

Please note that each of the Respondents has appealed this decision of the Registrar to the Financial Services Tribunal.

Please also note that Section 9 of the *Mortgage Brokers Act* provides that:

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*.**

Also please note that the Respondent Verico is no longer a franchisee of the Verico Financial Group Inc. and any reference to “Verico” in the decisions of the Registrar do not refer to the Verico Financial Group Inc.

**IN THE MATTER OF THE MORTGAGE BROKERS ACT
R.S.B.C. 1996, C313, as amended**

- AND -

**0707543 BC LTD. dba Verico 1st Landmark Mortgage
and Lee Douglas Bussey**

- DECISION -

Before: W. Alan Clark
Registrar of Mortgage Brokers

Place: Surrey, British Columbia
March 19 and 20, 2007 and
October 1 and 2, 2007

Kelowna, British Columbia
April 3 and 4, 2007

Appearing: Richard Fernyhough for the Staff of the
Registrar of Mortgage Brokers

R. Pelletier and M. Tarmen for Verico
and Bussey

INTRODUCTION

Background

On February 9, 2006, the staff of the Registrar of Mortgage Brokers received a complaint from a financial services professional employed in Vernon, British Columbia.

The complaint and subsequent investigation led to a hearing notice being issued.

Hearing Notice

The notice was amended and issued on March 14, 2007. It was alleged:

1. *That Bussey was the president and sole director of Verico at all material times and was identified as the submortgage broker responsible for the operations of Verico ("the Designated Individual").*
2. *That Bussey attempted to obtain, and did obtain, credit by false pretence or by fraud for [REDACTED] and [REDACTED] and thereby conducted business in a manner prejudicial to the public interest.*
3. *That Bussey counseled [REDACTED] and [REDACTED] to fraudulently change a valid purchase and sale agreement in an attempt to obtain credit for [REDACTED], and thereby conducted business in a manner prejudicial to the public interest.*
4. *That Bussey misrepresented [REDACTED] and [REDACTED] ability to obtain financing to [REDACTED] and the [REDACTED] through [REDACTED], and thereby conducted business in a manner prejudicial to the public interest.*
5. *That Bussey attempted to mislead Colin Parcher ("Parcher"), an investigator with the Financial Institutions Commission, in his investigation into this matter by refusing to produce records requested by Parcher, contrary to section 6(4) of the Mortgage Brokers Act ("the Act").*
6. *That Bussey, as the Designated Individual, arranged a first mortgage with lender Toronto Dominion Bank ("TD Bank") for borrowers [REDACTED] and [REDACTED] without disclosing to the TD Bank that a second mortgage would be placed on the property, which Bussey attempted to obtain for [REDACTED] and [REDACTED] through [REDACTED] misleading the TD Bank as to the actual indebtedness of the borrowers, and thereby conducted business in a manner prejudicial to the public interest.*
7. *That Bussey loaned [REDACTED] and [REDACTED] \$14,000.00 to be used as a down payment required by the TD Bank, knowing the down payment could not come by way of a loan and failing to advise the TD Bank as such, and thereby conducted business in a manner prejudicial to the public interest.*

