' was a 'stressor in her life' at the relevant time". However, the Respondent says that the Delegate considered the evidence and "declined to place significant weight on these personal stressors as a mitigating factor in determining the appropriate sanction".

[56] To the extent that the Appellant argues that the Delegate did not appreciate that the personal stressors may have carried into the investigation stage, the Respondent says that the Appellant does not indicate which part of the evidentiary record supports the Appellant's position of ongoing stress. Further, the Respondent argues that "there was no evidence led at the Hearing, expert or otherwise, as to the nexus between the Appellant's

personal stressors in September 2020 and her knowing submission of false information to lenders". The Respondent says "the Delegate had only the Appellant's bald assertion that her personal stress was such that it led to her intentional misconduct" and "it was reasonable to put limited weight on this evidence as it pertained to the Appellant's penalty".

[57] The Respondent says the Delegate's conclusion was intelligible and justified. However, in the event the FST finds the Decision to be unreasonable, the Respondent says "the matter should be remitted back to the Registrar for redetermination, pursuant to s. 242.2(11) of the *Financial Institutions Act,* RSBC 1996, c.141 ("*FIA*"). The Respondent relies on *Vavilov* and argues that "the principles of deference underlying the reasonableness standard require, in most situations, for the matter to be remitted back to the first instance decision-maker for reconsideration". The Respondent further argues that in the present circumstances, there are no factors which would "inhibit the 'timely and effective resolution' of this matter if it were remitted back to the Registrar".

RELEVANT LEGISLATION

[58] The appeal is brought under section 9 of the *MBA* which provides:

> **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*.
>
> **(3)** In respect of an appeal taken from a suspension of registration or an order made under section 8 (2), the following provisions do not apply:
>
> **(a)** subsection (2) of this section;
>
> **(b)** section 242.2 (10) (a) of the *Financial Institutions Act*.

[59] The powers of the FST on such an appeal are set out in section 242.2(11) of the *FIA* as follows:

> The member hearing the appeal may confirm, reverse or vary a decision under appeal, or may send the matter back for reconsideration, with or without directions, to the person or body whose decision is under appeal.

ISSUES

[60] I will consider the issues raised on this appeal as follows:

1. What is the standard of review to be applied to each of the matters raised in this appeal?
2. Did the Delegate err in law in the treatment of the Appellant's financial hardship?
3. Was the Delegate's Decision on penalty unreasonable?
4. In the event of a finding in favour of the Appellant, what is the appropriate recourse?

ANALYSIS AND DECISION

What is the standard of review to be applied to each of the matters raised on this appeal?

[61] The applicable standard of review has been the subject of a number of decisions of the FST. I agree with the Respondent that the following standards of review apply:

a) correctness for questions of law;

b) reasonableness for questions of mixed fact and law; and

c) reasonableness for fact and discretionary decisions.

[62] With respect to the reasonableness standard, past decisions of the FST have held that "the proper application of the reasonableness standard is concerned with the decision-making process and its outcomes" (*TruNorth*, at para 84). In *Amarpal Singh Atwal v Insurance Council of BC*, 2021 BCFST 1 ("*Atwal*") at paragraph 65 I explained the application of the reasonableness standard to the decision under review as follows:

> … the decision under review must be reasonable in respect of both: 1) the rationale for the decision which was made by the decision maker; and 2) the outcome to which it led. The Supreme Court of Canada in *Vavilov* stated it this way (at paras 86-87):
>
> … In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis. (emphasis in original)

> ... that a court conducting a reasonableness review properly considers both the outcome of the decision and the reasoning process that led to that outcome was recently reaffirmed in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 12. In that case, although the outcome of the decision at issue may not have been unreasonable in the circumstances, the decision was set aside because the outcome had been arrived at on the basis of an unreasonable chain of analysis.

[63] In my review of the Decision, I adopt the approach to reasonableness as stated above. In addition, since this case involves the appeal of a penalty, I find it is also appropriate to apply the less deferential standard referred to in *Deng* and the approach to penalty decisions explained in *Bridge Tolls*.

Did the Delegate err in law in the treatment of the Appellant's financial hardship?

