



**IN THE MATTER OF THE MORTGAGE BROKERS ACT,**

**RSBC 1996, c. 313**

**AND**

**ROBERT JOHN EMIL HENSEL**

**Hearing Date:** October 26 & 27, 2015  
**Place:** Vancouver, British Columbia  
**Before:** Carolyn Rogers, Registrar of Mortgage Brokers  
**Appearing:** Glen Orris, Q.C. for the Respondent (Robert John Emil Hensel)  
Stephen E. King for the Staff of the Registrar of Mortgage Brokers  
**Date of Decision:** February 11, 2016

**INTRODUCTION**

Robert John Emil Hensel has been registered by the Registrar of Mortgage Brokers (“Registrar”) as a sub-mortgage broker continuously since 2000.

On April 11, 2014 Mr. Hensel altered an official Registrar industry alert by replacing the names of the actual subjects of regulatory enforcement action with the names of other individuals and then sent the altered alert to Mr. [REDACTED] M [REDACTED], an individual with whom he had various business interests.

Staff of the Registrar ("Staff") maintains Mr. Hensel's actions constitute conduct prejudicial to the public interest and are seeking penalties and costs under the Mortgage Brokers Act (Act), including:

- Mr. Hensel's sub-mortgage registration be suspended for at least 12 months pursuant to s. 8(1) of the Act; and
- Mr. Hensel pay costs of the investigation in the amount of \$6,385 and the costs of the hearing pursuant to s. 6(9) of the Act.

Counsel for Mr. Hensel proposed a reprimand by the Registrar as an appropriate penalty and that costs be reduced by 50 per cent.

## **RELEVANT LEGISLATION**

Section 8 of the Act provides that:

(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 would be disentitled to registration if the person were an applicant under section 4;
- (f) the person is in breach of this Act, the regulations or a condition of registration;
- (g) the person is a party to a mortgage transaction that is harsh and unconscionable or otherwise inequitable;

(h) the person has made a statement in a record filed or provided under this Act that, at the time and in the light of the circumstances under which the statement was made, was false or misleading with respect to a material fact or that omitted to state a material fact, the omission of which made the statement false or misleading;

(i) the person has conducted or is conducting business in a manner that is otherwise prejudicial to the public interest;

(j) the person is in breach of a provision of Part 2 or 5 of the Business Practices and Consumer Protection Act prescribed under section 9.1 (2).

(1.1) After giving a person registered under this Act 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 paragraphs (f) to (i) of subsection (1) apply.

(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.

(1.3) 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,

Sub-section 6(9) of the Act provides that:

If the inquiry discloses a contravention of this Act or the regulations or orders or directions of the registrar, the registrar may order the costs to be paid by the person.

## THE ALERT

Central to these proceedings is an industry alert that was issued by the Registrar and delivered, via email, to registered mortgage brokers on April 10, 2014. This alert contained information about serious regulatory findings made against an individual, including holding himself out as a mortgage broker without being registered and the misappropriation of \$100,000.

## AGREED FACTS

Staff and Mr. Hensel agreed upon certain facts, as follows.

Robert John Emil Hensel has been registered with the Registrar's office at the Financial Institutions Commission of British Columbia as a sub-mortgage broker continuously since 2000. Mr. Hensel is currently registered as a sub-mortgage broker with, and is a director of, MAC Mortgage Approval Corp.

At all material times Mr. Hensel has also been licensed with the Real Estate Council of British Columbia as a real estate agent with [REDACTED] Ltd.

At all material times Mr. Hensel has also been a private investor in mortgages through his RRSP account held at [REDACTED] Trust Company and through his own mortgage funds held in his company, [REDACTED] Ltd.

At all material times the office of the Registrar sent official industry alerts to sub-mortgage broker registrants and mortgage broker registrants, including, Mr. Hensel.

On or about April 17, 2005, [REDACTED] M [REDACTED] became the registered owner of a property at [REDACTED] (the "[REDACTED] A [REDACTED] Property").