8. That Bussey made a false document, a gift letter dated February 17, 2006, knowing it to be false with intent that it should be acted on by the TD Bank as if it were genuine, and thereby conducted business in a manner that was prejudicial to the public interest.
9. That Bussey counseled [REDACTED] to make a false document, a gift letter dated February 17, 2006, knowing it to be false with intent that it should be acted on by the TD Bank as if it were genuine, and thereby conducted business in a manner that was prejudicial to the public interest.
10. That Bussey made a false document, a rental agreement, knowing it to be false with intent that it should be acted on by the TD Bank as if it were genuine, and thereby conducted business in a manner that was prejudicial to the public interest.
11. That Bussey, as the Designated Individual, submitted a gift letter to the TD Bank that he knew to be false in support of a mortgage loan application on behalf of [REDACTED] and [REDACTED] and thereby conducted business in a manner that was prejudicial to the public interest.
12. That Bussey, as the Designated Individual, submitted a rental agreement to the TD Bank that he knew to be false in support of a mortgage loan application on behalf of [REDACTED], and thereby conducted business in a manner that was prejudicial to the public interest.
13. That Bussey, as the Designated Individual, attempted to obtain credit by false pretence or by fraud for [REDACTED] and thereby conducted business in a manner prejudicial to the public interest.
14. That Verico carried on business as a mortgage broker elsewhere than at or from Verico's registered address through its submortgage broker [REDACTED] contrary to s. 21(1) (b) of the Act.
15. That Verico failed to disclose to borrowers in the prescribed manner that Verico or its associate or related party had a direct or indirect interest in the mortgage transaction brokered by Verico, contrary to sections 17.3 and 17.5 of the Act. Those borrowers include: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
16. That Verico failed to disclose to lenders in the prescribed manner that Verico or its associate or related party had a direct or indirect interest in the mortgage transaction brokered by Verico, contrary to sections 17.4 and 17.5 of the Act. Those lenders include the TD Canada Trust in a mortgage arranged for [REDACTED]
17. That Bussey, as the Designated Individual, did not ensure that Verico provided proper disclosure to lenders and borrowers pursuant to sections 17.3 and 17.4 of the Act, and did not ensure that Verico retained copies of the disclosure statements for the prescribed period of time pursuant to sections 17.2 and 17.5 of the Act, and thereby conducted business in a manner that was prejudicial to the public interest.

Mortgage Broker Registration History

0707543 B.C. Ltd. ("Verico") was registered as a mortgage broker as follows:

- Doing business as 1st Landmark Mortgage from December 14, 2004 to February 2006; and
- Doing business as Verico 1st Landmark Mortgage from February 10, 2006 to the present.

Lee Douglas Bussey ("Bussey") has been registered as a submortgage broker since September of 1995. He has been registered with Verico since December of 2004.

During the period covered by this hearing notice, Bussey was the sole shareholder and director of Verico.

HEARING

Dates of Hearing

The dates and locations of the hearing were as follows:

- Surrey B. C. - March 19th and 20th, 2007;
- Kelowna B.C. - April 3rd and 4th, 2007; and
- Surrey B.C. - October 1st and 2nd, 2007.

Exhibits

Numerous exhibits were filed in this matter.

During his opening statement, Counsel for Bussey/Verico admitted the authenticity of Exhibits 9 through 40. (He referred to them as tabs 7 – 39 in the investigative report.)

Witnesses

The witnesses who testified in order of appearance were:

1. Colin Parcher ("Parcher") – investigator with the Financial Institutions Commission.
2. [REDACTED] – employee T.D. Canada Trust.
3. [REDACTED] – real estate licensee in Vernon B.C.
4. [REDACTED] – common-law wife of owner of house sold to [REDACTED]
5. [REDACTED] – mother of [REDACTED]
6. [REDACTED] – father of [REDACTED].
7. [REDACTED] – submortgage broker employed by Verico.
8. [REDACTED] – client of Bussey/Verico.
9. [REDACTED] – client of Bussey/Verico.
10. [REDACTED] – real estate licensee in Vernon B.C.
11. [REDACTED] – client of Bussey/07075453.
12. [REDACTED] – friend of Bussey, [REDACTED]
13. Lee Bussey ("Bussey") – subject of hearing.
14. Brian Wallace ("Wallace") – employee with the Financial Institutions Commission.

Reasons for decision.

The hearing notice contained 17 allegations which can be distilled down to six circumstances. They are:

1. Was Bussey the president and sole director of Verico and responsible for its operations? (Paragraph 1 of the Notice.)
2. Did Bussey and Verico conduct business in a manner prejudicial to the public interest in the [REDACTED] matter? (Paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, and 17 of the Notice.)

