

IN THE MATTER OF THE MORTGAGE BROKERS ACT

R.S.B.C. 1996, C313

- AND -

**IN THE MATTER OF THE DANH VAN NGUYEN AND EXPRESS
MORTGAGES LTD.**

- HEARING -

Before:

W. Alan Clark
Registrar of Mortgage Brokers

Dates:

June 1st, 2004 to June 14th, 2004

Place:

Vancouver, British Columbia

Appearing:

Lynda Wrigley for the Registrar of Mortgage Brokers

George Sourisseau for Danh Van Nguyen and
Express Mortgages Ltd.

INTRODUCTION

On April 28, 2004, a Notice of Hearing was issued pursuant to the Mortgage Brokers Act ("the Act") alleging that Danh Van Nguyen ("Nguyen") and Express Mortgages Ltd. ("Express"), between August 1, 2001 and March 11, 2004 have:

- (a) conducted business in a manner prejudicial to the public interest, contrary to section 8(1)(e) of the Act, by knowingly submitting false documents including employment letters, income verification letters, and bank passbooks to Maple Trust, Bank of Montreal and HSBC Bank Canada ("HSBC"), to facilitate the approval of mortgage applications by client borrowers; and that such documents were acted upon by the said financial institutions as if they were genuine;
- (b) failed to provide Disclosure Statements to their client borrowers as required by section 16 of the Act and sections 1.1(a) and 10 of the Mortgage Brokers Act Regulations B.C. Reg.100/73 ("the Regulations");
- (c) failed to provide and retain copies of Conflict of Interest Disclosure Statements to their client borrowers, with respect to the licensees' interests in Pacific Rainbow Investments Ltd. ("Pacific Rainbow"), as required by sections 17.3 and 17.5 of the Act and sections 1.1(e) and 14(1) of the Regulations;
- (d) failed to provide and retain copies of Conflict of Interest Disclosure Statements to lenders Maple Trust, Bank of Montreal, and HSBC, with respect to the licensees' interests in Pacific Rainbow, as required by section 17.4 and 17.5 of the Act;

- (e) conducted business in a manner that is prejudicial to the public interest, contrary to section 8(1)(e) of the Act, by knowingly arranging second mortgages for their client borrowers through three companies, namely Pacific Rainbow Investments Ltd., TNL Investments Ltd., and Christa Vina Investments Ltd., which were carrying on business as mortgage brokers without being registered, as required by section 21(1)(a) of the Act;
- (f) carried on business as a mortgage broker at 4170 Fraser St. Vancouver, B.C., which was not a registered address of Express or Nguyen, contrary to section 21(1)(b) of the Act; and
- (g) employed persons as sub-mortgage brokers who were not registered, namely Lisa Tran ("Tran") and John Nguyen, contrary to section 21(1)(d) of the Act.

The hearing was started on June 1, 2004 and continued until June 14, 2004. The witnesses who testified were:

- Melanie Flint – the Financial Institutions Commission ("FICOM") investigator who was initially in charge of the investigation.
- Wayne McMillan – a FICOM investigator who assumed responsibility for the investigation from Ms. Flint.
- Ina Schoemaker – a FICOM investigator who assisted Mr. McMillan.

- Cst. Clint Baker – a RCMP officer who seized Express computers and extracted various data from the hard drives.
- Calvin Lai – a former HSBC employee who dealt with Nyugen and Express.
- Ara Karakashian – an employee of Maple Trust who dealt with Nyugen and Express.
- Mark Robinson – Corporate Security, Bank of Montreal.
- Rosemarie Szkwarok – Senior Manager Investigations, HSBC.
- Liane Wong – TD Canada Trust Security and former Manager, Customer Sales and Service, Kingsway and Victoria Branch.
- Hien Thi Dao – an Express client.
- Lisa Tran – wife of Nyugen and an employee of Express.
- Danh Van Nyugen – principal of Express and a registered sub-mortgage broker.

