

IN THE MATTER OF
The Mortgage Brokerages and Mortgage Administrators Act

AND

**IN THE MATTER OF Quick Response Mortgage
Services Ltd. and Sergio S. Coppola**

DECISION OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

Before: J.M. Hall, Superintendent of Financial Institutions

Appearances: Michael D. Tochor, Q.C., solicitor for the proposed licensee
Sergio S. Coppola, Quick Response Mortgage Services Ltd.
(proposed licensee)
Tamara M. Harasen, Financial Institutions Division

Hearing Date: April 8, 2011

Decision Date: June 30, 2011

I. BACKGROUND

Quick Response Mortgage Services Ltd. (“Quick Response”) applied for a mortgage brokerage licence on October 1, 2011 pursuant to *The Mortgage Brokerages and Mortgage Administrators Act*, S.S. 2007 c. M-20.1 (the “Act”), with Sergio S. Coppola designated as the principal broker (the “October Application”). A subsequent application was made by Quick Response on or about November 8, 2010 (the “November Application”) proposing Linda Plese as principal broker. As Ms. Plese has now successfully been licensed to broker mortgages with a different firm, the October Application, with necessary changes, will be considered the application at hand.

Quick Response previously held a mortgage broker’s licence pursuant to *The Mortgage Brokers Act*, S.S. 1998 c. C-45.2. It first obtained a licence under that Act on March 20, 2003. Its licence was renewed successively and continued in effect until September 30, 2010 when *The Mortgage Brokerages and Mortgage Administrators Act* was proclaimed in force. At that time, *The Mortgage Brokers Act* was repealed and all previous licensees were obliged to submit new applications under the new Act. An informal grace period was extended to existing licensees who were permitted to continue to broker mortgages while their applications were being processed.

In a December 15, 2010 Notice of Opportunity to be Heard, I notified Quick Response of my disinclination to grant a mortgage brokerage licence based on the applications submitted and additional material reviewed by my office in relation thereto. Quick Response requested a hearing pursuant to s. 21(3) of the Act.

On December 24, 2010, my staff advised Quick Response through its solicitors that as it was not licensed to broker mortgages it could not carry on business until such time as a valid licence was issued. Accordingly, Quick Response has not been licensed since October 1, 2010.

II. ISSUES

Authority to grant or deny licences under the Act rests with the Superintendent of Financial Institutions (the “Superintendent”) pursuant to s. 10 of the Act, which provides:

10 The superintendent may:

- (a) issue a licence if the superintendent:
 - (i) receives an application pursuant to subsection 8(1);
 - (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
 - (iii) is satisfied that the applicant is suitable to be licensed and that the issuance of the licence is not for any reason objectionable; or

(b) refuse to issue a licence.

Based on the information available to me, it was my inclination on December 15, 2010 to refuse to issue Quick Response a mortgage brokerage licence under the Act, for the following reasons:

1. **Non-compliance:** Quick Response failed to provide me with the information I requested in support of its October and November applications for a mortgage brokerage licence. Various sections of the Act make it clear that applicants have an obligation to comply with certain requests for information made by the Superintendent. Section 10(a)(ii) requires me to satisfy myself that the applicant has complied with the Act and regulations in order to issue a licence. I was not satisfied that these requirements had been met.
2. **Suitability:** Based on the evidence available to me on December 15, 2010, I was not satisfied that Quick Response was suitable to be licensed as a mortgage brokerage. Firstly, Mr. Coppola's actions appeared to be an attempt to circumvent my repeated requests for his criminal record check pursuant to the Act. This impacted my view of both his integrity and that of his business associates who were or ought to have been aware that he was not providing this information. This course of dealings gave me doubt as to the ability of Quick Response to operate in a manner befitting its obligations to consumers.

Secondly, at the time of the Notice of Opportunity to be Heard, Mr. Coppola had been charged with fraud over \$5000 and possession of stolen property valued in excess of \$5000 under the *Criminal Code*. These charges were discovered when my staff made inquiries with the clerk of the provincial court, and not through Mr. Coppola. Given the evidence that Mr. Coppola maintained a controlling or at a minimum, influential role in the operation of Quick Response, these criminal charges involving money or property were of particular concern. The mortgage broker stands in a position of trust between the lender and borrower, both of whom rely on the mortgage broker's honesty and integrity. This position of trust is directly impacted by the kinds of allegations underlying fraud and possession of stolen property charges.

2. **Objectionability:** Finally, I was concerned that unresolved fraud and possession of stolen property charges against Mr. Coppola would make granting a licence objectionable. One aspect of objectionability is preserving the reputation of honest, ethical mortgage brokers by only granting a licence to applicants with the requisite suitability. My preliminary view was that granting a licence to an entity whose founder was facing fraud charges would adversely affect the public's confidence in the industry. Mr. Coppola's conduct through the licensing process reinforced this view.

III. THE EVIDENCE

At the outset of the hearing, counsel agreed to the filing of the following evidence:

1. A binder of documents comprising the matters considered by me in reaching the preliminary views expressed in the December 15, 2010 Notice of Opportunity to be Heard;
2. Statement of Sergio Coppola (undated);
3. Facsimile letter enclosing Stay of Proceedings in the matter of R. v. Sergio Coppola; and
4. Calendar for October – November 2010

A. The Regulatory Framework

Section 4(1) of the Act makes the Superintendent of Financial Institutions responsible for the administration of the Act and the regulations. The Act was proclaimed in force on October 1, 2010 following a lengthy consultation process with industry and consumer groups. Similar legislation has been enacted in other Canadian jurisdictions such as Ontario and British Columbia, which, like the Saskatchewan legislation, expand the consumer protection mandate of the Superintendent. Among other things, the Act grants the Superintendent expanded investigative powers, and prescribes new offences, penalties, and enforcement powers such as administrative penalties and orders for costs. Specific standards of conduct and educational requirements have also been prescribed for mortgage brokerages, mortgage administrators, brokers and associates.

It is useful to note the purpose of the licensing function prescribed by the Act. By prohibiting the brokering or administering of mortgages in the province of Saskatchewan without a licence under the Act, the Superintendent is able to perform a gate-keeping function in determining who is suitable to carry on business in this industry. In addition, the Superintendent performs a supervisory role with the authority to renew or suspend, revoke or impose conditions on licensees. These requirements protect the interests of consumers while enhancing confidence in this regulated industry.