3. Did Bussey attempt to mislead Parcher in his investigation into this matter by refusing to produce records requested by Parcher, contrary to section 6(4) of the Act? (Paragraph 5 of the Notice.)
4. Did Bussey and Verico conduct business in a manner prejudicial to the public interested in the ██████ matter? (Paragraph 13 of the Notice.)
5. Did Verico conduct business elsewhere than its registered address? (Paragraph 17 of the Notice.)
6. Did Verico fail to provide disclosure to borrowers of a conflict of interest? (Paragraph 15 and 17 of the Notice.)

I will deal with each of these issues in order.

Was Bussey Responsible for Verico

Based on the evidence and the admission of counsel for Bussey/Verico, I find Bussey was the president and sole director of Verico and as such was responsible for its operations.

The ██████ Transaction

In his opening statement, counsel for Bussey/Verico stated:

- "The factual allegations which are in paragraphs 3, 6, 7, 8, 9, and 11 of the Amended Notice of Hearing are therefore admitted."

There was conflicting evidence as to when ██████ began dealing with Bussey/Verico. However, it is very clear on the evidence that ██████ referred ██████ to ██████, a licensed real estate salesman. It appears that ██████ also referred ██████ to Bussey.

██████ were looking to buy a house after a fire destroyed the home they were renting. ██████ testified he began showing the pair houses in November of 2005.

██████ was very clear in her evidence that she and ██████ had very little money to use in purchasing a house, just enough to pay legal fees, and expenses for their move. The evidence supports ██████ testimony. In ██████ statement to the investigator, he stated they had \$4,000.00; however, at the hearing he claimed it was \$8,000.00. Bussey gave evidence that they had \$8,000.00;

however, he also testified that by February 7, 2006 he knew they did not have money for a down payment for their purchase.

On January 16, 2006, [REDACTED] signed and, by doing so, agreed to a mortgage pre-approval from TD Canada Trust. The principal amount was \$190,000 with a down payment of \$10,000. A review of this document (Exhibit 29) finds some conditions. Some of these are:

1. Satisfactory confirmation of down payment without recourse to borrowing; and
2. A gift (of down payment) must be from the immediate family.....standard gift form from donor confirming gift is non-repayable and non-refundable.

On February 7, 2006, using the services of [REDACTED] [REDACTED] entered into a contract of sale and purchase for a house situated at [REDACTED] [REDACTED] in Vernon (exhibit 10). The vendors were [REDACTED] and his mother [REDACTED], with the purchase price agreed being \$247,500. Acting for the vendors was real estate licensee [REDACTED]

The closing date of the sale was February 28, 2006. By addendum, (exhibit 11) the contract was subject to a number of conditions including the purchasers being able to obtain satisfactory financing by February 14, 2006.

The evidence indicates that at this time Bussey and [REDACTED] knew [REDACTED] [REDACTED] did not have funds for a down payment above their \$1,000 deposit.

[REDACTED], common-law wife of [REDACTED], testified she received a telephone call from Bussey who asked if the [REDACTED] would raise the selling price of the house. This was after the purchase and sale agreement had been accepted by all parties. She referred the matter to [REDACTED]

[REDACTED] testified she subsequently spoke to Bussey on February 8, 2006. At this time, Bussey asked that the purchase/sale agreement be rewritten to reflect a purchase price of either \$260,000.00 or \$265,000.00 in order to generate a deposit as this was the only way [REDACTED] were able to purchase the home.

Exhibit 25 is a copy of a rough note which reads as follows:

260,000
- 13,000
247,000

[REDACTED] C-21
[REDACTED]

██████████ further testified that Bussey was persistent in his attempt to get them to rewrite the price, however, she advised her clients against this as it was "illegal".

██████████ testified that the contract cannot be changed as it is illegal. He further stated that Bussey took it upon himself to get the price changed without his knowledge and consent.