In March 2011 Mr. M [REDACTED], with the assistance of Mr. Hensel acting as his mortgage broker, borrowed funds and three mortgages (the "Mortgages") were registered against the [REDACTED] A [REDACTED] Property:

- a. a first mortgage in favour of [REDACTED] in the amount of \$1,250,000 (the "First Mortgage");
- b. a second mortgage in favour of Mr. Hensel's RRSP account held at [REDACTED] [REDACTED] Trust Company in the amount of \$200,000 (the "Second Mortgage"); and,
- c. a third mortgage, originally in favour of Mr. Hensel's RRSP account, but later sold to [REDACTED] Ma [REDACTED], in the amount of \$105,000.00 (the "Third Mortgage").

At various times prior to and after the Mortgages being registered against the [REDACTED] A [REDACTED] Property, Mr. Hensel in his capacity as Mr. M [REDACTED]'s mortgage broker, would provide Mr. M [REDACTED] with recommendations and information.

In the period after the Mortgages were registered against the [REDACTED] A [REDACTED] Property, Mr. M [REDACTED] found himself unable to cover the Mortgage payments.

As a result of Mr. M [REDACTED] being in default with respect to the Mortgage payments, [REDACTED] Trust Company commenced foreclosure proceedings on three occasions. On the first two occasions these proceedings were discontinued when Mr. M [REDACTED] brought the mortgage back up to date.

On September 6, 2013, because Mr. M [REDACTED] had again defaulted on his Mortgage payments, foreclosure proceedings were commenced by the [REDACTED] Trust Company.

A certificate of pending litigation was registered against title to the [REDACTED] A [REDACTED] Property on that same date, as a result of Mr. M [REDACTED]'s default under the Second Mortgage.

After the foreclosure proceeding was commenced Mr. M [REDACTED] continued to make efforts to secure alternate financing to discharge the Mortgages which were in default. During this period Mr. Hensel continued to provide Mr. M [REDACTED] with information pertaining to potential lenders and brokers.

In the Spring of 2014, in his efforts to obtain financing to discharge the Mortgages against the [REDACTED] A [REDACTED] Property, Mr. M [REDACTED] approached [REDACTED] W [REDACTED] and [REDACTED] G [REDACTED].

On March 3, 2014, Master Tokarek granted conduct of sale in the foreclosure proceeding to [REDACTED] Ma [REDACTED] who held the Third Mortgage against the [REDACTED] A [REDACTED] Property.

After being granted conduct of sale [REDACTED] Ma [REDACTED] entered into a listing agreement with [REDACTED] Ltd. and Mr. Hensel to market the [REDACTED] A [REDACTED] Property for sale.

During the March 3, 2014 court appearance Mr. M [REDACTED] introduced Mr. W [REDACTED] to Mr. Hensel and after that date Mr. M [REDACTED] continued to communicate to Mr. Hensel that he was trying to work with Mr. W [REDACTED] and Mr. G [REDACTED] as well as other lenders, to secure alternate financing to discharge the Mortgages against the [REDACTED] A [REDACTED] Property.

After Mr. M [REDACTED] introduced Mr. Hensel to Mr. W [REDACTED] and advised Mr. Hensel that he was also dealing with Mr. G [REDACTED], Mr. Hensel warned Mr. M [REDACTED] that he should not rely upon the representations of Mr. W [REDACTED] and Mr. G [REDACTED] and that he should not pay them any money in order to obtain financing until that financing was firmly in place. Mr. Hensel warned Mr. M [REDACTED] that if he paid the money to Mr. W [REDACTED] before securing financing arrangements, it may not be money well-spent.

On April 10, 2014, [REDACTED], an employee at the Registrar's office, sent an official Registrar industry alert (the "Registrar Alert") by email to mortgage brokers. Mr. Hensel, in his capacity as a sub-mortgage broker, received that official Registrar Alert.

On April 11, 2014 Mr. Hensel altered the Registrar Alert by replacing the names of the actual subjects in various places throughout the Registrar Alert with the names of [REDACTED] W [REDACTED], [REDACTED] S [REDACTED], [REDACTED] G [REDACTED] and [REDACTED] G [REDACTED] and then sent the altered Registrar Alert to Mr. M [REDACTED] via email.

At no time has there ever been any order or Registrar alert issued through the Registrar's office against anyone named [REDACTED] W [REDACTED], [REDACTED] S [REDACTED], [REDACTED] G [REDACTED] or [REDACTED] G [REDACTED]. At no time has anyone by the name of [REDACTED] W [REDACTED], [REDACTED] S [REDACTED], [REDACTED] G [REDACTED] or [REDACTED] G [REDACTED] ever been registered as a sub-mortgage broker.