Extensive Exhibits were filed as follows:

Number	Description
1	Notice of Hearing
2	Binder containing tabs 1 – 14
3	Binder containing tabs 15 – 20
4	Binder containing tabs 21 – 24
5	Binder containing tabs 25 – 31
6	Binder containing tabs 32 – 42
6-36.1	Yellow folder containing HSBC file re Phuong Thi Giang
6-36.2	Yellow folder containing HSBC file re Ly Thanh Thi
7	Binder containing tabs 43 – 48
8(A)	Maple Trust File re The van Nguyen
8(B)	Maple Trust File re Nga Ngoc Thi Phong
8(C)	Maple Trust File re Phuong Thi Giang
9	Bank of Montreal Spreadsheet re Mortgages demanded upon
10	Express file – KAPOOR
11	Mortgage Broker Bulletins
12	Land Title Searches
13	Bayfield Mortgage Applications
14	CDs containing all Express Files
15	Agreed Statement of Facts
16	Letter from Dosanjh & Company dated January 14, 2002, to Express, with three pages attached
17	Extracts from "Real Estate Salesperson's and Sub-mortgage Broker's Pre-licensing Course Manual"
18	Original of Exhibit 16 (Letter from Dosanjh & Company dated January 14, 2002, to Express, with three pages attached)
19	Blank page bearing Canada Trust graphic
18A	Formerly marked Exhibit 18 (Original of Exhibit 16 Letter from Dosanjh & Company dated January 14, 2002, to Express, with three pages attached)
18B	Original letter from Dosanjh & Company dated September 26, 2002, with attachments
18C	Original letter from Dosanjh & Company dated August 1, 2003 with attachments

Exhibit 15, the Agreed Statement of Facts, Admission and Waiver for the purposes of the hearing, is attached as Appendix "One" to these Reasons for Decision.

Throughout this Reason for Decision (including Appendices) a number of terms are used that need defining. They are:

- Morty – a software program that allows mortgage brokers to process and submit applications to financial institutions; and
- Beacon Score – a credit scoring system used in conjunction with credit history to determine an individual's credit rating.

Background

This matter came to the attention of the Investigations Department at FICOM in January 2003, when representatives of the Bank of Montreal advised that they were investigating a large number of mortgages brokered between the Bank of Montreal and the borrower by Nyugen of Express. This investigation was undertaken after an audit which found numerous irregularities, such as an inability to verify income and the source of down payments, and the discovery of second mortgages which were not known to the bank when the mortgage was funded.

Subsequently some 62 mortgages were demanded on and paid in full. Exhibit 9 is a spreadsheet documenting these mortgages.

Sometime in February 2003, representatives from HSBC attended at FICOM's office and produced a spreadsheet containing information on 96 mortgages (Exhibit 6-32) that had been brokered between the bank and the borrower by Nyugen of Express. In addition, the bank provided copies of the 96 files. They also advised these mortgages were going to be demanded upon as a result of similar issues discovered by Bank of Montreal staff. Evidence indicates that subsequent to the demand, they were all paid in full.

In March of 2003, FICOM investigators conducted searches on the offices and residence of Nyugen and Express, specifically at:

- 8817 – 160A Street in Surrey; and
- 4170 Fraser Street in Vancouver.

FICOM investigators seized about 900 files from the office/residence of Express which were mortgages brokered by Express/Nguyen. Cst. Baker of the RCMP attended with the FICOM investigators and he seized four computers.

Subsequent to the seizure, Cst. Baker produced a number of reports which I will comment on later in this decision.

With respect to the Express files, they were scanned and placed in evidence in the form of four compact discs (Exhibit 14) without further reference. The hearing focused on the contents of 19 Express files placed into evidence as exhibits and 9 corresponding HSBC and Maple Trust files.

Evidence was read which indicated Nguyen graduated from the University of British Columbia with a bachelor's degree in science. He was employed as a chemist until he entered the financial services sector in 1991. He was a real estate salesman from 1991 until July 2000 when he registered as a mortgage broker only while acting as an exclusive agent of Canada Trust. He testified he was a successful realtor, continually finishing in the top ten for sales. In August of 2001, Express became registered and Nguyen was registered as its sole sub-mortgage broker. Early in the hearing, it became apparent that Express Mortgage also employed Tran, wife of Nguyen, and John Nguyen. Evidence was also placed before me that Pacific Rainbow was incorporated in May of 2001. The sole shareholder was Tran but the evidence indicated Nguyen maintained control of the day to day activities of the company. The company was incorporated to make investments in real estate. Nguyen testified that soon after incorporation, the focus of the company changed from investment to lending on second mortgages.