Bussey testified he viewed this as an attempt to create a vendor incentive which is not illegal.

Bussey's explanation is not credible given all the facts. It is clear from the evidence that he was attempting to create false equity for ██████████ in the absence of a down payment.

Also on February 8, 2007, ██████████ sent an e-mail to her broker outlining Bussey's request. The broker in turn complained to the Financial Institutions Commission. This complaint led to the investigation.

On February 13, 2006, ██████████ waived the subject to clauses contained in the addendum by signing a standard form, (exhibit 12) which was witnessed by ██████████

A number of documents dated February 13, 2006, were signed by ██████████
██████████ They were:

- A first mortgage approval as acceptance of the terms (dated February 9, 2006) from TD Canada Trust (exhibits 28 & 77). The terms of the mortgage were:
 - Mortgage Amount – \$241,590.93;
 - Down payment - 13,375.00.Some of the conditions were that the borrowers must provide satisfactory confirmation of down payment without recourse to borrowing.
- A second mortgage approval terms and conditions as acceptance, (exhibit 20). This document was on 1st Landmark letterhead. This document indicated that ██████████ were borrowing \$12,000.00 from one ██████████, the security for which was a second mortgage on the property they were purchasing. Bussey signed on behalf of 1st Landmark. The advance date of the funds was to be March 1, 2006 one day after the closing of the sale.
- A disclosure statement issued pursuant to the Act, (exhibit 21) for the above second mortgage. Bussey signed as agent of the lender.

██████████ testified he had known ██████████ ██████████ for about 20 years and knew he was looking for second mortgage opportunities and, as a

result, put him in touch with Bussey so [REDACTED] would be able to get a second mortgage (when they couldn't come up with a down payment).

[REDACTED] testified they were going to get a second mortgage from [REDACTED] stated [REDACTED] pulled out at the last moment.

A residential tenancy agreement (exhibit 23) was also dated February 13, 2006. I will discuss this document in further detail later.

A gift letter (exhibit 22) was also dated February 13, 2006. It was signed by [REDACTED], father of [REDACTED] in which he states he is giving \$12,000.00 to [REDACTED] and the monies do not have to be repaid.

Another gift letter (exhibit 28) was dated February 17, 2006. It was signed by [REDACTED] in which he states he is giving \$14,000.00 to [REDACTED] with the monies not having to be repaid.

Exhibit 17 is a copy of a Prospera Credit Union cheque in the amount of \$14,000.00 made payable to [REDACTED] dated February 20, 2006.

[REDACTED] testified he signed the gift letters to help his son. The first amount "wasn't enough to satisfy the problem of getting the house", so he signed another gift letter.

[REDACTED] testified a Prospera Credit Union cheque in the amount of \$14,000.00 (exhibit 17) made payable to [REDACTED] was brought to her house by [REDACTED] and given to her as she was going downtown. She deposited this cheque at the HSBC Bank, after which she obtained an HSBC cheque in the same amount made payable to [REDACTED]. (who were conveying title) and she took it to them. Both [REDACTED] testified they did not know whose money the \$14,000.00 was.

Counsel for Bussey/Verico in his opening statements admitted that Bussey delivered this cheque to [REDACTED], however the evidence indicates it was done through [REDACTED]. I have taken counsel's admission to mean Bussey was the source of the funds. This is supported by the evidence. Bussey in his testimony claims to have said to [REDACTED] and [REDACTED] that: "I can't actually lend them the money but what I would do is lend it to the parents and the parents could gift it back to them". This is not a credible statement given that [REDACTED] and [REDACTED] subsequently signed a promissory note in favour of Bussey regarding these funds.

A facsimile cover page (exhibit 15) indicates [REDACTED] notified Bussey/Verico they had received the cheque and sent him a copy of the bank

draft received from [REDACTED]. The stamping by the facsimile machine indicates this document was sent to Bussey on February 21, 2006 at 4:16pm.