[64] The Delegate identified that financial circumstances may be considered in determining the appropriate sanction (Decision, para 84). However, the Delegate erred in determining that a portion of the *Faminoff* decision dealing with stress and embarrassment provided legal support for not giving much weight to the Appellant's financial circumstances as a mitigating factor, and erred in analyzing the impact of the Appellant's financial circumstances.

[65] Importantly, the Delegate failed to adequately consider the relationship of the Appellant's financial circumstances to deterrence. The Appellant's Affidavit evidence at the Hearing indicated that going through the misconduct process, including the imposition of the Conditions, had a significant impact on her financial circumstances, and the Delegate accepted that the Appellant had suffered financial consequences such as lost income (Decision, para 83). In her Affidavit, the Appellant attests to the impact on her financial stability as follows:

> The impact on my life has been profound, immersing me in a series of distressing and challenging days. It went beyond mere shock. Just as I had begun rebuilding and finding my way back on track my livelihood was stripped away, my financial stability was shattered, my business suffered irreparable damage, and my relationships were ruined.
>
> I was compelled to withdraw my children from their activities, cancel trips and events, and give up activities.
>
> I will continue to be affected by this matter (financially and otherwise) for years to come.

[66] I agree with the case law cited by the Appellant that the financial impact of the misconduct process has a specific deterrence effect (*Moussa*, para 27) as well as an effect on general deterrence (*Ranspot*, para 36). While the Delegate accepted that the Appellant had "missed time in employment in the mortgage industry as a result of the inquiry into

her actions" (Decision, para 103) and had "not worked in the mortgage industry since October 2022" (Decision, para 83), the Delegate failed to adequately consider the deterrent effect relating to her loss of employment and the financial hardship she had already suffered. In particular, the Delegate failed to consider that going through the misconduct process has had a specific deterrent effect regarding the Appellant's future conduct, with the Appellant having learned her lesson through suffering the financial consequences of going through the process.

[67] This failure is important since the Delegate found specific and general deterrence warranted a significant penalty. Indeed, the Delegate found that the "administrative penalty in the amount of $30,000 be imposed in order to provide sufficient specific and general deterrence" (Decision, para 114). However, the Delegate failed to properly consider the relationship of the Appellant's financial hardship to deterrence in setting that administrative penalty, and failed to take into account that a significant degree of deterrence had already been achieved through the financial hardship experienced by the Appellant as a result of the Conditions and the discipline process. That failure was an error.

[68] Although the Respondent relies on the Delegate's treatment of the Appellant's Conditions in the Decision as indicating the Delegate properly considered the Appellant's financial circumstances, in my view the Delegate erred in how he treated the Conditions. The reason the Appellant lost her employment was because of the Conditions – in other words, it was because her employer's designated individual refused to agree to the Conditions that she lost her employment (Affidavit, para 17). While the Delegate was critical of the Appellant's search for employment under the Conditions, the Delegate failed to take into account the context relating to the Conditions. First, the Delegate failed to take into account the delay in finalizing the Conditions and that the Conditions were not finalized until after April 5, 2023, which was only 2 months prior to the June 2023 Hearing. Before that, there was uncertainty about the Conditions under appeal with the outcome being unknown, and the Delegate failed to consider the difficulty that would pose for the Appellant in searching for employment with others. Second, the Delegate failed to consider the extent of the Conditions, with there initially being 23 Conditions for approximately the first 3 months of the Conditions, and later 14 Conditions, which included a designated individual having to agree to accept the duties under the Conditions and being responsible for the review and approval of all mortgage broker services provided by the Appellant (Conditions Decision, para 19). Third, given the unwillingness of the Appellant's own employer to employ her under the Conditions, it would have been very difficult for the Appellant to convince others to take on a responsibility in respect of the Conditions that her own employer was not willing to take on.