Reasons for Decision

Did Express and Nguyen conduct business in a manner that is prejudicial to the public interest by knowingly submitting false information to Maple Trust, Bank of Montreal and HSBC?

For the purposes of this hearing, Express and Nguyen admitted that they had submitted a number of false documents to the financial institutions in question, but argued that they did so without the knowledge that the information contained therein was false. It

was their position that the information had come from clients and realtors and they were not in a position to know the information was false. In order for me to come to a conclusion on this issue, I examined each of the 19 Express files in detail. My analysis of the documents in each of the deal files is attached as Appendix Two to these reasons for decision. Mr. Sourisseau suggests, and I agree, that any conclusion that Express/Nguyen knowingly submitted false information to any of the financial institutions must be based on clear and convincing evidence.

After imposing this standard, I have concluded Nguyen and Express knowingly submitted false information to the financial institutions in question. My reasons for this belief are as follows:

- The evidence focused on a large number of false employment letters, most of which were used for income verification. It was the testimony of both Tran and Nguyen that they came from realtors and clients and they had no way of knowing the information contained therein was false. They also testified they did not make any attempts to verify any of the false information. The evidence of Cst. Baker was that a number of the false letters of employment were found on the hard drives of computers located in the Express offices and the Nguyen residence. Tran testified she typed the body of the letters as a template and when she printed them off they would not have a letterhead (or logo/graphics) on them. Nguyen testified the letters were received from realtors and clients and that he had no idea she was typing up letters until he saw the forensic report (Exhibit 2-3). The subsequent evidence of Cst. Baker makes the testimony of Tran and Nguyen not credible. Cst. Baker, when recalled, testified that he was

able to print out (from the hard drive of the computer located in a bedroom in the Nguyen residence) four of the employment letters and produced them showing the letterhead of the company (including graphics). He stated he found these letters in the print spool on the computer indicating the documents had been printed. Two of the letters in question were in the subject files produced as exhibits. The first was the false employment letter found in Exhibit 3-18.

Evidence indicates this letter was produced at the Express office and sent to the Bank of Montreal as proof of income. The second letter was the false employment letter found in Exhibit 5-30. Cst. Baker originally testified this letter was hit numbers 50, 55 and 61 in his forensic report. After recall, he further testified that the original document was created on September 13, 2002 at 9:04 pm and was printed three times, once removing the word "specialist" after "gardener" which created the letter found in the file. Cst. Baker stated he was able to find (through internet explorer history) that the bedroom computer had been used to conduct a web search and download the graphics. They were located after a web search using the word "gardening". The gardening images, as seen in the letterhead, were saved to the computer at 8:44 pm. The corresponding three letters regarding Island Evergreen were printed on the computer at 9:04 pm, 9:36 pm and 9:37 pm, all on September 13, 2002. Cst. Baker gave similar testimony regarding another employment letter which was not one of the subject files. A review of Exhibit 2-3 also finds in some cases there appears to be a letterhead in some of the false letters. As a result, I conclude Express/Nguyen (or someone under their direction) created a number of false

employment letters and forwarded them to financial institutions as proof of income.

- Cst. Baker initially produced a forensic report after a search of the seized computer (and floppy discs) using a keyword string of "to whom it may concern". His initial report documented the 61 hits recovered from the four computers and one floppy disc (all located at the 160A Street address) this search found. Three of the computers and one floppy disc were located in the office portion of the Nguyen residence, with the fourth computer located in a bedroom.

The following chart shows the distribution of the hits on the computer/disc:

Office 1	Office 2	Office 3	Floppy	Bedroom
1 – 26	27 – 34	35 – 48	49 – 51	52 – 61

Nguyen testified that he used one of the three office computers, with the other two used by Tran.