On February 19, 2006, [REDACTED] signed a promissory note in favour of Lee Bussey in the amount of \$14,000.00 (exhibit 13). The document assigned the proceeds of the second mortgage monies funded by Anderson to Bussey. The due date of the note was March 1, 2006.

On February 28, 2006 the purchase of the house completed. This was the same day Parcher attended at Bussey's office. [REDACTED] did not fund the second mortgage; however, TD Canada Trust funded the first mortgage.

[REDACTED] TD Canada Trust employee, testified the mortgage would not have been funded if TD Canada Trust had known [REDACTED] did not have \$12,375.00 of their own funds. She further stated that funds given as a gift must be from the immediate family and must not have to be repaid.

The residential tenancy agreement differed from the other documents signed by [REDACTED] in that it was only signed by [REDACTED]. The following are some significant portions of this document;

RESIDENTIAL TENANCY AGREEMENT

TENANCY AGREEMENT, entered into between [REDACTED] (Landlord)
and [REDACTED] (Tenant).

For good consideration it is agreed between the parties as follows:

1. **Location:** Landlord hereby rents to Tenant the premises described as follows:

[REDACTED]

2. **Term:** This Tenancy Agreement shall be for a term of month to month, commencing on March 01, 2006.

3. **Rent:** Tenant shall pay the Landlord the monthly rent of \$ 1,550.00, each payable on the first day of each month in advance at such place as we may from time to time specify by written notice to you. Tenant shall pay a security deposit of \$ 700.00 to be returned upon termination of this Tenancy Agreement and the payment of all rents due and performance of all other obligations.

4. **Utilities and Services:** Tenant shall at its own expense provide the following utilities or services: Tenant must pay promptly as they become due all charges for furnishing [specify, e.g., water, electricity, garbage service, and other public utilities] to the premises during the tenancy term.
electricity, gas

Landlord shall at its expense provide the following utilities or services: [specify]
water, garbage service

Signed this 13 day of February, 2006.

IN WITNESS OF THIS AGREEMENT, the Landlord and Tenant execute this agreement as of the day and year first above written.

LANDLORD

[Name of Landlord]

By _____ [Signature]

[Address]

TENANT

[Name of Tenant]

By _____ [Signature]

[Address]

The agreement is for monthly rent of \$1,550.00 for the lower unit.

_____ testified she did not remember why _____ did not sign the document. She also stated she felt she had signed at the office of Verico but also admitted it could have been done elsewhere. She further testified _____ was not present when she signed the document and did not know who wrote his name in as the tenant. She also stated Bussey told her the document was important as it would help raise the mortgage amount. She also said that the basement suite was subsequently rented out to two individuals for \$700 a month but later raised to \$800 as extra people ended up there. They used a different rental agreement, one that _____ got off the internet.

_____ testified he never saw the document until the deal was completed. At that point, he said the document wasn't right, however, he was told it doesn't matter any more. He further testified that _____ knew somebody who would rent the lower suite for \$750 – \$800 a month but they found a renter before he got back to them.

_____ testified he signed the agreement on behalf of his daughter and her friends. He stated he did not read the agreement, he did not discuss the matter with _____ he never noticed the terms, and he just signed the back. _____ was one of the least credible witnesses I have ever experienced.

_____ testified the rent for the basement suite was \$750 a month at the time of the sale of the house.

Bussey stated he does not recall if _____ signed the agreement in his office or not. He also testified:

- The document was given in blank form to [REDACTED] with portions underlined being filled in by them when it returned to him;
- It was just a blank form given to customers and was not given to [REDACTED] in an electronic format;
- It was given to [REDACTED] after they knew the mortgage conditions; and
- The income would be used for debt servicing.

