

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Mortgage Brokers, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “Act”), in particular sections 19 and 21, and the Mortgage Brokers and Agents Licensing Regulation, SOR 409/07 (the “Regulation”), in particular, section 10;

AND IN THE MATTER OF the Superintendent’s Notice of Proposal dated March 23, 2010 to Revoke the Mortgage Broker’s Licence issued to Mr. Hamid Azizi and the Mortgage Brokerage Licence issued to Centum Arianna Financial Services Inc.;

AND IN THE MATTER OF Mr. Azizi’s and Centum Arianna Financial Services Inc.’s Request for a Hearing before the Financial Services Tribunal (the “Tribunal”) pursuant to Subsection 21(3) of the Act.

BETWEEN:

HAMID AZIZI and CENTUM ARIANNA FINANCIAL SERVICES INC.

Applicants

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

John Solursh
Chair of the Tribunal and Chair of the Panel

Heather Gavin
Member of the Tribunal and Member of the Panel

Patrick Longhurst
Member of the Tribunal and Member of the Panel

APPEARANCES:

Hamid Azizi, representing himself and Centum Arianna Financial Services Inc.
Robert Conway, representing the Superintendent of Financial Services

HEARD:

July 16, 2010

REASONS FOR DECISION

A. BACKGROUND AND EVIDENCE

The Superintendent of Financial Services (the “Superintendent”) issued a Notice of Proposal (the “NOP”) on March 23, 2010 proposing to revoke the mortgage broker licence of Hamid Azizi and the mortgage brokerage licence of his corporation, Centum Arianna Financial Services Inc. on the basis that in the Superintendent’s opinion their past conduct affords reasonable grounds for the belief that they will not deal or trade in mortgages in accordance with the law and with integrity and honesty. The reasons for the proposal, set out in an attachment to the NOP identify the alleged past conduct, consist in summary, of Mr. Azizi causing his real estate brokerage to breach its trust obligations under the *Real Estate and Business Brokers Act, 2002* (“REBBA”)¹ which led to revocation of Mr. Azizi’s registration as a real estate broker under REBBA on July 14, 2009 and to his conviction for offences under REBBA on September 14, 2009. The reasons attached to the NOP state that the breaches of trust led to the revocation of the real estate brokerage of his controlled corporation Homelife Arianna Realty Inc., and to the conviction of Mr. Azizi and Homelife Arianna Realty Inc. real estate brokerage of offences under REBBA.

The parties presented an Agreed Statement of Facts at the hearing of this matter which specified the following facts:

1. Centum Arianna Financial Services Inc. (“Centum Arianna”) is currently licensed as a mortgage brokerage with licence number 11333, under the Act. It conducts business from the residence of its principal broker, Hamid Azizi (“Azizi”), which is located in Ajax, Ontario.
2. Azizi is currently licensed as a mortgage broker with licence number M08006879 under the Act. He has been the principal broker of Centum Arianna since February 27, 2009. He was listed as an active officer of Centum Arianna from April 13, 2006 to June 30, 2008.
3. Azizi was registered as a real estate salesperson under REBBA in 1999. His corporate real estate brokerage, Homelife Arianna Realty Inc. (“Homelife Arianna”) was registered under the *REBBA* in 2005. At the same time he was registered as its broker of record.
4. The registration of Homelife Arianna as a real estate brokerage in 2005, and the accompanying registration of Azizi as its broker of record, were based on applications dated June 8, 2005.
5. Each of those applications contained a question as to whether there were any outstanding judgments against Azizi. Azizi responded in each application that there were no outstanding judgments against him.

¹ The prior version of the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, chapter 30 Schedule C was replaced in 2002.