On November 21, 2014, the Registrar's office received a complaint from Mr. M [REDACTED] and on December 12, 2014, [REDACTED] We [REDACTED], an investigator for the Registrar, interviewed Mr. M [REDACTED] in relation to the complaint.

Mr. We [REDACTED] asked Mr. M [REDACTED] to provide him with Mr. W [REDACTED]'s and Mr. G [REDACTED]'s contact information in order that he may interview them. Mr. M [REDACTED] advised Mr. We [REDACTED] that they had declined to be interviewed.

On January 15, 2015 Mr. We [REDACTED] interviewed Mr. Hensel.

## EVIDENCE

Staff presented testimony from [REDACTED] We [REDACTED] Investigator, and from Mr. [REDACTED] M [REDACTED].

Key evidence is summarized as follows:

- Mr. Hensel intentionally altered an official Registrar Alert in a manner that made it appear to be an alert respecting [REDACTED] W [REDACTED] S [REDACTED] G [REDACTED] and [REDACTED] G [REDACTED] (referenced hereafter as the “altered Registrar Alert”) and then sent the altered Registrar Alert to Mr. M [REDACTED].
- Mr. Hensel knew at that time he created and sent the altered Registrar Alert that Mr. M [REDACTED] was actively seeking financing from Mr. W [REDACTED] and Mr. G [REDACTED] to discharge the mortgages registered against Mr. M [REDACTED]’s property.
- Mr. Hensel had a beneficial interest in the second mortgage.
- If Mr. M [REDACTED]’s property was sold in the foreclosure proceeding, Mr. Hensel who was the listing agent appointed in the foreclosure proceeding, stood to receive a commission from the sale.
- Mr. Hensel reduced the sale price of Mr. M [REDACTED]’s property in close proximity to his delivering the altered FICOM alert to Mr. M [REDACTED].

The Respondent testified on his own behalf and was cross-examined by counsel for the Staff. The Respondent’s Counsel also cross-examined both witnesses called by the Staff.

Key evidence presented by the Respondent is summarized as follows:

- Mr. Hensel and Mr. M [REDACTED] were friends.
- Mr. Hensel stated he was not advising Mr. M [REDACTED] on his mortgage financing in the capacity of a Mortgage Broker, rather he was offering advice as a friend and out of concern that Mr. M [REDACTED] may be deceived by Mr. W [REDACTED] and Mr. G [REDACTED].



- Mr. Hensel intentionally altered an official Registrar alert and sent the altered Registrar Alert to Mr. M [REDACTED]
- Mr. Hensel testified that his intentions in sending the altered Registrar Alert were to warn Mr. M [REDACTED] against dealing with Mr. W [REDACTED] and Mr. G [REDACTED] parties whom he knew from previous business dealings to be untrustworthy.
- Mr. Hensel also testified that he intended the altered Registrar Alert to be a joke, and that he did not intend for Mr. M [REDACTED] to rely on the content or validity of the altered Registrar Alert.
- There were inconsistencies (misspellings and links that had not been altered) in the altered Registrar Alert.
- Mr. Hensel contacted Mr. M [REDACTED] within days of sending the altered Registrar Alert to tell him it was not authentic and that he intended it as a joke and meant only to warn Mr. M [REDACTED] against dealing with Mr. W [REDACTED] and Mr. G [REDACTED] whom he believed were not trustworthy.
- Mr. Hensel did not reach out to the Registrar's Office and advise them of the altered Registrar Alert.
- Mr. M [REDACTED] continued to do business with Mr. W [REDACTED] and Mr. G [REDACTED] despite the altered Registrar alert.
- Mr. Hensel agreed to be the listing agent for [REDACTED] Ma [REDACTED] who was granted conduct of sale and held the third Mortgage against Mr. M [REDACTED]'s property. As a part of this agreement, Mr. Hensel agreed to reduce or waive his commissions if necessary, to ensure [REDACTED] Ma [REDACTED] received the full proceeds owing on the mortgage.