An analysis of the hits finds that all three office computers were used to create false employment letters. In the Ngoc Thi Nguyen matter (Exhibit 18), one finds variations of the false employment letter on all four computers. This fact alone refutes the testimony of Nguyen that he was unaware of the existence of these letters until he read the forensic report. I placed great weight in the evidence of Cst. Baker.

- Exhibit 5-31 contains a false letter of account verification. This letter is written on what purports to be Canada Trust letterhead and states Ms. Thanh Thi Ly has \$55,286.71 on deposit. The letter is signed by Rebecca Leung, Financial Services Officer and dated in August of 2002. Calvin Lai, of HSBC, testified this letter was requested by the bank in order for HSBC to satisfy the "know your client rule". It was relied on and after receipt the requested mortgage was funded. This letter was hit 23 in Exhibit 2-3 and was located on the hard drive of one of the Express computers located in the office. Tran testified she had no knowledge of this letter and had no idea how it came to be found on her hard drive (other than a client may have used her computer to type it). Nguyen testified the client provided the letter in question to Tran and he had never seen it. Liane Wong testified the letter was not prepared by Rebecca Leung and the account information was false, as the account number in question belonged to someone else. Liane Wong went on to say Rebecca Leung had dealings with Nguyen when he was employed at Canada Trust and she (Rebecca Leung) was well known to him. Liane Wong spoke with Rebecca Leung and confirmed she was no longer an employee of TD/Canada Trust as of the date of the letter. Information was also given that the signature resembles Rebecca Leung's signature but she did not sign the letter. Nguyen admitted he knew Rebecca Leung and that his wife did not. The testimony of Tran and Nguyen with respect to this matter is not credible. Nguyen would have me believe that a client prepared a false account verification letter and, of all the people that worked at the TD Bank/Canada Trust, the use of Rebecca Leung's name and a signature close to hers was just a coincidence. Tran would have me believe the letter just

materialized in the hard drive of one of Express's computers. Clearly, this letter was prepared by someone at Express (either Nguyen or someone under his direction, given he had the knowledge regarding Rebecca Leung) to satisfy HSBC requirements and submitted to HSBC by Express and Nguyen with the knowledge it was false.

- At this point, I note that a number of the false employment letters did in fact get faxed into Express by three realtors and one other individual. It is my belief that Express and Nguyen knew these were false, given what occurred in the Che Thi Nguyen file. In this file, Express ran a credit inquiry on the borrower after which, and on September 13, 2002, Express faxed Linh Ngo (a realtor) stating on the cover sheet "require job letter w/income of \$3950 per month for 4 years". The next day a false employment letter is faxed to Express stating exactly that. Clearly, there is a small group of individuals and Express/Nguyen working in concert to supply false employment information in order to qualify house purchasers for mortgages. I have noticed that if the realtor involved is not one of the group, the false job letter is created at Express. For an example of this, I refer to the Suon-Anh Thi Nguyen matters (Exhibit 2-13 and 3-19 – same individual, two separate real estate deals). In the first file, a false employment letter, Do Mushroom Farms, dated November 9, 2001, is faxed into Express by realtor Houston Ngo. In the second deal, another false Do Mushroom Farms letter dated October 2, 2002, was used as income verification. The realtor in the second matter was a Diven Kisun. The second letter was prepared in the

Express offices (Hit 48, Exhibit 2-3). I also note that the forensic report (Exhibit 2-3) contains similar letters (without letterhead) as the letter faxed in by Ngo.