6. In fact, there was an outstanding default judgement against Azizi in the amount of \$50,000 for rent arrears for his business premises. The default judgment was dated January 24, 2005, *i.e.* around 4½ months before Azizi stated in the June 8, 2005 applications that there were no outstanding judgments against him.
7. When Azizi signed the applications dated June 8, 2005, he knew that the plaintiff was entitled to obtain default judgment any time after July 12, 2004, because of Azizi's failure to pay the first \$5,000 instalment due under settlement agreement between the plaintiff and Azizi. However, he did not take any steps to determine whether the plaintiff had obtained judgment.
8. Azizi submitted applications for renewal of his personal real estate broker licence and his corporate real estate brokerage licence on June 18, 2007.
9. By that time Azizi knew about the judgment and the execution against him. Despite that, he stated in the renewal that there were no outstanding judgments against him.
10. Eventually the Real Estate Council of Ontario ("RECO") found out about the judgment and the execution against Azizi. RECO staff questioned Azizi about it, in the light of his 2 previous statements that there were no outstanding judgments against him.
11. Azizi responded by letter dated February 5, 2009 that the question by RECO staff was the first time he heard about the execution. That statement was a deliberate falsehood. Azizi admitted that the statement was a deliberate falsehood during cross-examination in the proceedings to revoke his RECO registrations.
12. Azizi also made a false statement about another issue in his 2007 application for renewal of his personal broker's licence. In response to a question as to whether he was engaged or employed in any other business, occupation or profession, Azizi stated that he was not. In fact, he was listed as an active officer of Centum Arianna Financial Services Inc., a registered mortgage brokerage from April 13, 2006 to June 30, 2008. His intentional non-disclosure of that information made his response to the question false.
13. While licensed as a Real Estate Broker from 2005 to 2009, Azizi substantially failed to comply with the requirements of the REBBA for the safeguarding of clients' assets. In particular:
 - (a) he permitted Homelife Arianna to advertise and carry on business (including, without limitation, entering into listing agreements with sellers, acting as a trustee for the holding of deposit money, entering into commission trust arrangements with its employees and other brokerages) for a considerable period of time, even though he knew that Homelife Arianna could not meet its financial and/or trust obligations to consumers, its employees, co-operating brokerages and its landlord;
 - (b) he failed to keep Homelife Arianna's real estate trust account and/or handle money that came into Homelife Arianna's hands in trust for other persons in connection with Homelife Arianna's business, in accordance with the requirements of the REBBA, such that there were shortfalls;

- (c) he failed to deposit funds into Homelife Arianna's real estate trust account to eliminate the shortfall, contrary to the requirements of the REBBA;
 - (d) he failed to properly keep the books and records of Homelife Arianna in accordance with the requirements of the REBBA;
 - (e) he failed to properly keep Homelife Arianna's commission trust account, such that Homelife Arianna could not meet its contractual obligations to pay commissions to certain of Homelife Arianna's employees and other brokerages;
 - (f) he intentionally furnished false information to RECO on January 19, 2009 regarding his trust obligations. He informed RECO that his trust obligations totalled approximately \$10,000 when in fact they totalled approximately \$50,000. He confessed to RECO the following month that he had furnished false information, and then provided correct information.
14. Based on the preceding evidence, Azizi plead guilty to 3 charges under the REBBA for breach of trust. On the first 2 charges, Azizi received a suspended sentence, was ordered to pay restitution of \$18,478.75, and was placed on probation for 2 years. On the 3rd charge, Azizi was fined \$2,000 plus a victim fine surcharge of \$500 for a total monetary penalty of \$2,500.
15. Homelife Arianna also pled guilty to 3 charges under REBBA for breach of trust. It was ordered to pay a fine of \$10,000 and victim fine surcharge of \$2,500 for each conviction for a total monetary penalty of \$37,500.
16. Based on the above evidence, the Ontario Licence Appeal Tribunal ordered the Registrar of Real Estate Brokers to carry out his proposal to revoke the licences of Homelife Arianna and Azizi on July 14, 2009.

The parties agreed at the hearing that the date of guilty pleas by Azizi and Homelife Arianna referred to above was September 14, 2009.