[69] In terms of the length of time it took to finalize the Conditions, the Delegate failed to consider that the actions of the Respondent were a significant factor causing the delay in finalizing the Conditions. Those actions involved the Respondent failing to provide the Appellant with procedural fairness before originally imposing the Conditions, and the process involved with the Respondent later deciding to reconsider the Conditions because

of that failure. This resulted in an adjournment of the FST proceedings and delay while the Respondent reconsidered the Conditions. Ultimately, the Respondent revised the Conditions, removing 9 of them on the basis they were not necessary within the meaning of section 4(c) of the *MBA* (Conditions Decision, para 19)

[70] As previously noted, the Delegate's errors resulted in the failure to adequately consider the Appellant's financial hardship. In addition, the Delegate failed to place sufficient weight on the impact of the Conditions in relation to the severity of the penalty. As the case law cited by the Appellant indicates, an individual's finances can impact the severity of the penalty (*Vondette,* paras 68-69, 71). While the Delegate accepted that the imposition of the Conditions had affected the Appellant and her employment (Decision, paras 103, 106), the Delegate erred in placing limited weight on the Appellant's financial hardship and lost income as a mitigating factor.

[71] Regarding the severity factor and impact of the sanction, the Administrative Penalty was set at $30,000, although the evidence at the Hearing was that the Appellant had only about $30,000 in savings left and that she would need those funds to pay for legal fees, pay any administrative penalty, and cover her family's monthly expenses (Affidavit, paras 19, 20; Hearing Transcript, June 9, 2023, p 68.) As such, the Administrative Penalty which was imposed was particularly severe.

[72] For all the reasons stated above, I find the Delegate erred in the treatment of the Appellant's financial hardship. I find these errors affected the penalty imposed on the Appellant, by reducing the weight attributed to them. These errors relate to fundamental principles in imposing penalties, particularly in relation to deterrence, and I find them to be errors of principle as noted in *Bridge Tolls*.

Was the Decision reasonable?

[73] I begin with the Delegate's finding on the Appellant's remorse and admission of liability. The Delegate found that the Appellant had "come to acknowledge her responsibility for her conduct and did ultimately admit liability in respect of the Applications" (Decision, para 78). However, the Delegate noted that the Appellant's initial position was to deny liability and assert that the Registrar was holding her to an unreachable standard (Decision, para 78). The Delegate held that the Appellant's "initial position…limits the amount of weight to be given to this mitigating factor" (Decision, para 78), and subsequently held that all the applicable mitigating factors had "limited weight", including this factor (Decision, para 115).

[74] I find that the Delegate's determination regarding the Appellant's remorse and admission of liability, based on her initial position, to be unreasonable both in terms of the decision-making process and its outcome.

[75] In respect of the decision-making process, I find that the Delegate's reasoning on this issue was unreasonable in terms of lacking intelligibility and justification. Regarding

the lack of intelligibility, the reasoning lacks clarity and the Delegate does not adequately explain the treatment of the Appellant's remorse and admission of wrongdoing. The Delegate says the Appellant's initial denial of wrongdoing "limits the amount of weight to be given to this mitigating factor" (Decision, para 78), but does not say what that amount of weight is. For example, does this statement mean the Delegate is placing "moderate" weight rather than significant weight on this factor, or little weight rather than moderate weight, or something else? It is only later in the Decision that the Delegate says he has placed "limited weight to the mitigating factors identified by Ms. Aaltonen" (Decision, para 98). While, again, it is not clear what this means, it appears that the Delegate is equating "limited weight" to "little weight" and placing little weight on this factor as well as all the other mitigating factors.

[76] In terms of lacking both intelligibility and justification, the Delegate's reliance on the Appellant's initial reaction does not adequately explain or justify the result. The Appellant's Affidavit indicates that she had come to reflect on her conduct over the few months prior to the Hearing which led to her understanding that she had made a mistake, and she took full responsibility for her conduct. The Delegate accepted 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" (Decision, para 78). There is no adequate explanation then of why the Appellant's initial reaction limits the weight to be given to this mitigating factor, since the Delegate accepted the Appellant's acknowledgement of responsibility and admission of liability. Similarly, having accepted that the Appellant had come to acknowledge her responsibility over the course of the compliance process, the Delegate does not adequately explain why comments made by the Appellant in connection with her initial reaction earlier in the compliance process should limit the weight to be given to her accepted acknowledgment of wrongdoing. While it could be argued that an individual's initial reaction may lead a decision-maker not to accept the wrongdoer's later acknowledgment of responsibility, that was not the case here. The Delegate accepted that the Appellant had acknowledged responsibility for her conduct and admitted liability.