I am mindful that this authority ought to be exercised in a manner that recognizes the potentially severe financial consequences on an individual's ability to earn a living in his or her chosen career. Having said that, it ought not be forgotten that the granting of such a licence is a privilege that is subject to on-going review and supervision.

The Act outlines the process for licensing mortgage brokerages, administrators, brokers and associates. Eligibility to apply for licensing, including that of corporations, is outlined in s. 6(1):

- 6(1) A corporation, partnership or sole proprietorship is eligible to apply for a mortgage brokerage licence.
- (2) Only a corporation is eligible to apply for a mortgage administrator's licence.
- (3) Only an individual is eligible to apply for a broker's licence or an associate's licence.

All licence applicants must comply with section 8:

“8 (1) Every applicant for a licence shall:

- (a) apply to the superintendent in the form provided by the superintendent;
- (b) provide the superintendent with:
 - (i) an address for service in Saskatchewan; and
 - (ii) any other information or material that the superintendent may reasonably require;
- (c) if financial security is required pursuant to section 9, file financial security with the superintendent in accordance with that section;
- (d) comply with the following:
 - (i) any prescribed errors and omissions insurance requirements;
 - (ii) any prescribed capital requirements;
- (e) submit to the superintendent any prescribed fees; and
- (f) comply with any other prescribed requirements and satisfy any other prescribed criteria.

...

- (3) The superintendent may require an applicant to verify, by affidavit or otherwise, any information or material submitted to the superintendent pursuant to this section. ”

Section 18 echoes the above requirement to cooperate with the Superintendent's requests for further information:

“18(1) At any time, the superintendent may:

- (a) require an applicant or a licensee to submit to the superintendent any further information or material that the superintendent may reasonably require; and
- (b) require verification, by affidavit or otherwise, of any information or material submitted to the superintendent pursuant to clause (a).

- (2) No applicant or licensee who receives a request from the superintendent pursuant to subsection (1) shall fail to comply with that request within the period specified by the superintendent.”

Regulation 4(1)(b) of *The Mortgage Brokerages and Mortgage Administrators Regulations*, c. M-20.1, Reg. 1 (the “Regulations”) requires criminal record checks of all directors and officers to be submitted with an application for a mortgage brokerage licence, and Regulation 13 outlines additional individuals for whom a criminal record check may be requested.

The test for the issuance or refusal to issue a licence is set out in s. 10 of the Act:

10 The superintendent may:

(a) issue a licence if the superintendent:

- (i) receives an application pursuant to subsection 8(1);
- (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
- (iii) is satisfied that the applicant is suitable to be licensed and that the issuance of the licence is not for any reason objectionable; or

(b) refuse to issue a licence.

In the time leading up to the proclamation of the Act, numerous industry information sessions were conducted, and under my direction, the Financial Institutions Division (“FID”) of the Saskatchewan Financial Services Commission published numerous notices to the industry to give industry players ample opportunity to become familiar with the new legislation before it became law.

Two such publications are the *Summary of Mortgage Brokerage Compliance Requirements under the MBMA* and the *Mortgage Brokerage Licence Kit* made available to the public on the FID website at <http://www.sfsc.gov.sk.ca/financial/mbma>. The Licence Kit lists the required supporting materials for a licence application, while the webpage provides instructions for completion of the form and lists the additional material which must be submitted with an application. Those noted include:

- criminal record checks for both individuals and designated corporate representatives;
- a completed broker licence application for the principal broker;
- detailed corporate information including current registration with Corporations Branch of Saskatchewan Justice, and director, officer and shareholder information; and
- employment histories of officers and directors of a corporate applicant.

B. Previous Licence Conditions

Quick Response’s licence under the previous Act was subject to conditions as a result of two complaints respecting Mr. Coppola’s dealings on behalf of Quick Response, the Pastuch complaint and the Clark complaint.

The Pastuch complaint stemmed from a personal financial transaction Mr. Coppola entered into with Alena Pastuch in July 2007 after he had received Ms. Pastuch’s personal information in the course of Quick Response’s business. I concluded that Mr. Coppola used this information for personal financial gain, in a manner which constituted a conflict of interest. Deficiencies in Quick Response’s record keeping were also identified.

The Clark complaint arose in 2006 out of Quick Response’s retainer by Bill and Lynda

Clark to obtain mortgage financing. The Clarks provided funds to Quick Response to pay out an existing mortgage, but numerous delays were encountered as a result of which the Clarks suffered monetary loss and expense.

In a Consent Order dated June 26, 2009, Mr. Coppola acknowledged, among other things, that he and Quick Response had conducted themselves in a manner:

- (a) that fell below the standard of reliability and professionalism required to be suitable for licensing as a mortgage broker; and
- (b) that would make it objectionable for Quick Response to be issued a license as a mortgage broker if it were applying for a licence, unless there were reasonable assurances in place to prevent the conduct from happening again.

By entering into the Consent Order, Mr. Coppola and Quick Response accepted certain licence conditions for Quick Response's continued operations. Those included the following:

1. A prohibition on Quick Response receiving funds from clients except in specified circumstances;
2. A specific standard of behaviour was prescribed for Quick Response's directors, officers, employees and representatives. This included the development of written policies and procedures to restrict personal transactions with clients, and provided for certain record keeping and reporting obligations; and
3. Quick Response was to submit to a series of reports by an independent consultant on its level of compliance with the policies and procedures prescribed by the conditions. OMG Consulting Ltd. has provided two such reports to my office to date, with two additional reports to be provided in February and August 2011. The February 2011 report has been held in abeyance pending my final decision in this matter.

Quick Response implemented Corporate Governance and Ethical Standards Guidelines ("Guidelines") as well as a policy manual to be made available as a resource to all staff and in training of new employees. At the time of the hearing, the most recent report from OMG Consulting Ltd. in the fall of 2010 had identified two deficiencies vis a vis the Consent Order requirements. One deficiency was what I considered to be an undue delay in the implementation of the policy manual. The other was inadequate efforts to document client follow-up contacts, which was a matter I had drawn specific attention to previously. I advised Quick Response by letter dated November 12, 2010 that further delays of this kind could result in further monitoring of the licence conditions.