A copy of the Decision of the Licence Appeal Tribunal released on July 14, 2009 was presented in evidence with the mutual consent of the parties. The Decision of the Licence Appeal Tribunal, on the issue as to whether Mr. Azizi's conduct reported reasonable grounds for belief that he will not carry on his business under the REBBA in accordance with the law and with honesty and integrity reads in part as follows:

"Mr. Azizi acknowledges that he has conducted business in disregard of the Act. When asked directly about the outstanding execution against him in February of 2009, Mr. Azizi falsely claimed that he did not know about it. His persistence in denying the truth about this debt clearly raises doubt as to his honesty. He also provided misleading financial records to RECO at the time he wished to terminate his business.

Mr. Azizi knew what the true situation was, and knew that RECO would rely on the information provided and that it was not correct. The fact that he later verbally provided the correct information does not negate his earlier conduct.

The Tribunal finds that the acknowledged breaches of the Act, set out on pages 3 and 4 of this decision, together with these other instances of less than honest conduct on behalf of Mr. Azizi, provides reasonable grounds to believe that Mr. Azizi will not carry on business in accordance with the law and with honesty and integrity.”

Mr. Azizi testified on behalf of the Applicants. He was subjected to cross-examination by counsel for the Superintendent. The relevant facts arising from that testimony and cross-examination are as follows:

- (a) Mr. Azizi agrees with the evidence presented in the Agreed Statement of Facts. He acknowledges that he knows what he had done and he is troubled by it.
- (b) He knows that his conduct needs to change and he needs to show full redemption for what he has done.
- (c) He has taken some courses at Trent University as well as some non-university courses, including courses on ethics and behaviour modification related to “life mastery” and “choice theory” in support of his desire to change his behaviour and to learn to be honest. Mr. Azizi expressed the view on cross examination that “honesty is learned”. He acknowledged that in the past he did not conduct himself in business dealings with honesty and integrity.
- (d) Mr. Azizi replied in a vague and evasive manner to questions by Superintendent’s counsel on cross examination as to whether he understood what it means to be honest.
- (e) He testified that no complaints have been submitted to the Superintendent or relating to the previous matter under REBBA from customers or clients about his conduct as a salesperson.
- (f) Mr. Azizi has a special needs child who requires special care and assistance. He did not suggest that his child’s special needs was a reason for his past conduct. Rather his reason for noting that situation was so that the Tribunal would understand, from a humanitarian and compassionate perspective, the financial consequences he was facing should he lose his mortgage brokers licence.
- (g) Mr. Azizi is working at a car dealership which is the source of 50% of his current income. The other 50% of his income is derived from his mortgage brokerage business. Mr. Azizi initially testified that he was working in sales at the car dealership but on cross examination he instead stated that he was being paid mainly for cleaning cars. The car dealership is owned by a relative.
- (h) On cross examination Mr. Azizi acknowledged that while he was taking courses to hold himself to a higher standard and to address his past breaches of honesty and lack of

integrity, “the work is not yet complete”. He also acknowledged that he had been ambitious to the exclusion of everything else.

- (i) Mr. Azizi presented in evidence various character letters of reference relating to his work as a real estate representative and contributions to the community. All of these letters of reference were issued in the period up to June 2009 and prior to the decision of the Licence Appeal Tribunal under REBBA. Mr. Azizi acknowledged on cross-examination that he was not presenting any such character references for the period following the decision of the Licence Appeal Tribunal that might be relevant to support his testimony that he was on the road to changing his ways on matters of honesty and integrity.

B. STATUTORY FRAMEWORK

Pursuant to s.19(1) of the Act, the Superintendent may revoke the licence of a mortgage broker or mortgage brokerage in any of the circumstances in which he is authorised to suspend a licence under s. 18(1). For present purposes, the relevant ground is set out in s. 18(1)(b) as follows: “if the Superintendent believes, on reasonable grounds, that the licensee is no longer suitable to be licensed having regard to the circumstances, if any, prescribed for the purposes of subsection 14(1) or 16(4), as the case may be, and such other matters as the Superintendent considers appropriate.” Sections 14 and 16 of the Act deal with the issuance and renewal of a licence. Accordingly, under the Act, a proposal to revoke or suspend a licence on the basis of a licensee’s unsuitability involves a consideration of the same factors as a proposal to deny the issuance or renewal of a licence on the basis of an applicant’s unsuitability.