- In the Giang matter (Exhibits 5-29, 6-36-1 and 8 C), Giang was one of the mortgages where repayment was demanded by HSBC. The Express file contained a copy of the letter from HSBC's lawyer demanding repayment as a result of "certain misrepresentations in your credit application". Subsequent to receiving this letter, Express brokered the mortgage with Maple Trust stating the reasons for refinancing was to remove a co-signer. Nguyen testified he had made a mistake when he advised Maple Trust of this fact. I do not find Nguyen's reason for not advising Maple Trust of the true reason for refinancing as credible. The fact a bank demanded repayment as a result of misrepresentation for a mortgage brokered by a registrant would be a significant matter and, as a result, I find it impossible to believe anyone could make the kind of mistake Nguyen suggests he made, especially so soon after the client brought the bank's letter to his attention. Nguyen was aware of the fact the bank was claiming misrepresentation in the loan application, however, he forwarded the same employment and income to Maple Trust as he did to HSBC. When he did so, he knew the information was false.
- In the Troung matter (Exhibits 3-20 and 6-36), Express and Nguyen knew the information contained in a gift letter submitted to the bank was false as he brokered a second mortgage for a portion of the alleged funds. A false gift letter had to be submitted to cover up the fact a second mortgage (which was clearly hidden from HSBC) was also being placed on the subject property.

- In the Pham matter (Exhibit 3-30), Express and Nguyen knew the down payment information being forwarded to the Bank of Montreal was incorrect because he arranged a second mortgage for a portion of the alleged funds. The second mortgage was hidden from the bank by using a false bank book. It is apparent Express and Nguyen knew that false information was being submitted.
- Additionally, in the Thach matter (Exhibit 3-16 -34), the Ngoc Thi Nguyen matter (Exhibit 18), and the Ly matter (Exhibit 5-31), Express and Nguyen presented deals to HSBC and the Bank of Montreal as 75 or 65 per cent loans to value when in fact hidden second mortgages were placed on the property. Evidence was given that lenders need to know all encumbrances on property as this would affect the debt service ratio and may result in the mortgage not being funded. Nguyen, with his lengthy career in real estate and mortgage brokering, would know this and, as a result, I concluded by not disclosing these second mortgages, he knowingly submitted false information to financial institutions. I believe he was well aware that a higher loan to value ratio would result in closer scrutiny of the income of the borrower and he knew what was being submitted would not stand rigid verification.
- I have also noticed a pattern of Express supplying down payment information and income verifications a period of time after the initial sending of documents. This is demonstrated in the Trieu matter (Exhibits 3-16, 3-17) where one month after the Bank of Montreal was sent a number of documents pertaining to funding the mortgage, such as contract of sale and purchase, appraisal documents etc., a false employment letter was submitted to satisfy the bank's requirements. In

this case, the employment letter sent was not even for the individual getting the mortgage. It is my belief that Nguyen knew full well how financial institutions operated, and used the time lag to submit false information knowing it would not be closely scrutinized so close to the funding of the mortgage.

- I have also noted the number of times telephone numbers used as contacts for employment verification appear as home phone numbers of the borrowers or are written in the margins of Express credit applications. All of this leads me to believe Express and Nguyen knowingly used contact numbers that would respond favourably to inquiries. An example of this is found in Exhibit 2-12 where the employment verification phone number shows up in two other places: 1) As the home phone number of the borrower; and 2) At the bottom of the application with a notation, which has led me to believe, indicates it was the phone number of a realtor, Tan Nguyen. (This is further support to my belief that a number of realtors were acting in concert with Express/Nguyen to supply false information to financial institutions.)
- I have also noticed that in a large number of deals where the employment, employment income and assets change from the credit application to what was ultimately forwarded to financial institutions. An example of this is in the Ngoc Thi Nguyen matter (Exhibit 3-18), where liquid assets change from \$21,000.00 in the credit application to \$96,000.00 in the Morty application. In my opinion, this increase of assets was necessary to hide the fact a second mortgage was also being arranged. Another example of this is in the Ha Xuan Nguyen matter (Exhibit 4-21). The borrower's annual income changed from \$6,000.00 with

\$24,000.00 a year assistance from family (Van City application) to full employment at Truong Mushroom farm for 1 ½ years (false employment letter) with an annual income of \$24,000 (CIBC application). I can draw no other conclusion except that Express and Nguyen were manipulating data to qualify clients who might not otherwise be qualified to borrow. This results in false information being conveyed to the lenders.

