

**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "Act"), in particular sections 9, 14 and 21 and the Mortgage Brokers and Agents Licensing Regulation, SOR 409/07 (the "Regulation"), in particular Section 10;

**AND IN THE MATTER OF** Mr. Joel Richard Glaude;

**AND IN THE MATTER OF** a request for hearing pursuant to subsection 21(3) of the Act.

**BETWEEN:**

**JOEL RICHARD GLAUDE**

Applicant

-and-

**SUPERINTENDENT OF FINANCIAL SERVICES**

Respondent

**BEFORE:**

Ms. Anne Corbett  
Vice Chair of the Tribunal and Chair of the Panel

Mr. Martin Brown  
Member of the Tribunal and of the Panel

Mr. Paul Litner  
Member of the Tribunal and of the Panel

**APPEARANCES:**

Ms. Natasha Guiffre, for the Applicant  
Mr. Robert Conway for the Superintendent of Financial Services

**HEARD:**

October 7, 2008

## REASONS FOR DECISION

### A. Background

On June 27, 2008 Joel Glaude submitted an application to be licensed under the Act as a mortgage agent working for HomeLink Financial Corp. On August 25, 2008 the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal pursuant to Sections 14 and 21 of the Act to refuse to issue the mortgage agent's license on the basis that Mr. Glaude was not suitable to be licensed because he had provided false information to the Superintendent in respect of his application for a license and because his past conduct afforded a reasonable ground for the belief that he will not deal or trade in mortgages in accordance with the law and with integrity and honesty.

On September 5, 2008 Mr. Glaude requested a hearing before the Financial Services Tribunal requesting that the Tribunal make an order for the issuance of a mortgage agent's license to him.

The relevant sections of the Act and the Regulation are as follows:

#### ***The Act***

9. (1) An individual may apply for a mortgage agent's licence.
- (2) A mortgage agent's licence authorizes the licensee to deal in mortgages in Ontario or trade in mortgages in Ontario on behalf of one specified brokerage by engaging in the activities permitted under the licence issued to the licensee.
- (3) A mortgage agent's licence is subject to such conditions as may be imposed by the Superintendent or the Tribunal.
- (4) The licensee shall comply with such standards of practice as may be prescribed for the licence issued to the licensee.
- (5) A person who has a mortgage agent's licence shall not deal in mortgages in Ontario or trade in mortgages in Ontario except under the supervision of a mortgage broker.

14. (1) The Superintendent shall issue a licence to an applicant who satisfies the prescribed requirements for a licence unless the Superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Superintendent considers appropriate.

### ***The Regulation***

10. In determining whether an individual is not suitable to be licensed as a mortgage ... agent, the Superintendent is required by subsection 14(1) ... of the Act to have regard to the following prescribed circumstances:
  1. Whether the individual's past conduct affords reasonable grounds for belief that he or she will not deal or trade in mortgages in accordance with the law and with integrity and honesty.
  2. Whether the individual is carrying on activities that contravene or will contravene the Act or the regulation if he or she is licensed.
  3. Whether the individual has made a false statement or has provided false information to the Superintendent with respect to the application for the licence.

The basis on which the Superintendent refuses to grant the license to Mr. Joel Glaude is that he is not suitable to be licensed as a mortgage agent having regard to the circumstances prescribed in Sections 10.1 and 10.3 of the Regulation.

The particulars of the circumstances related to Section 10.1 and 10.3 of the Regulation are set out in the separate reasons for the proposal that were issued by the Superintendent along with the Notice of Proposal. In particular, the Superintendent relies on the following:

1. Mr. Glaude was convicted of a criminal offence (possession of marijuana for the purposes of trafficking) on March 14, 2008, for which he is still on probation.
2. Mr. Glaude submitted a letter to the Financial Services Commission of Ontario (the "Commission") from his principal broker on July 16, 2008 and the letter contained a false statement with respect to the description of the criminal offence.

The reasons for the proposal to refuse the application issued by the Superintendent also contained statements that Mr. Glaude failed to comply with instructions in the application to provide a full explanation of the conviction and he did not comply with the Commission's request for specifics of the offence. During the hearing, counsel for the Superintendent stated that the Superintendent was not relying on a failure to provide complete information as, on a review of the file, no specific request for detailed information had been made of Mr. Joel Glaude and he had in fact offered to provide such information.