The factors or “prescribed circumstances” that the Superintendent must consider in determining a person’s suitability to work or continue working to hold a licence in the mortgage industry are outlined in section 10 of the *Mortgage Brokers and Agents Licensing Regulation*, Ont. Reg. 409/07 (the “Regulation”). Section 10 of the Regulation reads as follows:

10. In determining whether an individual is not suitable to be licensed as a mortgage broker or agent, the Superintendent is required by subsection 14(1) and 16(4) of the Act to have regard to the following prescribed circumstances:
 1. Whether an 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 regulations 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 licence.

In the present case, as explained in the reasons attached to the NOP, the Superintendent’s belief in the unsuitability of Mr. Azizi and Centum Arianna rests on the circumstances prescribed in sections 10¶1 of the Regulation.

Section 21(4) of the Act provides that if a licensee requests a hearing before the Tribunal in order to contest a proposal to revoke his or her licence, the Tribunal has the authority to “direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent” and “may impose such conditions as it considers appropriate in the circumstances”.

C. ISSUE

The issue to be decided by the Tribunal is whether Mr. Azizi and Centum Arianna are “no longer suitable to be licensed” as a mortgage broker and mortgage brokerage respectively within the meaning of s. 18(1)(b) of the Act. For reasons that follow, the Tribunal’s answer is in the affirmative and we agree that they are no longer suitable to be licensed.

D. ANALYSIS

a. Preliminary Observations

The Tribunal has released reasons in several matters decided under s. 21(3) of the Act. Most of those hearings involved the suitability of a person to be licensed as a mortgage agent or broker under the new statutory regime except for the decision of this Tribunal in Linda Todorovic, Superintendent of Financial Services (FST Decision No. M0338-2008-1) which related to the suitability of Ms. Todorovic to continue to be licensed as a mortgage agent. In each of those cases, except for the decision in Todorovic, the Superintendent was proposing to deny a licence application on the basis of the applicant’s past conduct, on the basis of false information provided in his/her application, or on the basis of both grounds conjunctively. However, as noted in the decision relating to Ms. Todorovic, the penultimate question remains the suitability of a person to continue to be licensed as a mortgage broker, mortgage brokerage or mortgage agent.

In a recent decision, the Tribunal summarised four principles that have consistently been applied in the context of suitability hearings held pursuant to s. 21(3) of the Act:

1. Hearings held pursuant to s. 21(3) of the Act are *de novo* hearings. The Tribunal need not show any deference to the Superintendent’s determination with respect to the applicant’s suitability to be licensed as a mortgage broker or agent. Rather, the Tribunal must make its own assessment of suitability to be licensed as a mortgage broker or agent having regard to the prescribed circumstances invoked by the Superintendent and the evidence adduced during the hearing.
2. In determining whether there are reasonable grounds to conclude that the applicant is not suitable to be licensed, within the meaning of s. 14(1) of the Act, the Tribunal must be mindful of two overriding considerations: 1) the Act and Regulation are designed to protect the public interest and enhance public confidence in the mortgage industry; 2) a decision to refuse to issue a licence under the Act can have severe financial consequences for the applicant.