A review of the document and the evidence of [REDACTED] lead me to reject the testimony of Bussey and [REDACTED]. It is clear, upon reviewing the document, that the document was prepared on a computer using the same font throughout and that it would be impossible for someone to receive a blank form and return with the blank portions typed in, much less using the same font. Bussey admitted to printing [REDACTED] name in the document. As a result, I conclude that this document was prepared by Bussey/Verico and required for debt servicing.

It is well settled that making false representations about financial status and ability to pay is detrimental in the integrity of the financial system and the public interest.

In summary then:

- Allegation two of the hearing notice is proven as it is clear upon the evidence that Bussey obtained credit by false pretences or by fraud for [REDACTED] and thereby conducted business in a manner prejudicial to the public interest.
- Allegation three of the hearing notice is proven as it is clear from the evidence Bussey counseled the same individuals to fraudulently change the contract price and, as a result, conducted business in a manner prejudicial to the public interest.
- Allegation four is not proven. Based upon the evidence, [REDACTED] knew at the time the house purchase was taking place that [REDACTED] lacked the ability to obtain financing without resorting to a non-conventional means of obtaining a down payment; hence his referral to a second mortgage lender. [REDACTED] was not misled by Bussey, he knew their financial situation through personal knowledge.
- Allegation six is proven. Based on the evidence, Bussey/Verico misled TD Canada Trust about the actual indebtedness of [REDACTED] and

as a result conducted business in a manner prejudicial to the public interest.

- Allegation seven is proven. Based on the evidence Bussey loaned [REDACTED] \$14,000 knowing the down payment could not come by way of a loan and as a result conducted business in a manner prejudicial to the public interest.
- Allegation eight relies on the similar circumstance as allegation nine. As a result of the evidence placed before me, I believe a finding under that allegation would be more appropriate. I make no finding with respect to allegation eight.
- Allegation nine is proven. Based on the evidence, Bussey counseled [REDACTED] to make a false gift letter and intended it be acted upon as if genuine by TD Canada Trust and, as a result, conducted his business in a manner prejudicial to the public interest.
- Allegation ten is proven. Based on the evidence before me, it is apparent the rental agreement was not genuine and was prepared for the sole purpose of increasing the monthly income of [REDACTED] which would be one of the considerations T.D. Canada Trust would make (debt service ratio) before advancing the mortgage funds.
- Allegation eleven relies on the same circumstance as allegation nine. As a result of this duplication, I make no finding.
- Allegation twelve relies on the same circumstance as allegation ten. As a result of this duplication, I make no finding.

Did Bussey/Verico mislead Investigator Parcher

Both Parcher and Bussey testified to the circumstances which gave rise to the allegations in paragraph five of the Amended Hearing Notice. The facts agreed upon were:

- Parcher arrived at the offices of Verico on February 28, 2006. (The day the [REDACTED] transaction was to complete.)
- When Parcher arrived, Bussey was on the telephone. After completing the call, they met and Parcher was taken into a boardroom off Bussey's office.
- They went and Bussey showed Parcher the file room. At some point Parcher asked for the [REDACTED]

- They went back to Bussey's office where they both agreed numerous files were found, on the floor, his desk and other places.
- They returned to the reception area and then Parcher was put in the boardroom and Bussey went into his office.
- At this point, Parcher opened the door to Bussey's office and went in and advised Bussey he intended to be present when the file was found.
- At this point the file was located.

They did not agree on the following facts;

- Parcher testified that Bussey was visibly uncomfortable when he asked for the file. Bussey denied this.
- Parcher testified Bussey aggressively refused assistance from the receptionist. Bussey denied this.
- Parcher testified the [REDACTED] file was found in a pile on the floor that had been previously looked at and dismissed as construction mortgages. Bussey testified the file was located in a pile on his desk.

After considering the testimony of the witnesses and the summations of counsel, I find that, although Bussey may very well have misled a less experienced investigator, he did not mislead Parcher. Based on testimony, it is clear Bussey was stalling and reluctant to produce the file in question; however, the actions of Parcher prevented Bussey from continuing his stalling to the point where I could find a breach of Section 6 (4) of the Act.