- Mr. M [REDACTED]'s property was eventually sold and Mr. Hensel was paid in full on the second mortgage he held against the property.
- Mr. Hensel withdrew as the listing agent prior to the sale of the house and therefore did not receive real estate commissions.
- Mr. Hensel stated that he was not motivated by receiving his real estate commissions; rather his primary motivation was being paid out on the mortgage he held against Mr. M [REDACTED]'s property.
- Mr. Hensel testified that he owed Mr. M [REDACTED] a fiduciary duty.

## **SUBMISSIONS**

Counsel for Staff submitted the following:

- Mr. Hensel felt frustrated and was growing impatient with what he perceived to be Mr. M [REDACTED]'s lack of cooperation in selling his property.
- Mr. Hensel intended Mr. M [REDACTED] to rely on the altered Registrar Alert as though it was genuine.
- Mr. M [REDACTED] did rely on the altered Registrar Alert such that it caused him to question one of the potential sources of lending available to him to discharge the Mortgages that were in foreclosure.
- Mr. Hensel had a duty to act as a fiduciary to Mr. M [REDACTED] and he breached that duty.
- Mr. Hensel's conduct was dishonest and intentional and therefore constitutes conduct that is prejudicial to the public interest contrary to s. 8(1)(i) of the Act.

Staff proposed the Registrar make the following orders:

- Mr. Hensel's sub-mortgage registration be suspended for at least 12 months pursuant to s. 8(1) of the Act; and,
- Mr. Hensel pay costs of the investigation in the amount of \$6,385 and the costs of the hearing pursuant to s. 6(9) of the Act.

Counsel for Staff provided a series of authorities supporting their proposed penalty. Those authorities I considered to be most relevant are set out below:

- In *Mortgage Brokers Act vs. Lee Douglas Bussey et al*, the Registrar suspended Mr. Bussey's mortgage broker registration for a period of five years and awarded costs of \$20,000, following a hearing in which he determined Mr. Bussey's conduct to be prejudicial to public interest. This conduct included multiple incidents of falsifying documents including rental agreements, gift letters and purchase and sale agreements which were provided to lenders for the purposes of securing mortgages for his clients.
- In *Mortgage Brokers Act vs. Danh Van Nguyen and Express Mortgages Ltd.* the Registrar suspended Mr. Van Nguyen's mortgage broker registration for a period of ten years and levied an administrative penalty of \$50,000 following a hearing in which he determined that Mr. Nguyen's conduct to be prejudicial to public interest. This conduct included an ongoing practice of falsifying documents supplied to lenders for the purpose of securing mortgages for his clients.
- Each of the matters mentioned above involve mortgage brokers who falsified documents and in that sense are relevant to this case. Where they differ from this case is that they involve the falsification of documents for the benefit of the client,

as well as for the broker himself, by securing mortgage financing (and the attendant commissions) where the client may not otherwise have qualified. These matters differ in that the falsified documents were not court or regulatory documents and because they involve repeat or multiple incidents over an extended time frame.

- In the Matter of Mortgage Brokers Act vs. Stuart Ramsay, Mr. Ramsay's registration as a mortgage broker was suspended for a period of two years and he was ordered to pay investigative costs of \$4,875 after admitting that he submitted a falsified employment letter as part of a mortgage application submitted to a lender on his own behalf. This case is relevant and is different than the two noted above in that Mr. Ramsay falsified a document for his own benefit.
- In the matter of The Mortgage Brokers Act vs. Alissa Lyn Sarrazin, Ms. Sarrazin's registration as a mortgage broker was suspended for eighteen months and she was ordered to pay investigative costs of \$3,800 after admitting to knowingly signing a falsified letter of employment. In this matter the falsified document benefited neither Ms. Sarrazin nor her clients, but rather her colleague.
- In the Matter of The Law Society of Upper Canada vs. Peter Poulakis, Mr. Poulakis' license to practice law was suspended for 12 months and further limited to practicing under another member for an additional three years following the 12 month suspension, after it was found that he misled his own client by forging a support order and advising her it was issued by the court. Mr. Poulakis was also ordered to pay costs of \$5,000.
- In the Matter of The Law Society of Upper Canada vs. Joel Lawrence Hertz, Mr. Hertz's license to practice law was suspended for a period of one year and he was ordered to pay costs of \$1,000 after it was determined that he created a false court order including forging a judge's signature.