3. In determining the weight that should be given to the prescribed circumstances listed in sections 10¶1 (past conduct) and 10¶3 (false statement) of the Regulation, in the context of its assessment of the applicant's suitability to be licensed, the Tribunal should adopt a contextual approach. In *Henderson*, the Tribunal identified a series of 9 relevant considerations with respect to s. 10¶1 (at p. 9). In *Alves*, the Tribunal identified a series of 4 relevant considerations with respect to s. 10¶3 (at p. 14). Neither of these lists was meant to be exhaustive, nor to represent a hierarchy of factors that must be addressed in each and every case.
4. The prescribed circumstances listed in 10¶1 (past conduct) and 10¶3 (false statement) of the Regulation can be considered conjunctively in determining whether there are reasonable grounds to conclude that the applicant is not suitable to be licensed.

Robert Kostrubiec v. Superintendent of Financial Services (FST Decision No. M0327-2008-1) at pp. 10-11 (*Kostrubiec*)

In the following sub-sections, the Tribunal will apply these four guiding principles to the evidence adduced during the Hearing.

b. Past conduct

In determining whether Mr. Azizi's and Centum Arianna's past conduct affords reasonable grounds to believe they will not deal or trade in mortgages in accordance with the law and with honesty and integrity, within the meaning of s. 10¶1 of the Regulation, the Tribunal must weigh a number of considerations: *Ian Douglas Henderson v. Superintendent of Financial Services* (FST Decision No. M0319-2008-1) at p. 9 (*Henderson*). With respect to the factors listed in the *Henderson* decision, the Tribunal makes the following observations and findings:

- (i) *The time that has elapsed since the conduct:* The decision of the Licence Appeal Tribunal was released on July 14, 2009. It included references to conduct as recent as February 5, 2009 that constituted a deliberate falsehood by Mr. Azizi, as he acknowledged in the Agreed Statement of Facts and during cross examination, in the proceedings to revoke his RECO registrations. As also acknowledged in the Agreed Statement of Facts Mr. Azizi intentionally furnished false information to RECO on January 19, 2009 regarding his trust obligations. Accordingly only a relatively short period of time has elapsed since the end of the conduct that gave rise to the proceedings before the Licence Appeal Tribunal and the Superintendent's NOP to revoke the licences of the Applicants. Mr. Azizi acknowledged in his testimony and in response to questions during cross-examination that he is still early in the process of changing his ways and recognizing the need to deal in business with an appropriate standard of honesty and integrity. He confirmed that he has not yet redeemed himself and that the process of learning to be honest is continuing.

- (ii) *The prolonged or repetitive nature of the conduct:* As acknowledged in the Agreed Statement of Facts Mr. Azizi's conduct did not stem from an isolated event but from several events over a period commencing in 2005 and continuing into 2009.
- (iii) *The advertent or inadvertent nature of the conduct:* With respect to this consideration, the Tribunal cannot overlook the fact that Mr. Azizi and Homelife Arianna (his controlled corporation) pled guilty to three charges under REBBA. Moreover, the Tribunal must consider the specific nature of those offences. By entering a plea of guilty and through the agreed Statement of Facts Mr. Azizi specifically acknowledged several false statements that involved intentional and deliberate falsehoods and constituted intentional failure to comply with the requirements of REBBA relating to the safe keeping of client assets.
- (iv) *The extent to which the conduct can be taken to call into question the integrity, honesty and law abiding nature of the individual:* There is no room for debate with respect to this consideration in light of the convictions under REBBA and Mr. Azizi's acknowledgement regarding past dishonesty and the need for future redemption.
- (v) *The closeness of the context of the conduct to the context of activities in which the individual would be engaged as a mortgage agent or broker:* There is a close and rational connection between the real estate agency activities involving Mr. Azizi and Homelife Arianna that led to their 2009 convictions under REBBA and the typical business activities of mortgage brokers and a mortgage brokerage, subject only to the statement by Mr. Azizi that he does not currently hold any trust funds or mortgage broker clients and that there is an arrangement in place for such funds to be remitted to an independent company which provided the franchise for Centum Arianna's mortgage brokerage operations. In the mortgage industry, lenders rely on the honesty, integrity and confidence of agents and brokers when advancing funds to borrowers. Their reliance on brokerage intermediaries is necessary not only to ensure a rate of return commensurate with their best interest, but also to preserve the capital advanced.
- (vi) *The fairness of the process followed in the disciplinary proceeding:* The appellants accept the findings of the Licence Appeal Tribunal. Mr. Azizi and his controlled corporation were represented by counsel before that Tribunal.
- (vii) *The seriousness with which the disciplinary body treated the conduct as reflected in the severity of the sanction it imposed:* The Licence Appeal Tribunal ordered the Registrar of Real Estate Brokers to carry out his proposal to revoke the licenses of Homelife Arianna and Mr. Azizi on July 14, 2009. In addition, Mr. Azizi pled guilty to three charges under REBBA for breach of trust on the first two charges he received a suspended sentence and was ordered to pay restitution of over \$18,000 and was placed on probation for two years. On the third charge, Mr. Azizi was fined \$2,000 plus a victim fine charge of \$500 for a total monetary penalty of \$2,500. His controlled company Homelife Arianna also pled guilty to three charges under REBBA for breach of trust. It was ordered to pay a fine of \$10,000 and victim fine surcharge of \$2,500 for each conviction for a total monetary penalty of \$37,500. Those penalties and sentences were not light.