[77] Having accepted the Appellant's acknowledgement of responsibility, it was unreasonable for the Delegate to focus mainly on the Appellant's initial reaction. Specific deterrence is a forward-looking matter and in terms of the Appellant's conduct going forward, her initial reaction to the allegations, or comments she may have made in connection with her initial reaction, do not mean that she has not learned her lesson in terms of her future conduct, and it is not an adequate explanation to justify the result.

[78] With respect to the specific circumstances in the present case, it was also unreasonable for the Delegate to fail to take into account the context for the Appellant's initial reaction. There were originally four allegations of misconduct alleged against the Appellant in the Notice of Hearing, two of which were later withdrawn. In the Decision, the Delegate was critical of the Appellant for not admitting liability sooner, however there was no consideration of the initial allegations being more extensive, whether BCFSA Counsel

ought to have withdrawn the other allegations sooner, and whether that had an effect on when the admission of liability occurred.

[79] In terms of the outcome, it was unreasonable for the Delegate to place little weight on the Appellant's admission of liability and remorse. It is not uncommon for a person facing such allegations to initially deny liability and to later come to the realization of wrongdoing through the compliance process or obtaining legal advice. In my view, where, as in this case, an individual admits their liability and arrives at an agreed statement of facts such that a liability hearing is avoided, it carries more than limited or little weight and is a significant mitigating factor. In addition to demonstrating a realization of wrongdoing going forward, such admissions also avoid the necessity of witnesses testifying and save resources for the adjudicating body, as in this case.

[80] I agree with the Appellant that "professional disciplinary proceedings can themselves act as a deterrent against future misconduct" and "responding to the Registrar's position with respect to the alleged misconduct can have the effect of educating and rehabilitating the professional in question". As previously noted, the disciplinary process has had an impact on the Appellant, and the Appellant's Affidavit indicates that she has accepted responsibility and has learned her lesson. She attests as follows at paras 12-13:

> 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 client.
>
> I acknowledge that I made a mistake and take full responsibility for my conduct.

[81] As the Appellant submits, an expression of remorse and admission of liability is relevant to specific deterrence and rehabilitation. I agree with the finding in *Gregoropoulos* that "the existence of remorse is relevant because it means the behaviour is unlikely to recur" (para 26). As previously noted, specific deterrence relates to future conduct, and the deterrence effect on behavior going forward is not dependent on what the individual's initial reaction was to the allegations many months earlier.

[82] Similar to the Delegate's failure to appropriately consider the Appellant's financial hardship, the failures of the Delegate in dealing with the Appellant's acceptance of responsibility and remorse are particularly important because of the relationship to deterrence. The Delegate found specific deterrence was a factor in setting the penalty in this case (Decision, para 114); however, the relationship of Appellant's acceptance of responsibility and remorse were not given appropriate consideration regarding specific deterrence. As such, although the penalty was set based in part on specific deterrence, important factors relating to specific deterrence were not appropriately considered.

[83] Turning to the issue of the Appellant's motive and financial gain, the Delegate found that it was "more likely than not that Ms. Aaltonen was in fact seeking to obtain a mortgage for her clients" and "such a mortgage would, of course, have provided Ms. Aaltonen with a financial benefit" (Decision, para 77). Although the Appellant asserts that the question is not whether there was a possible financial benefit, but whether a financial benefit was in fact received, in my view, it is relevant to consider the potential advantage to be gained by the misconduct, even if no financial benefit was in fact received. For example, an advisor who attempted to carry out a fraudulent transaction should be subject to discipline, even if the attempt failed and a financial benefit was not obtained.

[84] In the present case, the Delegate made a finding of fact that the Appellant was seeking to obtain a mortgage for her clients and explains the reasoning behind that finding in an intelligible manner. The Delegate relied on email evidence from at or around the time of the Applications as well as evidence from the investigation in coming to that determination. I find the Delegate's finding that the Appellant was seeking a potential advantage to be reasonable.