C. The October Application

Quick Response continued to be licensed until September 30, 2010 when *The Mortgage Brokers Act* was repealed in conjunction with the coming into force of *The Mortgage Brokerages and Mortgage Administrators Act*. At that time all previous licensees were

required to submit new applications for licences under the Act in order to carry on mortgage brokering and administration.

When Quick Response submitted the October Application it was signed by Mr. Coppola, identified as “Sergio Coppola, Owner” beneath the signature line.

A consent and acknowledgment precedes the signature line, which also requires a statutory declaration before a commissioner for oaths or notary public. The consent states, in part:

Where the Applicant is a Corporation:

I, the undersigned as representative of the corporation, authorize the Superintendent to verify any information pursuant this application from any source. I understand that the Superintendent may require further information in order to evaluate this application, and I consent to the Superintendent collecting any additional information as required.

The Statutory Declaration provides:

I, the undersigned, an authorized representative of the applicant, do solemnly declare as follows:

1. That the information and documents provided in support of this application are complete and truthful in all respects.
2. That the applicant has complied with the requirement of the laws of Saskatchewan to which it has applied for a licence and hereby undertake to notify the Superintendent immediately of any material change that might affect this application.
3. That the applicant agrees to be bound to the forgoing [sic] promises throughout the term of any licence granted by virtue of this Application.
4. I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.
[emphasis added]

The October Application proposed Sergio Coppola as the individual to be designated the principal broker of Quick Response pursuant to s.22 of the Act.

D. The November Application

Further correspondence and discussions between my staff and Quick Response representatives led to the November Application proposing Linda Plese as the principal broker.

E. Corporate Structure and Operations

The principal broker role is a requirement which was introduced in part to ensure that a licensed broker in each brokerage took on the responsibility of ensuring compliance with the Act and Regulations. The duties of a principal broker include:

- a. Oversight of compliance by, and providing supervision of all brokers and

- associates with that firm;
- b. Making recommendations for policies and procedures necessary to ensure compliance; and
- c. Regular review of trust account reconciliations, in the case of brokerages holding an endorsement for the handling of trust accounts.

In common parlance, the principal broker is intended to act as a chief compliance officer, and when necessary, to be the liaison with my staff in relation to regulatory matters. To ensure that the principal broker has the necessary authority to be effective in compliance role, section 15 of the Regulations requires the proposed principal broker to be in a position of some authority with a brokerage: in the case of a corporation, he or she must be a director or officer. Furthermore, I must be satisfied pursuant to ss. 15(b) of the Regulations that the individual is suitable to perform the duties and responsibilities of principal broker and is not for any reason objectionable. This is an assessment I must perform in addition to assessing the suitability of the brokerage proper under s. 10 of the Act.

At the time the October Application was under consideration, there were a number of outstanding items required from Quick Response to render it complete:

1. Criminal record checks were not submitted for either Sergio Coppola or Sandra Drayton, the two directors;
2. Confirmation of an Errors and Omissions insurance policy; and
3. Disclosure document forms proposed to be provided to clients in compliance with the Regulations; and
4. It was unclear whether Sergio Coppola held the role and possessed the qualifications required to be licensed as Quick Response's principal broker, for reasons which are outlined below.

An October 7, 2010 Corporate Registry Profile Report obtained from the Saskatchewan Corporate Registry showed that as of that date, Quick Response had two directors, Sergio S. Coppola and Sandra Drayton. Two corporations, MLM Holdings Inc. ("MLM") and Wapati Holdings Ltd. ("Wapati"), owned all issued shares in Quick Response. Quick Response had been incorporated on December 4, 2002, with Articles of Incorporation of the same date showing Sergio Coppola as the incorporator. Sergio Coppola and his wife, Cheryl Coppola, wholly owned MLM, and Ms. Drayton and her husband wholly owned Wapati.

The supporting documentation submitted with the October Application made frequent reference to the supervisory or management role performed by Mr. Coppola in the business of Quick Response, which appeared to be consistent with the role of a principal broker. For example:

1. In the covering letter to the October Application, Quick Response provided the required detail as to its business processes, including the following statements:

[Re supervision and review] New Associates would be assigned a senior broker to mentor

their activities. We have a business manager in place and she would be the primary with the 3 other senior brokers providing support and advice as required. Initial client meetings would be done jointly through a sit in with the primary mentor. All files would be required to be submitted jointly with a licensed mortgage broker, and all submissions are submitted through Sergio Coppola and a senior co-agent/broker on each submission. Full access online to all files of an associate would be required. . . .

“[Re advertising] . . . Brokers will be required to vet any and all advertising through the business owner, Sergio Coppola or his corporate designate to ensure compliance with the company’s policy. A copy of that policy is provided in the attached QRM Manual.

This covering letter is signed by Linda Plese “for: Sergio Coppola, Owner, Quick Response Mortgage Services Ltd.”

2. The Guidelines implemented under the oversight of OMG Consulting Ltd. since the Consent Order were included in the package, and stated that the President of QRM (Sergio Coppola) will:
 - a. “...assume the responsibility of generally overseeing [this] compliance by every director, officer, employee and representative of Quick Response. The President of Quick Response shall appoint a representative to act in his stead, should he be away, and unable to fulfill his duties in overseeing compliance of the *Corporate Governance and Ethical Standards Guideline* for an extended period of time.”
 - b. Guidelines Principle #2 makes it Mr. Coppola’s responsibility to implement a system to ensure that all communications for which a response is required or expected are responded to within the timelines set out in the Guidelines;
 - c. Engagement Letter and Privacy Statement: Mr. Coppola is identified as the contact person for any questions or concerns raised by customers;
 - d. Mr. Coppola is indicated as the brokerage owner and contact on the Questions, Concerns or Complaints Policy; and
 - e. Mr. Coppola “or his designate” has final approval authority on proposed advertising by firm brokers.

These Guidelines had previously been ratified by the signature of Mr. Coppola as President and Director of Quick Response.

This information would have led me to conclude that Mr. Coppola was an eligible candidate to be licensed as the principal broker for Quick Response in October 2010, but for one problem.