- (viii) *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:* There is no evidence that Mr. Azizi was under any unusual or severe pressure at the time of the conduct that would explain it, but is unlikely to recur. Mr. Azizi acknowledged that the problem was his lack of understanding of the need for honesty and integrity and his need to learn the importance of dealing with honesty and integrity in business matters and in compliance with the law. The Tribunal sympathizes with Mr. Azizi regarding the situation relating to his special needs child and understands the impact this decision will have on him and his family. However, it was his intentional conduct which has led to this outcome. Furthermore, Mr. Azizi did not argue that the fact that he had a special needs child was a reason for his conduct; rather, he expressed it as a humanitarian and compassionate ground on which he suggested the Tribunal might decide not to order the Superintendent to revoke his licence.
- (ix) *Any consistent and prolonged pattern of reformed or redeeming behaviour on the part of the individual since the conduct occurred:* Mr. Azizi testified that he is in the midst of a process, which he stated is ongoing, to modify his behaviour and learn the importance of honesty and integrity. He acknowledged that he has a long way to go. It is interesting that he did not present any new evidence or testimonies relating to his character from third parties since the date of the decision of the Licence Appeal Tribunal. At best the process of redemption is on-going.

d. Conclusion

The Tribunal concludes that Mr. Azizi and Centum Arianna are not suitable to be licensed as a mortgage broker or mortgage brokerage, respectively in view of Mr. Azizi's past conduct. Having reached this conclusion the Tribunal need not address the question of whether conditions should be attached to their licenses. We conclude that there is clear, convincing and uncontradicted evidence that Mr. Azizi's past conduct, as set out in the Agreed Statement of Facts, affords reasonable grounds for belief that the Applicants will not deal or trade in mortgages in accordance with the law and with integrity and honesty. The Superintendent has satisfied his burden of proving, on the balance of probabilities, that the Applicants are not suitable, in the sense of the Act and Regulation, to be licensed as a mortgage broker or mortgage brokerage having regard to those facts including the decision of the Licence Appeal Tribunal.

E. ORDER

There is no sufficient evidence presented that would indicate that the public interest would be adequately protected in this case if a mortgage broker licence or mortgage brokerage licence were to be issued to the Applicants with restrictive conditions attached. We, therefore, order the Superintendent to carry out his Notice of Proposal to revoke the mortgage broker licence of Mr. Azizi and the mortgage brokerage licence of Centum Arianna.

DATED at the City of Toronto, this 16th day of August, 2010

“John Solursh”

John Solursh
Chair of the Tribunal and Chair of the Panel

“Heather Gavin”

Heather Gavin
Member of the Tribunal and Member of the Panel

“Patrick Longhurst”

Patrick Longhurst
Member of the Tribunal and Member of the Panel