[85] With respect to the Appellant's personal circumstances and stresses, the Delegate found that the Appellant's decision to submit the Applications with inaccurate information was not due to her personal stresses at the time. The Delegate relied on what the Appellant had said in a submission to the FST in December 2022 in arriving at that conclusion. In that submission, the Appellant had indicated that people lie on mortgage applications all the time, there comes a time that the borrower won't be able to produce the required document to get funding, and the best way to deal with such situations is to let them take their course. The Delegate held that this indicated the Appellant'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" (Decision, para 82). As with the finding on the Appellant's motive, this was a factual finding which was explained in an intelligible manner. I do not find this determination of the Delegate to be unreasonable.

[86] To summarize my findings on reasonableness, I find the Delegate's analysis of the Appellant's remorse and admission of liability, based on her initial position, to be unreasonable. I further find the failure to appropriately consider the Appellant's admission of liability and remorse in terms of specific deterrence to be unreasonable. As with the Delegate's errors regarding financial hardship, I find that these failures affected the penalty imposed on the Appellant, by reducing the weight attributed to them, and that they relate to fundamental principles in imposing penalties as noted in *Bridge Tolls*. I do not find the Delegate's determinations about the Appellant's motive or personal stresses to be unreasonable.

In the event of a finding in favour of the Appellant, what is the appropriate recourse?

[87] As a result of my findings that the Delegate erred regarding the Appellant's financial hardship and failed to meet the applicable reasonableness standard regarding the Appellant's admission of liability and remorse, I set aside the Administrative Penalty of $30,000.

[88] The next question is whether to remit the matter of penalty to the Delegate. The Respondent has argued that in the event the administrative penalty is set aside I should remit the matter for reconsideration. The Appellant has asked "that the FST vary the penalty imposed by the BCFSA and impose an appropriate penalty in the circumstances", with the potential for remittal proposed in the alternative.

[89] In the present circumstances, I find that it would be appropriate for me to determine the appropriate penalty, exercising my power to vary the decision under appeal pursuant to section 242.2(11) of the *FIA*.

[90] The Appellant has already been involved in numerous proceedings relating to this matter including an appeal of the Conditions to the FST, a reconsideration of the Conditions before the Respondent, an adjournment application on her appeal of the Conditions, and proceedings before the Delegate. The time and expense of dealing with this matter have already been significant, the parties should not be put to the time and expense of more proceedings to determine the matter, and the additional delay in referring the matter back ought to be avoided. The misconduct in the present case relates to events which occurred in the Fall of 2020 – almost four years ago - and it took the Respondent approximately two years to complete its investigation. The Hearing took place on June 9, 2023, and the Decision was not rendered until December 14, 2023 – more than six months later. If the matter was to be referred back for reconsideration, there would be further delay and costs with the potential for a subsequent appeal to the FST, and even more delay and costs. In terms of the Hearing before the Delegate, it proceeded on the basis of the ASF, a book of documents, and affidavit evidence from the Appellant, all of which are before me, as well as the transcript of that Hearing.

[91] The decision to determine the matter of the Appellant's penalty on this appeal is also consistent with the application of various factors identified in *Vavilov* regarding whether to remit a matter (*Vavilov*, para 142). In addition to the factors of concern for delay and avoiding costs to the parties noted in *Vavilov* and above, the nature of the regulatory regime here is one where the FST is recognized as a specialized tribunal with the ability to make its own judgments regarding penalty matters (*Bridge Tolls*, para 77).

[92] I turn now to a consideration of the penalty to be imposed. Before the Delegate, BCFSA Counsel sought an administrative penalty of $40,000, while the Appellant argued that the administrative penalty should be $5,000. As previously noted, the Delegate set the administrative penalty at $30,000, placing limited or little weight on the Appellant

being out of the mortgage industry for a period of just over a year, as well as the Appellant's admission of liability and expression of remorse.