## **B. The Facts**

### **Past Conduct**

The Applicant was convicted of possession of marijuana for the purposes of trafficking on March 14, 2008. The Barrie Police Services Arrest Report, which was provided to the Tribunal by the Superintendent and not disputed in any material respect by the Applicant, contained the following description of the circumstances leading up to his arrest:

- (a) The Sudbury Regional Police Services received information that the Applicant would be attending in the Toronto area to meet a male to pick up drugs.
- (b) Mr. Glaude was placed under police surveillance and followed from Sudbury to Barrie.
- (c) He was followed to a Canadian Tire parking lot where he was observed to pick up a male at the front door of the store.
- (d) He drove through the parking lot until he came upon another vehicle and was observed to receive a white Tommy Hilfiger bag from the front seat of the other vehicle.
- (e) Mr. Glaude and the unknown male then parted ways.
- (f) The Barrie Police Service was contacted for assistance and arrangements were made to conduct a vehicle traffic stop.
- (g) Mr. Glaude was arrested for possession of a controlled substance.
- (h) Upon a search of the vehicle the white Tommy Hilfiger bag was located and found to contain a JVC-VCR box and a UPS envelope, the contents of which were seven Ziploc bags of cannabis marijuana and forty (40) 5-gram vials of cannabis resin oil.

In March 2008 Mr. Glaude pled guilty to possession of marijuana for the purposes of trafficking. The amount of marijuana in question was approximately three and one-half pounds. He was sentenced to a fine of \$20,000.00, probation for one year and various restrictions on his behaviour including a prohibition from owning a firearm for ten years and a prohibition from associating with anyone with a criminal record.

Mr. Glaude will remain on probation until March 13, 2009.

The Applicant works for HomeLink Financial Corp., a company owned by his father, Richard Glaude, who is the principal broker. Both Joel Glaude and his father, Richard Glaude, gave evidence during the hearing. Mr. Joel Glaude testified that he has been practising in the industry since the age of eighteen. He is now twenty-seven years of age.

Mr. Joel Glaude further testified that he was asked by a childhood friend to pick up the package in Barrie. He was aware that his friend participated in illegal activity but he did not ask what he was picking up. He acknowledged that there was a good likelihood that it was drugs.

In his evidence he stated that he made no money and was not paid for doing this pick up. He was not intending to be a purchaser of the drugs. He was motivated solely out of a sense of friendship. He did not want to lose a good friend who had asked for a favour. He acknowledged that he was cognizant that he could end up in jail but he decided he would take a chance.

He further testified that since the incident, the individual is no longer a friend and he no longer speaks with him.

The Applicant testified that he knows that he needs to take responsibility for, and is ashamed of, his actions, that he was not making any attempt to hide this criminal record from the Commission but acknowledges that he did not disclose this incident to his family until he was required to do so in order to obtain from his father, his principal broker, a letter stating that he was aware of the criminal conviction and would continue to employ him as a mortgage agent.

The Applicant provided the panel with several letters of reference which he described as character references. All of the references are favourable, although, in only one case was the writer of the reference letter aware that Mr. Joel Glaude had been convicted of a criminal offence.

### **False Statement**

Mr. Joel Glaude disclosed his criminal conviction in his application, filed on June 27, 2008, for a mortgage agent's license. He was asked by the Commission to confirm that he had informed his principal broker of the conviction and to provide a written confirmation that the principal broker was willing to continue with the licensing. In response to this request, Mr. Joel Glaude faxed to the Commission a letter written by Richard Glaude dated July 15, 2008 which confirmed that the principal broker was aware of the criminal charge. The letter also contained this statement:

“The small amount in his possession was not for the purposes of trafficking”

It is the Superintendent's view that that statement was false and that Joel Glaude, by faxing the letter, communicated a false statement to the Commission as part of his application process.

With respect to the accuracy of the statements contained in the letter written by his father, Mr. Joel Glaude's testimony was that he did not write the letter nor did he read it before it was sent. He did however acknowledge that he was the one who faxed the letter and acknowledged that he did read the letter later and did not take any steps to correct the statements in the letter with respect to the amount of drugs and the reference to whether there was an intention to traffic.

Mr. Richard Glaude also provided testimony before the hearing. Mr. Richard Glaude's testimony concerned the circumstances that led up to the writing of the letter which the Superintendent asserts contain a false statement.

Mr. Richard Glaude testified that he first learned of the criminal conviction when he was approached by the Applicant to write the letter of reference to the Commission. He testified that he alone wrote the letter and regrets now the choice of words. He had no frame of reference to determine whether or not the amount of marijuana was a large or a small amount. When he wrote that it was not for purposes of trafficking, he meant that his son did not intend to sell it on a street corner or in a schoolyard.