This finding is more a testimony to the abilities of Parcher than the actions of Bussey.

The [REDACTED] Matter

On February 10, 2006, [REDACTED] entered into a contract of purchase and sale (exhibit 31) as purchase for a property situated at [REDACTED], British Columbia. The purchase price was \$262,900.00 with a deposit structured as follows:

1. \$1,000.00 within 24 hours of acceptance; and
2. \$4,000.00 within 24 hours of the final subject removal.

The contract called for satisfactory financing in place before February 15, 2006.

██████ testified he was purchasing a house as his previous house was given to his ex-wife as part of his divorce settlement. Bussey testified ██████ had to buy a house as he was going through a divorce and needed a place fairly quickly as he was no longer at home but living in the office.

██████ also testified he had known Bussey for 20 years and went to Bussey/Verico to obtain mortgage financing after his offer was accepted.

Exhibit 32 is a Verico mortgage application, undated. These applications are normal and the information obtained is sent to lenders to support mortgage borrowings. This application reflects the purchase price of \$262,900.00 and indicates a first mortgage in the amount of \$210,320.00 was required. The application indicates ██████ would have equity in the property of \$52,580.00.

The application contains several pieces of information which were inaccurate which are listed as follows:

1. ██████ cell phone number was listed as his residence phone number. ██████ did not recognize the number listed as his cell phone;
2. The present address given was incorrect as testimony indicated he was no longer living there;
3. The length of time at his current address was given as seven years. ██████ testified he had bought that house two and one half years ago;
4. A vehicle was listed as an asset when in fact it belonged to ██████ wife;
5. ██████ marital status was listed as being a widower when in fact he was in the process of getting a divorce. ██████ testified that before getting remarried he had been a widower; and
6. Stocks and bonds having a value of \$1,000,000.00 were listed as an asset of ██████. The evidence leads me to believe ██████ had trust monies in the amount of \$107,063.73 as of January 31, 2007.
(exhibit 67)

Bussey testified that the mistakes in the mortgage application were the result of him using a previous form and was just a mistake. I note, however, that all of the misinformation is information a lender would take into consideration when making decision to lend mortgage monies.

Also on February 10, 2006, TD Canada Trust approved a first mortgage in the amount of \$212,423.19, (exhibit 33). This approval contemplated a down

payment in the amount of \$52,580.00. This document was signed by [REDACTED] as being accepted. A number of conditions were attached. Some of the relevant conditions to this matter are:

1. Satisfactory confirmation of a down payment without recourse to borrowing; and
2. Confirmation that certain debts were paid.

This mortgage transaction did not complete. There was conflicting evidence as to the reasons.

On February 13, 2006, Bussey/Verico made arrangements to lend [REDACTED] \$40,000.00 which would be secured by a second mortgage on the property being purchased at [REDACTED]

These arrangements were summarized in a Verico document addressed to [REDACTED] entitled "Second Mortgage Financing, Terms and Conditions", (exhibit 36). This mortgage was due and payable on April 1, 2006.

Exhibit 376 is a B.C. Land Title Act form B prepared to register this second mortgage.

Exhibit 38 is a small handwritten note identified by Bussey as his writing which shows: 92,000 less 52,000 = \$40,000.

Exhibit 39 is a second TD Canada Trust Mortgage approval dated Tuesday February 21, 2006. This document indicates TD Canada Trust was prepared to advance \$170,885.00 secured by a first mortgage on the property in question. This approval also contains the condition that there has to be satisfactory confirmation of down payment without recourse to borrowing.

This document was accepted by [REDACTED] and sent to TD Canada Trust the same day. This mortgage funding also didn't complete. Both [REDACTED] and Bussey agreed it was because of [REDACTED] credit history.