In the summer of 2010 my staff had received information about an offer to purchase Mr. Coppola had made on a property located at 3516 Albert Street which ultimately fell through (hereinafter the “Paterson investigation”). The purchase was to be by way of assumption of an existing mortgage on the property from the owner, Karen Paterson. Due

to some similarities to Mr. Coppola's previous dealings on the Pastuch and Clark matters, an investigation file was opened.

My staff followed up on this information to determine whether Mr. Coppola was entering into this transaction in his personal capacity, or through Quick Response. If Quick Response was involved in the purchase of residential property such as this, Mr. Coppola's dealings may well have been subject to the guidelines, policies, and licence conditions referred to above.

During the course of this investigation, Mr. Coppola attended at FID's offices on July 20, 2010 for an interview. I have had an opportunity to review the transcript from that interview. Mr. Coppola's sworn testimony at that interview was that:

1. He occupied the position of President and has occasion to utilize the office space of Quick Response at 4633 Rae Street;
2. He did not partake in the day to day activities of the business;
3. He did not actively market for new clients on behalf of Quick Response;
4. He did not have any day to day dealings with the mortgage brokers employed by Quick Response, or their current files;
5. He "may have" provided his Quick Response business card to Ms. Paterson when negotiating the offer to purchase in his own name; and
6. They completed the offer to purchase at the Quick Response office.

A letter from Michael Redler of my office, dated October 19, 2010, referred to below, and Mr. Coppola's subsequent actions, set in place a lengthy chain of events which ultimately led to my issuing a Notice of Opportunity to be Heard on December 15, 2010, expressing my disinclination to grant a licence to Quick Response.

F. The Criminal Record Checks

The evidence adduced at the hearing, although contradictory on some matters, leads me to conclude that the events which occurred following the October Application transpired as follows.

Michael Redler, Financial Institutions Officer with FID, was responsible for reviewing all new licence applications under the Act. In the course of his duties, he reviewed the October Application and identified outstanding items that were needed to complete the application. He accordingly sent a letter to Sergio Coppola on October 19, 2010, requesting:

1. Criminal record checks for all directors and officers of the corporation;
2. A copy of an Errors & Omissions insurance policy;
3. Updated disclosure documents as required by Regulations 17 and 19; and
4. Confirmation of whether Mr. Coppola had been actively brokering mortgages for

at least 24 of the preceding 36 months, and whether he intended to continue to broker mortgages for Quick Response on an ongoing basis. These were necessary in order for Mr. Coppola to be eligible to be licensed as the principal broker of Quick Response.

Mr. Redler and Mr. Coppola spoke on the telephone on October 28, 2010 at which time Mr. Redler explained some of the duties of a principal broker. Mr. Coppola testified that he concluded that he would not be the appropriate candidate for the principal broker as he was not in the office every day. Furthermore, he was of the view that Linda Plese, the business manager of Quick Response, was already performing many of these responsibilities and would be a more appropriate candidate.

Mr. Redler also advised Mr. Coppola that the criminal record checks were outstanding for both Mr. Coppola and Sandra Drayton. Mr. Coppola advised Mr. Redler that Sandra Drayton was absent from the country and would not be able to request a criminal record check. He told Mr. Redler that he would be meeting with his corporate lawyer the following Monday (November 1) to discuss corporate changes.

Unfortunately, Mr. Coppola did not see fit to either advise Mr. Redler of the criminal charges that had been laid, or indicate that he intended to “step back” from the company for any reason other than to make way for Linda Plese to be designated as principal broker, or indicate that he was not going to submit a criminal record check. Mr. Coppola testified at the hearing that he did not intend to provide a criminal record check to my office at that time, as he was resigning as a director and shareholder.

Mr. Redler confirmed this conversation by email on October 28, which also reiterated the information that was still required to render Quick Response’s application complete. This included Mr. Coppola’s criminal record check. Mr. Coppola clearly knew at this time that charges had been laid against him in August 2010. My office had no knowledge of these at that time.

Mr. Coppola attended at the offices of Phillips & Co., Barristers and Solicitors on November 1, 2010 to discuss corporate changes. Documents were web-filed by Phillips & Co. at the Saskatchewan Corporate Registry, showing a processing date of November 2, 2010. As of that date the registry shows that Mr. Coppola had resigned as a director and officer as Quick Response. Mr. Coppola testified that he paid a rush fee to expedite these changes, as he felt it was important to ensure that the accurate corporate information was reflected in the new licence application to be submitted to my office.

On November 2, 2010, Mr. Redler notified all brokerages to which new licences had not been issued under the Act that the Superintendent may take regulatory action if they did not take steps to obtain licensing without further delay. Mr. Coppola advised Mr. Redler in a telephone conversation that day that he had seen his lawyer, and he and Sandra Drayton had both resigned as directors of the company “because they were both inactive.” Mr. Coppola was proposing Linda Plese, business manager of Quick Response, as the principal broker. Mr. Redler further advised that the Act required that Linda Plese be a

director or officer of Quick Response to be eligible to be its principal broker, and that a criminal record check would also be required for Linda Plese.

Under cover of a letter dated November 3, 2010, Linda Plese provided corporate restructuring and associated supporting materials to my office. She confirmed that she would stand as the proposed principal broker and had been made an officer of Quick Response. However, her letter also indicated that both Sandra Drayton and Sergio:

. . . will remain as shareholders of the company; Sergio through MLM Holdings Ltd. and Sandra, through Wapati Holdings Ltd.

This letter also enclosed Criminal record checks for Cheryl Coppola and Linda Plese confirming that neither had a criminal record.

Although the Corporate Registry Profile Report for Quick Response still showed Sandra Drayton as a director as of November 4, 2010, I accept that Ms. Drayton's resignation was signed November 2, 2010. Mr. Coppola testified that he had already removed himself as a shareholder and director of the company between November 1 and 3, 2010. However, he did not advise Mr. Redler in this conversation of the criminal charges that had been laid, or indicate that he had no intention of providing a criminal record check for himself.