[93] In the Decision, the Delegate refers to the case of *Re Lee*, Consent Order (8 November 2017) (Registrar of Mortgage Brokers)[3] ("*Lee*"). As the Delegate noted, caution must be taken when comparing a penalty from a consent order, given there may be many reasons that the parties agree to a consent order which do not appear from the order itself (Decision, para 105). Having said that, *Lee* is similar to the present case in terms of the misconduct involved, and indicates that it is appropriate to consider the amount of time an individual has already been out of the mortgage business when setting a penalty.

[94] The misconduct involved in *Lee*, as described at page 2, was that Mr. Lee:

a) altered a letter of confirmation of employment dated February 21, 2017, provided by his client's employer, to make it appear that his client (D.S.) was a full time, permanent employee; when in fact D.S. was a full time, temporary employee, without the knowledge or consent of D.S. or the employer; and

b) submitted the altered employment letter to a prospective lender on behalf of D.S., with the intent that the prospective lender would act on it as though it were genuine.

[95] In *Lee*, the amount of time that the individual had already been excluded from the industry was taken into account when setting the penalty. At the time of the consent order, Mr. Lee had lost his employment and had been unable to practice as a submortgage broker for just over seven months as a result of his misconduct. The order provided that he was not eligible for registration for an additional two months, which was noted as a total of nine months exclusion from the industry (*Lee*, para 13).

[96] The Delegate distinguished *Lee* on the basis that Mr. Lee had lost his employment due to being terminated on two separate occasions as a direct result of the misconduct at issue (Decision, para 103). In my view, however, that is a distinction without a difference in the circumstances. Whether one loses their employment because their employer refuses to employ them under conditions (as in this case), or whether they were terminated by their employer, the financial hardship they have suffered ought to be given significant weight when determining penalty. Further, for the reasons previously mentioned at paragraph 68 of this decision, the Appellant would have faced difficulties in convincing other employers to take on a responsibility in respect of the Conditions that her own employer was not willing to take on, as well as difficulties due to the delay in finalizing the Conditions and their extent. On the question of penalty, I find the Appellant's circumstances to be similar to those of Mr. Lee.

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[3] *Re Lee*, Consent Order (8 November 2017) (Registrar of Mortgage Brokers, online: <https://www.bcfsa.ca/media/247/download>.

[97] In considering the amount of administrative penalty to be imposed here, where there have also been supervisory conditions, I note the following two cases: *Re Mahinsa*, Consent Order (22 December, 2015) (Registrar of Mortgage Brokers)[4] ("*Mahinsa*") and *Re Nevis*, Consent Order (9 November 2015) (Registrar of Mortgage Brokers)[5] ("*Nevis*"). Although both cases involved the supervisory conditions being imposed as part of the penalty, and not before (as in the present case), they were similar in terms of requiring the individuals to work under the supervision of a designated individual. Further, the misconduct in both cases was alike, with the individual having been involved in providing inaccurate or misleading information to lenders. I find *Mahinsa* and *Nevis* to be sufficiently similar to the present case when considering the administrative penalty here.

[98] In *Mahinsa* at page 3, it is noted that a review of mortgage applications submitted on behalf of six (6) borrowers revealed that Mr. Mahinsa:

a) failed to investigate whether borrowers owned other properties in addition to the properties disclosed in mortgage applications when he knew or ought to have known that the borrowers owned other properties; and/or

b) failed to advise lenders in mortgage applications that borrowers were concurrently seeking financing for the purchase other properties when he knew or ought to have known that borrowers were seeking financing for the purchase of other properties; and/or

c) prepared mortgage applications for submission to lenders on the basis that the properties would be owner occupied by borrowers at the time the application was submitted when he knew or ought to have known that this was not the case; and/or

d) completed and submitted mortgage applications concurrently to different lenders where the borrower's income and employment history varied significantly.

[99] In *Mahinsa*, the order involved an administrative penalty of $13,000 in addition to 4 conditions being placed on Mr. Mahinsa's registration, with 2 of them involving him working under the supervision of a designated individual for a period of one year.

[100] In *Nevis* at page 3, the misconduct is described as follows:

> ...in the case of four (4) borrowers, Mr. Nevis:

[4] *Re Mahinsa*, Consent Order (22 December 2015) (Registrar of Mortgage Brokers), online: <https://www.bcfsa.ca/media/236/download>.