- I have also noticed discrepancies in the employment history contained in Equifax results and that which was submitted to financial institutions. Examples are found in Exhibits: 2-11; 2-12; 3-16/7 and 4-21. In fact, in Exhibit 2-12, the Equifax report states the borrower, Chin Van Nguyen was living in Calgary as of May, 2000. The false employment letter purports that he was working as a mushroom grower since February, 2000. Nguyen testified he did not know what the initials ES (most current employment listed) means in an Equifax report. This is not a credible statement for someone employed in the financial services sector for as long as he has been. I do not believe it is possible for someone with the financial services experience as Nguyen to miss these discrepancies. As a result, the only conclusion I can draw is that he knowingly submitted false information to financial institutions.
- I would also like to comment on the Dao matter (Exhibit 5-28). Ms. Dao gave evidence that she had not seen the Island Evergreen employment letter before the hearing. She stated she made \$24,000 a year, not \$45,000 as purported in the letter submitted to the Bank of Montreal. Her evidence was she informed Nguyen that she made \$24,000 a year. She also stated she had never seen the

Residential Tenancy Agreement between her and Chien Thi Tran and that she did not know this person. She gave evidence that her tenant was Dung Vu Manh and he had lived in her house since November of 2002. (Shortly after her purchase.) With respect to the various banking information she testified that she had given Nguyen Toronto Dominion and Royal Bank passbooks. Although Ms. Dao was deliberately evasive about the source of the down payment (over \$130,000) I accept her evidence that she had no previous knowledge concerning both the employment letter and the Residential Tenancy Agreement with Chien Thi Tran. Nguyen did not give evidence concerning these issues. I also note the false Evergreen employment letter has very similar clipart inserted in the letterhead as the letter found in exhibit 5-30 and described in detail previously. I also note that these documents were submitted to the bank just prior to the closing date, a pattern I have commented on previously. As a result I conclude the Nguyen was aware these documents were false when Express submitted them to the Bank of Montreal. More problematic for me was the three false Canada Trust passbooks Ms. Wong testified belong to individuals other than Ms. Dao. The funds involved existed and were used for the down payment however the source of those funds remains unknown. The banking information was used as proof of down payment. As mentioned Dao testified she only submitted two passbooks. Given the fact false Canada Trust passbooks and account information have been submitted in other files I can only conclude Nguyen knew Dao was not the holder of the accounts in question and submitted the false information as proof of down payment. The ultimate source of the down payment funds remains unknown.

- And finally, between the Bank of Montreal and HSBC, 158 mortgages brokered by Express were subject to repayment demands because of irregularities in the information submitted. Evidence indicated they were unable to verify employment and sources of down payments and other such material information. This is almost 20 per cent of the mortgage business conducted by Express. In my opinion, the sheer numbers make it impossible to believe Express and Nguyen were unwitting participants in the forwarding of false information to financial institutions. Nguyen would have me believe his clients and realtors were to blame. Given the sheer number of suspect mortgages, I can form no other conclusion except that Express and Nguyen had to know information being sent to the Bank of Montreal and HSBC was false.

Did Express and Nguyen fail to provide Disclosure Statements to their client borrowers as required?

Some of the purposes of the disclosure statement are:

- To outline all the fees being paid by the borrower;
- To give the borrower rescission;
- To state the net amount they are going to be funded; and
- To state the effective annual interest rate.

In reviewing all of the evidence placed before me, I find that none of the disclosure statements issued by Express or its related company Pacific Rainbow have been done

in accordance with the Mortgage Brokers Act. However, there has been evidence that some of the lawyers acting for all parties in the first mortgage transactions have issued proper disclosure statements on behalf of the financial institutions. As a result, I cannot conclude proper disclosure was not given on the first mortgage transactions. On the second mortgage transactions, the requirements of the Mortgage Broker Act were not met.

Did Express and Nguyen fail to provide and retain copies of Conflict of Interest Disclosure Statements to their client borrowers with respect to the licensees' interest in Pacific Rainbow?