On November 3, 2010, Mr. Coppola and his wife completed an Annual Return and Application to Restore Name to the Register for MLM Holdings Inc. Mr. Coppola and his wife attended at the Corporate Registry offices in person to accomplish these changes. MLM's registration had lapsed since 2008 when no annual return had been filed with the Corporate Registry. When the Coppolas attended at the Corporate Registry, they had MLM restored to current status with the Registry, and removed Mr. Coppola as a director. This was two days after Mr. Coppola met with his lawyer, and the day after Quick Response corporate changes were web-filed at the Corporate Registry. Once the changes were processed, the Corporate Registry reflected Cheryl Coppola as the sole shareholder and director of MLM.

Mr. Coppola testified that Ms. Plese's statement that he remained an MLM shareholder was in error. Because the MLM changes were not filed on a rush basis, and the Corporate Registry was experiencing delays, it was not until sometime in December 2010 that its records reflected the MLM changes. However, a profile report for MLM from the Corporate Registry dated April 8, 2011 indicates that these changes, were indeed, requested and entered on its records effective November 3, 2010.

I am accordingly satisfied that both the Quick Response and MLM corporate changes were effected by the time Ms. Plese's letter of November 3 was sent to my office. However, at the time, this misunderstanding was accentuated when Linda Plese sent a November 5 email to my office stating "Apparently some changes are at hand now," and advised that Sergio had transferred all his shares to Cheryl. She also indicated that Sandra Drayton's criminal record check had been obtained and would be forthcoming.

This, along with the continued absence of Mr. Coppola's criminal record check,

reinforced the suggestion that the corporate changes were made piecemeal and in response to my requests for criminal record checks. Unfortunately, it was not until the hearing on April 8, 2011 that Mr. Coppola provided clarification on these timelines and his motivation in making the corporate changes.

Furthermore, no amending information as to the leadership roles in the business, in particular Mr. Coppola's continuing role in its day to day operations, was provided prior to the hearing.

Despite Mr. Coppola and Ms. Drayton ceasing to be directors and officers of Quick Response, I remained concerned that I receive complete information on the operation of Quick Response, including the significant corporate actors. Section 18 of the Act and Regulations 4 and 13 grant me the authority to request a wide range of information from applicants and licensees, including criminal record checks of any person involved in the activities of the licensee:

Further information or material

18(1) At any time, the superintendent may:

- (a) require an applicant or a licensee to submit to the superintendent any further information or material that the superintendent may reasonably require; and
 - (b) require verification, by affidavit or otherwise, of any information or material submitted to the superintendent pursuant to clause (a).
- (2) No applicant or licensee who receives a request from the superintendent pursuant to subsection (1) shall fail to comply with that request within the period specified by the superintendent.

REGULATION 4(1)

For the purposes of clause 8(1)(f) of the Act, an applicant for a mortgage brokerage licence may only be issued a licence if:

...

(b) the applicant has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check dated no earlier than three months before the date of the application with respect to the following:

- (i) in the case of a corporation, all directors and officers of the corporation;
- (ii) in the case of a partnership, all partners of the partnership;
- (iii) in the case of a sole proprietor, the sole proprietor.

REGULATION 13(3)

In addition to the updated criminal record check required pursuant to subsection (1), the superintendent may, at any time, require a licensee to provide a criminal record check with respect to:

- (a) any person with respect to whom the licensee has previously provided a criminal record check; or
- (b) any other person who is involved in the mortgage brokerage or mortgage administrator activities of the licensee and with respect to whom the superintendent considers it necessary to do so.

Accordingly, Mr. Redler wrote again to Mr. Coppola on November 4, 2010 stating:

At this time the Superintendent is requesting criminal record checks be provided for Sergio Coppola and Sandra Drayton on or before November 9, 2010. Please note that if these criminal record checks are not received the Superintendent will not consider the application for licensing complete until these are received in a form satisfactory to the Superintendent.

This was the third time my staff requested Mr. Coppola's and Ms. Drayton's criminal record checks. It was the second time Mr. Coppola's had been specifically requested by name.

Mr. Coppola testified that the correspondence he received was asking for the criminal record check of the directors and shareholders of the company, and that is what he was attempting to provide. He stated that he did not think that the criminal record check was required of him specifically anymore. He specifically stated that he was not trying to dodge the Commission's office (referring to my office) at all, and that he was trying to remove himself and comply at the same time.

Since Quick Response's October Application was submitted, my office had implemented a new licensing kit and application form for mortgage brokerages and brokers. Accordingly, Mr. Redler requested that Ms. Plese complete the new form. On November 8, 2010, Ms. Plese forwarded the November Application which included the new Mortgage Brokerage Licence Application form, up-to-date corporate records, and additional supporting information for Linda Plese's application to be principal broker. Sandra Drayton's criminal record check as a director and shareholder of Quick Response Mortgage Services disclosing no criminal convictions was also provided, along with disclosure of a driving while impaired conviction for [REDACTED] who was employed at Quick Response.

Ms. Plese's email states that "This should satisfy all your required documentation for consideration of the application." My office had not, however, indicated that Mr. Coppola's criminal record check was no longer required. Furthermore, the November Application was submitted without indicating who would perform the leadership roles in the company previously performed by Mr. Coppola.

By this point my requests for criminal record checks had been complied with in the case of Cheryl Coppola, Sandra Drayton, and Linda Plese, along with detail as to a criminal conviction against [REDACTED], an employee of Quick Response. This suggests that Quick Response management was aware that these criminal record checks were required, and that indeed Sandra Drayton's criminal record check was required, even though her involvement was now limited to her position with Wapati Holdings Ltd.

In combination with the anomaly in the dates on the shareholder changes, the implication was that Mr. Coppola was going to great lengths to avoid having to provide a criminal record check. Accordingly, my staff made a request of the Regina Provincial Court for any records of court proceedings or other records respecting Sergio Coppola. That search disclosed Information No. 40471209 charging "Sergio S Coppola b. 97-aug-1966 3543 Burns Rd Regina SK" with possession of stolen property under ss. 354 and 355 of the *Criminal Code* and fraud over five thousand dollars under s. 380(1)(a) of *Criminal Code*.

The court clerk also advised that the next court appearance on the two matters was scheduled for November 24, 2010.