[5] *Re Nevis*, Consent Order (9 November 2015) (Registrar of Mortgage Brokers), online: <https://www.bcfsa.ca/media/237/download>.

i. failed to investigate whether borrowers owned other properties in addition to the properties disclosed in mortgage applications when he knew or ought to have known that the borrowers owned other properties; and/or

ii. failed to advise lenders in mortgage applications that borrowers were concurrently seeking financing for the purchase of other properties when he knew or ought to have known that borrowers were seeking financing for the purchase of other properties; and/or

iii. prepared mortgage applications for submission to lenders on the basis that the properties would be owner occupied by borrowers at the time the application was submitted when he knew or ought to have known that this would not be the case; and/or

iv. prepared mortgage applications for submission to different lenders over a short period of time, for the same borrower, where there was unexplained variations in residency, rental income and/or ownership of properties.

[101] In *Nevis*, there was an administrative penalty of $10,000 together with 4 conditions attached to Mr. Nevis's registration. The conditions were the same as those in *Mahinsa* with 2 of them involving Mr. Nevis working under the supervision of a designated individual for a period of one year.

[102] In fashioning the administrative penalty in the present case, I find the Appellant's admission of liability and her financial hardship to be important factors. In particular, I find the financial loss already suffered by the Appellant, and the weight to be given to the time the Appellant had already been out of the industry due to the Conditions, require significant consideration in determining the penalty amount. While the Delegate placed little weight on the Appellant's absence from the mortgage industry, I have found that it ought to have been given more weight, and find it is a matter which warrants a large degree of weight in determining the penalty here. Further, this is consistent with *Lee* where the amount of time that the individual was excluded from the industry prior to imposing the penalty was specifically noted as being taken into account when setting the penalty.

[103] In assessing the financial hardship which has been experienced by the Appellant, I find it to have been substantial. She was effectively unable to practice in her chosen profession for over a year, with severe economic consequences. As previously noted, the Appellant estimates her lost income at in excess of $150,000 as a result of not being able to work, which is a substantial amount. The potential of facing similar consequences will be a general deterrent for others from engaging in similar misconduct, as well as a specific deterrent for the Appellant who could face even more severe penalties in the future with her record of misconduct which now exists (see also *Atwal*, para 110).

[104] Considering the circumstances of the present case, as well as the cases and factors previously mentioned, I find that the appropriate administrative penalty to be $10,000 for several reasons. First, the $10,000 amount equates to roughly one-third of the Appellant's

remaining savings and imposes a significant burden, while recognizing that the purpose of such orders is not to be punitive in nature. Second, in terms of cases where there is both an administrative penalty and conditions, I find the misconduct in the present case closer to *Nevis* in terms of the number of borrowers involved with the misconduct being 4 in *Nevis*, 6 in *Mahinsa*, and 2 in the present case. Third, I find a higher penalty amount than *Nevis* would not be appropriate given the Appellant suffered a longer absence from the industry than in *Lee* – 14 months here as opposed to 9 months in *Lee* – and there was no administrative penalty in *Lee*. Fourth, I find that the $10,000 figure provides for an appropriate adjustment to the result in the Decision had the Appellant's absence from the mortgage industry and admission of liability been given the importance or weight I have found such factors ought to have been given.

[105] Together with the financial hardship already suffered by the Appellant, I find that such an administrative penalty recognizes the seriousness of the misconduct and will provide both specific and general deterrence. It will maintain public confidence in the integrity of the mortgage profession, as noted in the quote from *Dent* (at para 27 of this decision), with an outcome which has resulted in the individual having lost 14 months of income, together with an administrative penalty equating to roughly one-third of their remaining savings, due to their wrongdoing. Further, as mentioned in the quote from *Dent*, I find that the public will have confidence in this disciplinary action compared to similar cases, as previously noted.

[106] In the result, I vary the amount of the Administrative Penalty ordered by the Delegate to $10,000 from $30,000.

CONCLUSION

[107] For the reasons previously stated, the appeal is allowed and the Administrative Penalty is varied from $30,000 to $10,000.

"James Carwana"

James P. Carwana, Panel Chair
Financial Services Tribunal