Nguyen testified that he did not provide any conflict of interest statements to customers of Pacific Rainbow, however, he went on to say they knew that he and Express had an interest in Pacific Rainbow because all the customers would deal directly with him and the commitment letter was issued in front of them. He also felt customers would know he had an interest because the address was the same. This excuse is not accepted. The fact that the customers dealt with him can in no way leave a customer with the knowledge of the extent to which he held an interest in Pacific Rainbow.

Did Express and Nguyen fail to provide and retain copies of Conflict of Interest

Disclosure Statements to lenders?

Nguyen testified that none of the lenders ever asked him to provide a conflict of interest statement. There was no evidence before me to conclude the lender knew of the conflict so it was not feasible to expect them to request these statements. On the evidence, including the testimony of Nguyen, I find that Express and Nguyen did not meet the requirements of the Mortgage Broker Act and failed to provide (where required) and retain copies of Conflict of Interest Disclosure Statement to lenders.

Did Express and Nguyen conduct business in a manner that is prejudicial to the public interest by knowingly arranging second mortgages for their client borrowers through three companies which were not registered as mortgage brokers?

Express and Nguyen, through the Agreed Statement of Facts, admitted to this breach of the Act. Evidence heard through the hearing supported this admission. Nguyen testified that he did not know Pacific Rainbow needed to be registered until informed by Melanie Flint. For someone with Nguyen's experience in the real estate and mortgage broker industries, this statement is not believable. Nguyen testified that Pacific Rainbow had funded 102 mortgages since its existence.

Did Express and Nguyen carry on business as a mortgage broker at an unregistered address?

Express and Nguyen, through the Agreed Statement of Facts, admitted to this breach of the Act. Evidence heard through the hearing supported this admission. Nguyen testified that he sub-rented space from his brother to avoid having to meet clients in restaurants. My review of the files has found that both addresses are printed on Express forms as being business offices of Express.

Did Express and Nguyen employ persons as sub-mortgage brokers who were not registered?

Express and Nguyen, through the Agreed Statement of Facts, admitted to this breach of the Act. Not only did the evidence heard through the hearing support this admission, the evidence indicated the breach was substantive with respect to Tran. I was especially troubled when Tran saw fit to make the statement "it all depend(sic) on lenders to verify informations(sic) once they receive it." This statement and large parts of her testimony were indications of the complete disregard for the regulatory regime as contemplated by the Mortgage Broker Act. The evidence was not clear on the role John Nguyen performed. As a result, I cannot conclude he was required to be registered.

I found both Nguyen and his wife, Tran, not to be credible witnesses. Some of my reasons for this belief have been documented previously. Other examples which have led to this belief are:

- Nguyen at times was vague about underwriting guidelines during cross-examination about specific files, especially with respect to placing second mortgages on properties. However, when later asked, generally he displayed excellent knowledge about this issue;
- Nguyen stated he had never read the standard HSBC mortgage form. I find this to be not believable, especially when the evidence shows he had brokered at least 96 mortgages with HSBC;
- He denied all knowledge of the false letters on the Express computers, even though some were found on the computer he used and he entered the information from these letters into Morty. Also, the confines of the office make it impossible for his wife to prepare and print these letters without his knowledge;
- In the Thi Van Nguyen matter (Exhibit 2-11), his explanation as to why the files contained two different employment histories, (neither of which were submitted to the lender), was the individual worked for two different farms at the same time, so he stated that he combined the incomes and submitted this figure with the notation "self employed". This explanation is not credible, especially when the combined income of the two false employment documents added up to an amount much higher than the income that was submitted.
- He denied all knowledge of the requirements of the Mortgage Broker Act and continually stated he did not know at the time that he breached the Act. Once

again, for someone with his experience in the financial services industry, these answers were not credible.

Tran's statement that all she typed was the body of the false letters as a template so that the clients could go back and get a proper job letter from their employers, was not believable. The evidence of Cst. Baker and the forensic report contradict that evidence.

CONCLUSION

I make a finding of fault in each and every one of the issues in the hearing notice. This matter stands adjourned until an agreeable day can be arrived at in which penalty will be argued.



W. Alan Clark
Registrar of Mortgage Brokers
Province of British Columbia

Dated at Vancouver, British Columbia
This 20th day of August, 2004.