When testifying about his business and reputation in the Sudbury community, Mr. Richard Glaude impressed the panel as an honest individual who is proud of this reputation in the Sudbury business community. He cited that he had never had any customer complaints or any errors and omissions claims. He indicated that he was very angry, hurt and disappointed in his son, that he took the conduct seriously, and considered it to be very serious behaviour but would continue to employ him and that while he has been caught, charged and is now on probation he is paying the price for his actions and it has not affected his work.

However, when answering questions about the explanation that his son gave him for the circumstances leading up to his arrest, Mr. Richard Glaude became evasive, failed to answer questions and provided answers that appeared inconsistent with the testimony of Mr. Joel Glaude.

In particular, Mr. Joel Glaude testified that he had told his father the name of the individual who asked him to pick up the package and his father had then said to him that he now understood why this individual had not been around over the last year. Mr. Richard Glaude, when asked if he knew who had asked his son to pick up the package stated that he was not sure. He said there were circumstances without offering a full explanation of what those circumstances were. When pressed, he indicated that perhaps there had been a medical problem for which the drugs were required.

Mr. Joel Glaude was not recalled to explain the discrepancy between what he said he told his father and what his father is remembering of the conversation. Accordingly, the Tribunal was not offered any explanation as to the discrepancy between the evidence of Joel Glaude and Richard Glaude with respect to the description of the circumstances of the offence that the Applicant disclosed to his father.

This evidence bears directly on whether the source of the false statement in the letter was Mr. Joel Glaude.

### **C. The Issue**

The issue before the Tribunal is to determine whether the Applicant is suitable to be licensed as a mortgage agent in light of his past conduct and his participation in the provision of a false statement to the Superintendent.

### **D. Analysis**

As noted in *Henderson v. Superintendent of Financial Services* (FST File No. M0319-2008, Decision No. M0319-2008-1), the Tribunal need not show any deference to the Superintendent's opinion about the suitability of the Applicant and must look afresh, as a matter of first impression, at the question of whether there are reasonable grounds to conclude that the Applicant is not suitable to be licensed as a mortgage agent.

We also accept that the Act is designed to protect the public interest but that we must also keep in mind the fact that the denial of a license can have severe consequences for the applicant or licensee.

The Applicant does not dispute the past conduct. The Applicant acknowledges the criminal conviction and the circumstances that led to it and does not deny that he was in possession of a significant quantity of marijuana and was charged with, and pled guilty to, possession of marijuana for the purposes of trafficking.

The Tribunal must determine whether that past conduct affords reasonable grounds for the belief that the Applicant will not deal or trade in mortgages in accordance with the law and with integrity and honesty and that there is therefore a reasonable ground on which to conclude that the Applicant is not suitable to be licensed.

We have also been asked to conclude that he is not suitable to be licensed as a mortgage agent given the false statement that was made in a letter that was written by his father which he submitted to the Commission.

In *Henderson*, the Tribunal identified a number of considerations (not intended to be an exhaustive list) that should be taken into account in determining whether the past conduct of an individual, established in an earlier disciplinary proceeding against him or her, affords reasonable grounds for belief that the individual will not deal or trade in mortgages in accordance with the law and with integrity and honesty.

In particular, the Tribunal in *Henderson* identified the following considerations:

- (a) the time that has elapsed since the conduct occurred;
- (b) the prolonged or repetitive nature of the conduct;
- (c) the advertent or inadvertent nature of the conduct;
- (d) the extent to which the conduct can be taken to call into question the integrity, honesty or law abiding nature of the individual;

- (e) the closeness of the context of the conduct to the context of activities in which the individual would be engaged as a mortgage agent;
- (f) the fairness of the process followed in the disciplinary proceeding;
- (g) the seriousness with which the disciplinary body treated the conduct as reflected in the severity of the sanction it imposed;
- (h) any unusual and severe pressure the individual was under at the time of the conduct that would explain the conduct but is unlikely to reoccur;
- (i) any consistent and prolonged pattern of reformed or redeeming behaviour on the part of the individual since the conduct occurred.

The Superintendent asserted that in circumstances where an individual is on probation for a serious criminal offence it is not in the public interest for a license to be issued and the Tribunal need not consider any evaluation of other factors or considerations. The Superintendent relied on two cases: *Re Laprise* [2007] O.L.A.T.D. No. 530, and *Ripani v. Registrar of Real Estate and Business Brokers* [1989], the unreported decision of The Commercial Registration Appeal Tribunal.