The existence of charges of this nature against the individual, who had, until November 2, 2010, held a central management and leadership position with Quick Response, was a matter of significant concern to me. I was further concerned given that this was not disclosed to my office despite frequent communications over a number of weeks specifically regarding Mr. Coppola's criminal record. I appreciate that charges are something quite different from a criminal conviction. However, I find it difficult to believe that it never occurred to Mr. Coppola that the criminal charges against him would be of interest to my staff and would be a material change that would affect the Quick Response October Application. I take this view particularly in light of Mr. Coppola's undertaking in paragraph 2 of the Statutory Declaration in the October Application "... to notify the Superintendent immediately of any material change that might affect this application."

On November 10, 2010, I emailed a letter to Mr. Coppola, care of his Quick Response email address, advising him that I had sought out and obtained this information due to his failure to comply with my repeated requests for a criminal record check. I advised at that time that I would be considering these circumstances in making my decision to grant or deny Quick Response a licence, and gave him an opportunity to provide additional information for me to consider in reaching my decision.

Mr. Coppola's counsel, Aaron Fox, Q.C., responded on November 15, 2010 with a statement that Mr. Coppola denied the allegations and intended to defend them. Mr. Fox alluded to the possibility that the charges would be withdrawn. He also passed on Mr. Coppola's explanation of the events leading to the charges. Mr. Coppola's explanation was essentially that he purchased building materials without knowing that they had been stolen, although no detail was provided as to why a fraud charge was laid. A criminal record check for Mr. Coppola was also attached, disclosing no criminal convictions.

My office requested further detail from Mr. Fox on November 24, 2010, asking a number of specific questions about the charges. Mr. Fox responded:

1. He was not aware of any other outstanding charges against Mr. Coppola;
2. The Crown had advised that they intend to proceed with the charges;
3. Mr. Coppola's next court appearance was December 13, 2010, at which time a not guilty plea would be entered. Available trial dates were in April and May 2011;
4. In response to my staff's inquiry as to the basis for a fraud charge, Mr. Fox stated:

The fraud charge, as I understand it, is an allegation that Gurskey fraudulently posed as a contractor in order to obtain supplies. Mr. Coppola purchased shingles from Gurskey and thus I believe the Crown has alleged that he is a party to the fraud.

I was therefore left to assess the November Application based on these limited facts, in the context of over a month of correspondence and discussions during which neither the existence of the charges nor Mr. Coppola's criminal record check were disclosed.

IV. ANALYSIS

A. Eligibility and Compliance

Prior to addressing the suitability question, section 10(a)(ii) of the Act directs me to satisfy myself that:

1. The applicant meets the requirements and satisfies the criteria for the licence set out in the Act and regulations; and
2. The applicant has otherwise complied with this Act and the regulations.

If I am not so satisfied, I may decline to issue a licence.

1. Eligibility

There are two components to eligibility: Quick Response must meet the requirements and criteria for licensing as a brokerage, and Mr. Coppola must meet the requirements and criteria for licensing as a principal broker. Although the more recent, November Application proposed Linda Plese as principal broker, the evidence has established that by reason of a number of developments since that date, Mr. Coppola is the only individual in a position to be licensed as the principal broker of Quick Response. Thus, the October Application proposing to have Mr. Coppola designated as principal broker, is the application at hand.

Regulation 4 provides additional eligibility criteria for the licensing of both a mortgage brokerage and principal broker:

Licence criteria

4(1) For the purposes of clause 8(1)(f) of the Act, an applicant for a mortgage brokerage licence may only be issued a licence if:

(a) the applicant:

- (i) in the case of a corporation, was incorporated or continued pursuant to the laws of any jurisdiction in Canada;
- (ii) in the case of a partnership, was formed pursuant to the laws of any jurisdiction in Canada; or
- (iii) in the case of a sole proprietor, is a resident of Canada;

(b) the applicant has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check dated no earlier than three months before the date of the application with respect to the following:

- (i) in the case of a corporation, all directors and officers of the corporation;
- (ii) in the case of a partnership, all partners of the partnership;

- (iii) in the case of a sole proprietor, the sole proprietor; and
- (c) the applicant has provided to the superintendent, in a form satisfactory to the superintendent, a designation of a principal broker and the designated principal broker is eligible to be a principal broker pursuant to the Act and these regulations.

Eligibility of Quick Response is not an issue, assuming it has an eligible principal broker designated. To be designated as a principal broker, Mr. Coppola must satisfy three criteria outlined in Regulation 15:

1. He must qualify to be licensed as a broker. This includes having been licensed as a mortgage broker pursuant to the former Act for at least 24 of the previous 36 months (in order to be exempt from additional education and experience requirements);
2. He must be a director or officer of the corporation; and
3. I must be satisfied that he is suitable to perform the duties and responsibilities of principal broker on behalf of the mortgage brokerage, and his designation is not for any reason objectionable.

Mr. Coppola's suitability to fulfill the compliance function of a principal broker will be addressed in more detail under the suitability assessment below. Although he is not currently a director or officer of Quick Response, I am satisfied that is a matter that can be remedied in advance of issuing a licence in the event that the other criteria are satisfied. That leaves the requirement that Mr. Coppola was actively brokering mortgages for at least 24 of the previous 36 months.

Mr. Coppola was the incorporator of Quick Response in 2002, and was the directing mind of Quick Response to and including the October Application. Quick Response had operated for 8 years with him in this role. Specifically, this role is evidenced by:

1. Quick Response corporate records;
2. Mr. Coppola's business activities;
3. Evidence provided to my office by Mr. Coppola and customers in the course of investigations conducted by my staff;
4. Specific references throughout the Guidelines and Policy Manual that were implemented pursuant to the June 26, 2009 Consent Order;
5. Quick Response advertising; and
6. Mr. Coppola holding himself out in the capacity of "owner" of Quick Response in various contexts.

This evidence of the wide range of Mr. Coppola's responsibilities suggests to me that he was a central figure in the operation of Quick Response. Only when Mr. Coppola attended at my office for an interview respecting a mortgage assumption transaction in July 2010 was there any suggestion that he did not hold a central role in directing the operations of Quick Response. Mr. Coppola had entered a contract to purchase 3516 Albert Street from Karen Paterson in his personal capacity, by providing the seller with

his Quick Response business card and having her accompany him to Quick Response's office to execute the documentation.