- I find these two cases relevant in that they deal with falsification of official or legal documents by individuals acting in their professional or licensed capacity and on behalf of a client with whom they have a trust relationship.
- Finally I found *Cartaway Resources Corp. (Re)*, 2004 SCC26 relevant in that it dealt specifically with the application of penalty for purposes of general deterrence. On an appeal, the Supreme Court of Canada held that the BC Securities Commission was entitled to consider the context surrounding the breach of statute, including the nature of the conduct, when assessing reasonableness of penalties and more specifically that "...it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative."

Counsel for Mr. Hensel submitted the following:

- Mr. M [REDACTED]'s overriding concern was the listing price of his house which he felt was being reduced by Mr. Hensel below its market value.
- Mr. M [REDACTED]'s motivation in filing a complaint with the Registrar's Office against Mr. Hensel was to forestall the sale of his house.
- Mr. M [REDACTED] is a sophisticated businessman with extensive experience in real estate dealings and therefore should not reasonably be expected to have relied on the altered Registrar Alert.
- The inconsistencies in the altered Registrar Alert, would have reasonably caused Mr. M [REDACTED] not to rely on it had he inspected the alert more closely.
- Mr. Hensel's conduct was inappropriate but not borne out of ill intent. Rather it was a moment of lapsed judgment, meant in jest and/or as a well-intended warning to protect

a friend. He recognized his error in judgment and attempted to correct the situation by contacting Mr. M [REDACTED] very soon after the fact.

Counsel for Mr. Hensel proposed a reprimand by the Registrar as an appropriate penalty.

Mr. Hensel's Counsel also argued that Mr. We [REDACTED] was diverted in his investigation by Mr. M [REDACTED]'s attempts to seek his assistance to forestall the sale of his home and that this was an inappropriate use of Mr. We [REDACTED]'s investigative time and not relevant to the case against Mr. Hensel. The investigative costs should therefore be reduced by 50 per cent.

No authorities were provided by the Respondent supporting the proposal nor did the Respondent make any argument or comment as to the relevance of the authorities provided by the Staff.

## **ANALYSIS**

There is no dispute that Mr. Hensel intentionally altered an official Registrar alert and sent the altered Registrar Alert to Mr. M [REDACTED]. On that fact, both parties agree.

Where the parties differ is on:

- Mr. Hensel's intent in sending the altered Registrar Alert and specifically whether or not Mr. Hensel intended Mr. M [REDACTED] to rely on the Alert; and,
- whether Mr. M [REDACTED] did, in fact, rely on the alert and if so, whether he suffered any harm.

Both parties agree that Mr. Hensel should be sanctioned; they differ on the severity of penalty and rely on their differences in their arguments with respect to the points immediately above.

Staff argue Mr. Hensel's intent was malicious; Mr. M [REDACTED] did rely on the altered Registrar Alert and he did suffer harm in that one potential source of funding available to him was called into question and effectively cut-off.

The Respondent argues that Mr. Hensel's intent was not malicious, rather it was a well-meaning warning or, in the alternate, a joke among friends and without any real expectation that Mr. M [REDACTED] would rely on the altered Registrar Alert. If Mr. M [REDACTED] did rely on the altered Registrar Alert that reliance was short-lived as Mr. Hensel advised him that it was not legitimate very shortly after he sent it. They also argue that Mr. M [REDACTED] was sophisticated enough to act on his own judgement, was not relying on Mr. Hensel's advice, and was desperate to the extent that he continued to pursue the potential lenders despite any warnings from Mr. Hensel.

To summarize, the substantive facts supporting a finding of conduct prejudicial under the Act in this case are not in dispute and the decision at hand is ultimately one of penalty, and on that point, the parties arguments focused on intent and on harm.

The Act, as set out earlier, provides latitude in determining penalties including:

- suspending or cancelling a person's registration;
- ordering the person to cease a specified activity or to carry out specified actions that the registrar considers necessary to remedy the situation; and
- ordering administrative monetary penalties.

The legislation also provides for the awarding of costs if, in the course of inquiry, a contravention of the Act is discovered.

While a penalty decision is largely discretionary I am guided by the predominantly accepted principles in sanctioning regulated industry participants for breaches of conduct: denunciation, deterrence and maintaining the public confidence in the integrity and regulation of the industry.