The Superintendent placed particular emphasis on the following passages from *Ripani*, where the Commercial Registration Appeal Tribunal, after reviewing a number of authorities made this statement:

What all these cases indicate is that where past conduct includes criminal convictions, generally, unless exceptional circumstances exist, no registration will be permitted until some time after the sentence has been served and parole or probation have been completed; then a period of reformation has been exhibited; and even then certain terms and conditions will be imposed. But even with these general principles, there is an overriding principle; namely, that in protecting the public interest, the Registrar must treat each case as an individual matter. This does not mean that the Registrar may act capriciously or inconsistently. Rather it means that while the Registrar must treat each individual equally as is set out in section 15 of the Canadian Charter of Rights and Freedoms, nevertheless, there may be certain circumstances which require the Registrar to refuse registration or to impose terms in order to protect the consuming public.

The Tribunal has in these reasons indicated some of these considerations as they affect the applicant for registration, but there may be others which affect the community and which require the Registrar not only to be fair to the applicant, but also to demonstrate certain standards of moral integrity of registrants to the public at large. Thus matters such as the effects of financial loss to a large segment of the community, a breach of trust, or a callous disregard for people or the laws of this province and country are all matters to be considered by the Registrar.

The Superintendent argued that the Tribunal need not apply any of the circumstances, as outlined in Henderson, to the evaluation of the past conduct on the basis that where an applicant is still on probation for a serious criminal offence the public interest requires that no license be issued at least until probation is completed.

We do not agree. The past conduct must still be evaluated based on relevant considerations. Where an individual is on probation it may be unlikely that a sufficient time will have elapsed for an individual to have an opportunity to exhibit a sufficient degree of redeeming behaviour to allow a conclusion to be reached that unlawful behaviour will not reoccur, but each case must be considered on its own facts.

We find the considerations identified in Henderson to be a useful framework for our evaluation of whether the past conduct of Mr. Joel Glaude, consisting of the circumstances leading up to, and including, his criminal conviction afford a reasonable belief that he is not suitable to be licensed as a mortgage agent, in that this past conduct affords a reasonable belief that he will not deal or trade in mortgages in accordance with the law and with integrity and honesty. The considerations in Henderson are not an exhaustive list nor must the Applicant be able to provide a positive response to all of them. Rather, the past conduct must be evaluated in light of various considerations which must be evaluated and weighed by the Tribunal to determine suitability for licensing.

We now turn to an examination of the considerations outlined in Henderson as they apply to Mr. Joel Glaude's past conduct:

1. *The prolonged or repetitive nature of the conduct.*

There is no evidence that behaviour of Mr Joel Glaude that led to his criminal conviction was anything other than an isolated act. There is no pattern of repetitive criminal or illegal behaviour.

2. *The time elapsed since the conduct occurred.*

The conduct at issue in this proceeding is very recent behaviour. The arrest occurred on January 8, 2007. The Applicant is still on probation and will remain on probation until March 13, 2009. While there is no evidence of repetitive criminal activity, the Tribunal is concerned that an insufficient time has elapsed from the date of the conviction for the Tribunal to conclude that there will not be another reoccurrence of unlawful activity.

3. *The advertent or inadvertent nature of the conduct.*

This was not inadvertent behaviour.

Mr. Joel Glaude admitted that there was a good likelihood he was being asked to pick up drugs. He knew that it was an illegal activity. Nonetheless, he decided to do what his friend had asked. Counsel for Mr. Joel Glaude agreed that he made an error in judgment attributable to his age. It is however just such errors of judgment, if made in the course of the conduct of his business as a mortgage agent, that will put the public at risk.

The Applicant's ability to conduct himself in accordance with the law is called into question by his willingness to participate in an activity he knew was likely to be an unlawful one.

4. *The closeness of the context of the conduct to the activities in which the individual would be engaged as a mortgage agent.*

Counsel for the Applicant argued that the criminal conduct in question is unrelated to the Applicant's business as a mortgage agent and we agree.

5. *The fairness of the process followed in the criminal proceeding.*

The Applicant pled guilty. He had access to counsel following his arrest. No evidence was provided to us to indicate that he pled guilty involuntarily, was not able to access legal counsel, or was otherwise not afforded a fair process in the criminal proceeding.

6. *The seriousness with which the criminal court treated the conduct as reflected in the severity of the sanction it imposed.*

The Applicant was fined \$20,000.00, put on probation for one year and is subject to various limitations on his behaviour. He is not to own a firearm, associate with individuals with a criminal record and he is not to take drugs. In our view, this appears to be a severe sanction for the criminal offence.