Mr. Coppola attended the interview with counsel, who took the position that many inquiries into the manner that Quick Response was operated were not relevant and amounted to a "fishing expedition." The answers Mr. Coppola did give suggested that he did not broker mortgages, did not actively market, had no daily duties, and did not even have his own assigned office on the Quick Response premises. This was a concern to my staff when, less than three months later, he applied to be designated as principal broker.

Mr. Coppola did give evidence at the hearing attesting to his ongoing involvement with Quick Response, albeit more as a resource person and adviser since December 2009 when Linda Plese was appointed business manager. This evidence is consistent with the professional background disclosed by Linda Plese in the November Application, and with the preponderance of evidence adduced as to Quick Response's method of operations over the years.

I accept that Mr. Coppola remained actively brokering mortgages to at least December 2009, and remained in a central management role thereafter. Specifically, I find that he remained the directing mind of Quick Response in July 2010, through the November 2010 corporate changes, and to the present time. Whether by way of actually brokering mortgages, holding himself out as the "owner" of Quick Response, or substantially overseeing the conduct of the business, Mr. Coppola remained centrally involved in the day today decision making of Quick Response to and including the present time. Accordingly, I find that he meets the eligibility requirements to be principal broker at this time.

However, this does not dispose of the matter. As will be discussed below, this evidence also reflects on Quick Response's compliance with the governing legislation in the course of the licensing process.

2. Compliance

Sections 8(1)(b)(ii) and 18(1)(a) of the Act require applicants to provide me with any additional information I may reasonably require. Sections 8(3) and 18(1)(b) authorize me to require verification of any information provided in support of an application. These requirements are important here with respect to Mr. Coppola's criminal record check. Although it was ultimately supplied through counsel on November 15, 2010, that was only after my staff had accessed the public record of two criminal charges outstanding against Mr. Coppola.

Mr. Coppola's contention at the hearing that his criminal record check was not required given his intention to "step back" from Quick Response must be tested against both the surrounding circumstances and the legislative backdrop.

Regulations 4 and 13 set out specific requirements respecting the provision of criminal record checks, while Regulation 14 addresses criminal charges in the context of changes in circumstances pertinent to a licensee's status. The pertinent portions of those provisions are reproduced below.

Licence criteria

4(1) For the purposes of clause 8(1)(f) of the Act, an applicant for a mortgage brokerage licence may only be issued a licence if:

...

(b) the applicant has provided to the superintendent, in a form satisfactory to the superintendent, a criminal record check dated no earlier than three months before the date of the application with respect to the following:

- (i) in the case of a corporation, all directors and officers of the corporation;
- (ii) in the case of a partnership, all partners of the partnership;
- (iii) in the case of a sole proprietor, the sole proprietor; and

(c) the applicant has provided to the superintendent, in a form satisfactory to the superintendent, a designation of a principal broker and the designated principal broker is eligible to be a principal broker pursuant to the Act and these regulations. **[emphasis added]**

Until November 2, 2010, Mr. Coppola was a director and officer of Quick Response, and thus subject to this requirement.

Criminal record checks

13(1) Every licensee shall provide to the superintendent, in the form required by the superintendent, an updated criminal record check with respect to each person with respect to whom the licensee was required to provide a criminal record check pursuant to section 4.

(2) A licensee shall provide the updated criminal record check required pursuant to subsection (1) within every five years after the date the previous criminal record check was provided.

(3) In addition to the updated criminal record check required pursuant to subsection (1), the superintendent may, at any time, require a licensee to provide a criminal record check with respect to:

(a) any person with respect to whom the licensee has previously provided a criminal record check; or

(b) any other person who is involved in the mortgage brokerage or mortgage administrator activities of the licensee and with respect to whom the superintendent considers it necessary to do so.

[emphasis added]

Mr. Redler's November 4, 2010 letter specifically references this provision when requesting Mr. Coppola's criminal record check, being:

... anyone who is involved including significant shareholders (more than 10%) with the corporation that is seeking licensing as a mortgage brokerage pursuant to the Act. **[emphasis added]**

Finally, Regulation 14 imposes a requirement on licensees to advise my office of various changes in circumstances. These include charges under the *Criminal Code*, and instances where the mortgage brokerage believes suitability or objectionability may be impacted:

Change in circumstances

14(1) For the purposes of section 20 of the Act, every licensee shall notify the superintendent if any of the following occurs:

- (a) a change to a telephone number of the licensee:
 - (i) that was provided to the superintendent in the licence application submitted by the licensee; or
 - (ii) that was provided to the superintendent by the licensee pursuant to this clause;
- (b) a change to the name of the licensee;
- (c) any of the following actions respecting, or changes to, the authority of the licensee to engage in brokering mortgages or administering mortgages in another jurisdiction:
 - (i) a suspension;
 - (ii) a cancellation;
 - (iii) an imposition of terms and conditions or other restrictions;
 - (iv) a surrendering;
- (d) the licensee is charged with:
 - (i) an offence contrary to the *Criminal Code*; or
 - (ii) any other offence against any law of any country, province or state, excluding traffic offences;
- (e) a civil action or administrative proceeding is brought against the licensee alleging fraud, breach of trust, deceit or misrepresentation by the licensee;
- (f) if the licensee is required to maintain errors and omissions insurance or financial security, a change in circumstances that provides reasonable grounds to believe that the errors and omissions insurance or financial security may not be in force or effective in accordance with its terms or may otherwise fail to meet the requirements of the Act.

(2) For the purposes of section 20 of the Act, a mortgage brokerage or a mortgage administrator shall notify the superintendent if any of the following occurs:

- (a) a change of the location of a business office in Saskatchewan of the mortgage brokerage or mortgage administrator, including any of the following:
 - (i) the opening of a new office;
 - (ii) the closing of an existing office;
 - (iii) the moving of an existing office to another location;
- (b) if the mortgage brokerage or mortgage administrator does not have a business office in Saskatchewan, a change of the location of the principal business office of the mortgage brokerage or mortgage administrator;
- (c) in the case of a corporation, a change of one or more of the directors or officers;
- (d) the mortgage brokerage or mortgage administrator ceases to carry on business in Saskatchewan as a mortgage brokerage or a mortgage administrator, as the case may be;
- (e) the mortgage brokerage or mortgage administrator becomes the subject of bankruptcy, receivership or winding-up proceedings;
- (f) the mortgage brokerage or mortgage administrator retains records with respect to its mortgage brokerage or mortgage administrator business at a location other than a business office or other location with respect to which the superintendent has been previously notified;
- (g) a change in the fiscal year of the mortgage brokerage or mortgage administrator.