In arriving at a penalty that meets these objectives there is therefore a need to assess:

- the gravity of the contraventions,
- evidence of harm,
- intent,
- whether there were any extenuating circumstances,
- evidence of remorse, rehabilitation or reconciliation; and,
- probability of recurrence.

Gravity of the contraventions

Mr. M [REDACTED] offered testimony that Mr. Hensel made repeated comments to him indicating a contempt or disregard for the regulator. In reaching my decision I placed little reliance on most of Mr. M [REDACTED]'s testimony. I found him to be a difficult witness. He was emotional and combative with counsel for the Respondent. However, Mr. M [REDACTED]'s testimony is, in my opinion, not necessary to conclude that Mr. Hensel has little regard for the regulator or for the regulations in place governing his industry. Altering an official Registrar alert implicating third parties in serious enforcement matters, and then circulating that document as though it were legitimate is ample evidence of that.

Altering an official regulatory document, regardless of intent, shows a high level of contempt for the regulatory framework in place to protect the public and the profession and for the regulator itself. I consider it very serious misconduct that is clearly contrary to the public interest.

Evidence of harm

The outcome of events surrounding this case for Mr. M [REDACTED] was that he lost his home through foreclosure. The ultimate outcome for Mr. Hensel, and for the other mortgagees, was that they were paid in full. Whether these outcomes would have been



different had Mr. Hensel not sent the altered Registrar Alert to Mr. M [REDACTED] cannot be known.

Intent

With respect to Mr. Hensel's intentions, I found him to be an unreliable witness in this regard. He testified on one hand that he intended the altered Registrar Alert to serve as a warning that Mr. M [REDACTED] should not do business with Mr. W [REDACTED] and Mr. G [REDACTED] who he knew to be disreputable and that he sent it out of concern for Mr. M [REDACTED] interests.

On the other hand, he testified that the altered Registrar Alert was a joke among friends and he had no intention or expectation that Mr. M [REDACTED] would rely on it at all.

Mr. M [REDACTED] was facing foreclosure proceedings, for the third time, initiated in all instances by Mr. Hensel. The proceedings were on his personal residence, which he testified was his family home. Mr. M [REDACTED] and Mr. Hensel also both testified as to the degree of desperation Mr. M [REDACTED] was feeling at the time.

I cannot, under any circumstances, see how Mr. Hensel would have reasonably expected Mr. M [REDACTED] to find humour in the situation, nor do I find it reasonable that Mr. Hensel provided the warning to Mr. M [REDACTED] out of concern for his interests.

I consider neither explanation by Mr. Hensel with respect to his intentions to be credible. Instead I find that Mr. Hensel deliberately altered an official regulatory alert and sent it to Mr. M [REDACTED] with the intent to frustrate his efforts to secure financing.

Extenuating circumstances

The extenuating circumstances in this case should have dictated an increased standard of care and caution on the part of Mr. Hensel.

There were three mortgages registered against the property, all of which had been previously arranged by Mr. Hensel and Mr. Hensel was also now acting as the listing agent for the third mortgage holder who had conduct of sale. Mr. M [REDACTED] and Mr. Hensel both testified there was significant disagreement on the listing price of the house.

Mr. Hensel, by his own admission that he was warning Mr. M [REDACTED] against certain lenders, was continuing to act as an advisor to Mr. M [REDACTED]. Mr. Hensel himself stated in evidence that he owed Mr. M [REDACTED] a fiduciary duty.

In addition, and in conflict to this role, Mr. Hensel's other duties and interests included:

- to himself as holder of the second mortgage;
- to the first and third mortgagees for whom he had arranged the mortgages on Mr. M [REDACTED]'s property;
- to the third mortgage holder who had conduct of sale and had retained Mr. Hensel as the listing agent;
- to [REDACTED] Ltd. and himself, as principle, who stood to make a commission on the sale of the property.

In summary, the situation was entirely rife with conflicts of interest.

Mr. Hensel has been in the mortgage broker business since 2000 and is also a licensed realtor. In his testimony he described a variety of complex real estate investments and transactions he has been party to. I do not find it at all plausible that Mr. Hensel would not have recognized and understood the conflicts of interest inherent in the situation. I can think of no reason other than to improve his own position that he would choose to put himself in this situation.