7. *Any unusual and severe pressure the individual was under at the time of the conduct that would explain the conduct but is unlikely to occur.*

The Applicant made no argument that the decision to go to Barrie to pick up a package for his friend was driven by any circumstances other than friendship. Counsel for the Applicant made reference to the Applicant's age as affecting judgment but the Tribunal does not see that as a mitigating factor.

8. *Any consistent and prolonged pattern of reform or redeeming behaviour on the part of the individual since the conduct occurred.*

For a proper evaluation of a pattern of reform or redeeming behaviour more time since the commission of the behaviour than has elapsed in this case. There has simply been insufficient time to reach a conclusion that the Applicant has exhibited a

pattern of redeeming behaviour. It might be argued that where the behaviour in question is isolated (as it appears to be here) and not related to the Applicant's conduct as a mortgage agent, which we have found to be the case, then a lesser emphasis needs to be placed on this consideration.

There are a number of factors in this case which have led the Tribunal to conclude that it is appropriate that more time pass than has past in this case from the date of the offence to the consideration of the application in order to be able to evaluate if this is an isolated act and there is sufficient redeeming behaviour to be satisfied that the Applicant will trade or deal in mortgages in accordance with the law and with integrity and honesty. In particular, the Tribunal has considered the following:

- (1) The Applicant has acknowledged that he was aware there was a good likelihood he was picking up drugs. It is the opinion of the Tribunal that he knowingly participated in a serious criminal act.
- (2) He kept his past conduct from his principal broker. This failure to disclose his past conduct is of concern to the Tribunal.
- (3) The past conduct consists of a serious criminal offence.
- (4) The Tribunal has, as outlined below, concluded that the Applicant misled his father when he described the circumstances leading up to his arrest. This is also of concern in evaluating the degree to which the Applicant has, in the relatively short time since his arrest, exhibited a pattern of reforming a redeeming behaviour that would allow us to conclude that he will conduct himself as a mortgage agent in accordance with the law and with integrity and honesty.
- (5) With respect to whether or not the Applicant acknowledged that the past conduct was wrong, Counsel for the Applicant argues that his failure to disclose the issue to his clients and parents was driven by embarrassment and not by a denial of the behaviour or failure to acknowledge his past wrongdoing. While that may be the case, it is also consistent with a failure to acknowledge and accept responsibility for the consequences of his actions.

We now turn to a consideration of the submission of a false statement to the Superintendent. The Superintendent argues that the submission of a false statement is a separate ground on which to deny the license. As outlined above, the Tribunal received conflicting evidence as to the description of the disclosure the Applicant made to his principal broker.

Based on the evidence presented to us, we have concluded that the Applicant misdescribed the circumstance leading up to his arrest when he informed his principal broker and was the source of the false information provided to the Commission in the letter from his principal broker. While he did not write the letter and did not read it when he sent it, he took no steps to correct the information once he later became aware of the contents of the letter.

We conclude from our examination of the evidence and our consideration of the submissions made to us that the Applicant is not suitable to be licensed as a mortgage agent in that his past conduct affords a reasonable belief that he will not deal or trade in mortgages in accordance with the law and with honesty and integrity and he has provided a false statement to the Commission in his application.

In reaching this decision, we recognize the consequences to the Applicant in pursuing his chosen line of work. We acknowledge the favourable references he has provided from his clients. Based on the evidence of his principal broker and his own evidence, the Applicant appears to have an aptitude and enthusiasm for his work as a mortgage agent. He is a young man still in the early stages of his career. The Applicant may choose to reapply for a license after twelve (12) months from the date of the refusal to grant the license. If he chooses to do so at that time, his probation will have been completed. The Superintendent will then be in a better position to assess if there has been a sufficient period of redeeming behaviour so as to be able to conclude that the past conduct is isolated and unlikely to reoccur and that therefore there are no reasonable grounds to conclude that the Applicant will not deal or trade in mortgages in accordance with the law and with integrity and honesty.

### **The Order**

We order that the Superintendent carry out his notice of proposal to refuse to issue a mortgage agent's license to the Applicant.

**DATED** at Toronto, Ontario, this 31<sup>st</sup> day of October, 2008

\_\_\_\_\_  
"Anne Corbett"

Anne Corbett  
Vice Chair of the Tribunal and Chair of the Panel

\_\_\_\_\_  
"Martin Brown"

Martin Brown  
Member of the Tribunal and of the Panel

\_\_\_\_\_  
"Paul Litner"

Paul Litner  
Member of the Tribunal and of the Panel