[REDACTED] testified he was late getting money from his investments, and Bussey offered to lend him \$40,000.00 until he got his money. He went on to say he was having problems with his wife, everything was frozen.

Bussey testified the \$40,000.00 would have been bridge financing until [REDACTED] investments were released. He also said if the deal would have gone ahead, he would let the bank know he was "interming against those terms (deposits) until released".

The deal did not complete. The real estate deal was subsequently reactivated with ██████ obtaining a first mortgage at about \$212,000.00 and a \$12,000.00 second mortgage with another financial institution.

Based on the evidence I am of the opinion Bussey/Verico attempted to mislead TD Canada Trust in his brokering of the ██████ mortgage. This deception occurred in his submission of the mortgage application which contained fundamental errors and his willingness to place a second mortgage on ██████ property contrary to the conditions on both approvals.

I reject Bussey's evidence that if the deal had completed he would have notified the bank. If Bussey was not trying to deceive the bank he would have disclosed this upfront and the second approval would have reflected this disclosure. I also reject his testimony that this was bridge financing as there are numerous other ways to do that for less cost than a second mortgage.

Based on clear and convincing evidence, I find paragraph 13 of the hearing notice to have been proven.

Did Verico conduct business elsewhere than at its registered address?

Exhibit 71 is a letter from Verico and signed by Bussey to the staff of the Registrar in which he states: As discussed by telephone this morning, I will have ██████ as the submortgage broker at my Kelowna office.

██████ testified that:

- She kept all her files at her home until they were completed then they were forwarded to the Vernon office;
- She never met a client at Kelowna offices;
- The only time she went to the Kelowna office was to meet Bussey;
- All correspondence she sent out was from her home and had a return address and her home phone and fax numbers; and
- All applications were sent to lenders through her home computer.

It is very clear, based on the evidence of ██████, that she did not conduct any business at the Kelowna office and even more important to the Registrar is the fact her files were not at the Kelowna office but were contained at her residence.

The Kelowna office was only used as the meeting place. Allegation 13 of the hearing notice is proven.

Did Verico fail to provide disclosure to Borrowers of a conflict of interest?

Parcher testified and produced a chart (exhibit 43) which indicated on 24 occasions Verico failed to disclose to borrowers that Verico had a direct or indirect interest in the mortgage transaction. In each example, Verico failed to disclose the fees received from lenders for brokering the transaction.

Exhibit 41 is a blank disclosure form known as Form 10 and contained in the regulations to the Act. The Act requires and it is the practice of the Registrar's staff to insist this form be filled out when a broker receives a fee from the lender.

Bussey admitted Verico received fees from lenders but testified he was informed by a member of the Registrar's staff that the form was not required unless the broker was charging a fee to the borrower. He felt he had received this information from one Wallace, however, Wallace testified it was not him and it was his understanding the form was required in the circumstances described.

After reviewing all of the evidence, I conclude allegation fifteen of the hearing notice is proven.

Allegation sixteen alleges Verico failed to disclose to lenders that Verico or its associate or related party had a direct or indirect interest in the mortgage transaction brokered by Verico and the lenders include TD Canada Trust in a mortgage arranged for [REDACTED]. Again, Bussey received such a fee but did not disclose it to [REDACTED]. Based on the evidence, I conclude allegation sixteen is proven.

Allegation seventeen is based on the same fact patterns as fifteen and sixteen and, in this case, I make no ruling.

In summary then I have made a finding of fault in all of the allegations contained in the hearing notice except:

- Allegation four;
- Allegation five;
- Allegation eight;
- Allegation eleven;

- Allegation twelve; and
- Allegation seventeen.

Given the findings of fault, I will take written submissions with respect to the appropriate penalty or penalties in this matter. Such submissions are to be received by February 15, 2008.

Dated at the City of Surrey in the Province of British Columbia this 8th day of January, 2008.


W. Alan Clark
Registrar of Mortgage Brokers