And, given that this was the third time Mr. Hensel had initiated a foreclosure proceeding against Mr. M [REDACTED], it is reasonable to assume that a sale of the property was a preferable outcome to Mr. M [REDACTED] securing financing.

While I accept Mr. Hensel's testimony that his primary objective was to be paid out on the mortgage he held on Mr. M [REDACTED]'s property and that his intention in acting as listing agent for [REDACTED] Ma [REDACTED] was to reduce his commissions if necessary to ensure [REDACTED] Ma [REDACTED] was paid in full, there is no question that the most ideal outcome for Mr. Hensel would have been the sale of Mr. M [REDACTED]'s property for a price high enough to pay out all mortgages and a commission.

*Evidence of remorse, rehabilitation and reconciliation*

Mr. Hensel testified that he recognized his lapse in judgement and contacted Mr. M [REDACTED] shortly after to advise him that the altered Registrar alert was not genuine. He was vague in his recollection of when that occurred and what, exactly, he said. He also testified that he did not advise the Registrar's office that he had altered and circulated an official alert. This appeared to be the extent of Mr. Hensel's efforts to correct his lapse in judgement; efforts I find entirely lacking.

Throughout the testimony I did not detect remorse from Mr. Hensel except to the degree that he has been inconvenienced and that his professional credentials and livelihood may be impacted. While he acknowledged the lack of judgment showed by altering the Registrar alert, he seemed unprepared to acknowledge the actual or potential damage of his actions. He also appeared to me to disregard or even discount the role that the many conflicts of interest played in this case and the responsibility he had to manage those conflicts.

From the testimony of Mr. M [REDACTED] it was evident that no reconciliation had occurred between him and Mr. Hensel.

Probability of recurrence

Given Mr. Hensel's apparent lack of remorse and unwillingness to acknowledge the various conflicts of interest he had placed himself in that exacerbated the situation, I saw no evidence on which to conclude that he is unlikely to demonstrate the same or similar lack of judgment in the near future.

## **CONCLUSION**

I consider the altering of an official regulatory document to be an extremely serious misconduct. It is conduct whose potential harm extends beyond the parties involved and beyond the two people whom Mr. Hensel held out had committed serious offences, to the reputation of industry as a whole and the public's confidence in both the industry and the regulator.

Based on the evidence and testimony it is my conclusion that Mr. Hensel intended the altered Registrar alert to influence Mr. M██████'s actions.

Whether or not the parties involved were directly harmed in this case may be inconclusive but I consider that of less importance, given the two points immediately above.

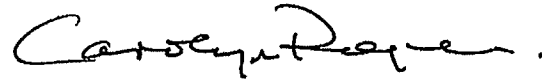
Mr. Hensel demonstrated little remorse and did nothing to convince me that he would change his behaviour in the future to either avoid putting himself in such a position of extreme conflict of interest or that he would behave differently if he found himself in a similar position.

In reading the authorities provided I was struck that while several decisions related to acts of dishonesty in relation to professional, industry, or regulatory standards or requirements, none included the altering of an official regulatory document. I conclude from this, that this is fortunately a rare occurrence and potentially the first time, on record, a registered or licensed mortgage broker has done so. For this reason I consider it important to set a penalty that sends a very clear signal of both specific and general deterrence.

Upon reviewing and considering the evidence and testimony summarized here I hereby order the suspension of Mr. Hensel's mortgage broker registration for a period of 24 months effective March 7, 2016.

With respect to costs, I accept Counsel's assertion that a portion of Mr. We█'s time appears to have been directed to dealing with Mr. M█'s inquiries as to whether the Registrar's office could assist him with other legal proceedings. While not alleged in the Respondent's submissions, I do not find that these efforts in any way prejudiced the investigation against Mr. Hensel nor do I accept that they accounted to anywhere near 50 per cent of the time Mr. We█ spent on the investigation. I therefore award investigative costs in the amount of \$5,000 be paid by Mr. Hensel. I further award hearing costs which I fix in the amount of \$2,500 be paid by Mr. Hensel. All costs must be paid no later than March 31, 2016.

Issued this 11<sup>th</sup> day of February, 2016  
at Vancouver, British Columbia



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Carolyn Rogers  
Registrar of Mortgage Brokers