(3) For the purposes of section 20 of the Act, a mortgage brokerage shall notify the

superintendent if any of the following occurs:

- (a) the person designated by the mortgage brokerage as its principal broker ceases to act in that capacity;
 - (b) a broker or an associate ceases to be authorized to broker mortgages on behalf of the mortgage brokerage;
 - (c) in the case of a mortgage brokerage that is a partnership, a change of one or more of the partners;
 - (d) the mortgage brokerage believes that there may be reasonable grounds on which the superintendent could determine that:
 - (i) a broker or an associate is not suitable to be licensed pursuant to the Act; or
 - (ii) the continued licensing of a broker or associate pursuant to the Act would be objectionable.
- (4) For the purposes of section 20 of the Act, a broker or an associate shall notify the superintendent if the broker or associate ceases to be authorized to broker mortgages on behalf of the mortgage brokerage named in his or her licence.
[emphasis added]

Mr. Coppola testified at the hearing that he believed he was being compliant in the responses provided to my staff throughout October and November 2010. He stated that he believed the correspondence he received was asking for the criminal record check of “the directors and shareholders of the company”, and that is what he was attempting to provide. He stated that he did not think that the criminal record check was required of him specifically anymore. He wishes me to accept that he was trying to remove himself and comply at the same time. This was why he paid to expedite the changes to Quick Response at the Corporate Registry, and this was why he attended in person at the Corporate Registry to effect the changes to MLM. In testimony, Mr. Coppola stated multiple times that he was charged only, that he had no criminal record.

Mr. Coppola also testified that, in hindsight, he could understand why his actions appeared to be motivated by an effort to keep the criminal charges from my knowledge. He indicated that he now regrets not having the Financial Services Commission involved, and that it was a huge error on his part to handle the situation the way that he did. However, Mr. Coppola could not explain why he did not submit his criminal record check besides that he “should have.”

The Act and Regulations reflect a comprehensive legislative scheme geared towards ensuring that mortgage brokerages and brokers operate within a regulated sphere with a view to protecting the best interests of consumers. Requirements for cooperation with the regulator, periodic reporting, audit powers granted to the regulator, and enumeration of specific duties to act in the borrowers’ best interest all promote these objectives.

It is within this context that the Act makes compliance with my requests for information mandatory. Failure to comply may result in the prosecution of an offence or imposition of other penalties and remedies pursuant to Part X Division 3 of the Act.

Offences are prescribed by Section 70:

- 70 (1) No person shall contravene any provision of this Act.
- (2) No person shall make a false or misleading statement in any application or in any proceeding or in response to any inspection or investigation.
 - (3) Every person who contravenes any provision of this Act is guilty of an offence.
 - (4) Every person who is guilty of an offence is liable on summary conviction:
 - (a) in the case of an individual, to a fine not exceeding \$500,000, to imprisonment for a term not exceeding one year or to both; or
 - (b) in the case of a corporation, to a fine not exceeding \$1,000,000.

Penalties include special penalties, compliance orders and restitution, administrative penalties, and orders to pay costs of a proceeding under the Act.

It is not Mr. Coppola's interpretation of the statutory regime but its actual requirements that are pertinent to my determination of whether his actions contravened the Act. The Statutory Declaration and Regulations 4, 13, and 14 considered in combination, make it clear that criminal convictions, criminal charges, and other changes in circumstances relevant to an applicant's or licensee's suitability are matters that must be immediately brought to the attention of my office.

It so happens that the criminal charges in this case were amended, reduced, and ultimately stayed. The charges themselves are relevant to the suitability assessment, discussed later in this decision. Mr. Coppola's actions surrounding the disclosure of those charges remains relevant to the determination of whether there will be repercussions for those actions.

Ignorance of the law is not an excuse. Based on the evidence I find that that Quick Response, through the actions of its principal and self acknowledged "owner", Sergio Coppola, contravened sections 8 and 18 of the Act, Regulations 4 and 13 and the undertaking in the Statutory Declaration in the October Application in failing to provide a criminal record check for Sergio Coppola when requested on or about October 19, October 28, and November 4, 2010 and failing to advise me immediately of the criminal charges Sergio Coppola was facing and in doing so, committed an offence under s. 70(1) of the Act.

B. Suitability to be licensed

1. Suitability

I am charged by s. 10 to satisfy myself as to Quick Response's and Mr. Coppola's suitability to be licensed, and that the issuance of the license is not for any reason objectionable.

Licensing regulators are commonly given a broad discretion to determine whether an applicant is "suitable" for licensing, premised largely on a consumer protection rationale.

This includes the ability to consider the past conduct of both a corporation and its officers in determining whether the business will be carried on in accordance with law, honesty, and integrity.

Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act), 2009 CarswellOnt 4743 (Ont.D.C.)

Suitability in the context of mortgage brokers and brokerages refers to the qualities or attributes that a person should exhibit in order to be licensed, including honesty, reliability, integrity, and professionalism (See, for example, *Khosla v. Real Estate Council of British Columbia*, [2000] B.C.C.O. No. 11.) Numerous cases have considered the impact of criminal charges, criminal convictions, or outstanding disciplinary proceedings on an applicant's suitability to be licensed. Despite Mr. Coppola's contention that he was charged and not convicted, Regulations 4, 13 and 14 require applicants, licensees, and related individuals to disclose both a criminal record and outstanding criminal charges, including notifying the Superintendent if charges arise after a licence has been granted. This is reinforced by the Statutory Declaration and Acknowledgement that Mr. Coppola signed as part of the October Application, which point out to the obligation to provide information and advise the Superintendent of material changes that may arise.

In *Chatt v. Ontario (Superintendent of Financial Services)*, 2003 (F.S.T.), the sole shareholder and director of a licensed mortgage brokerage had been convicted of fraud over \$5000.00. The tribunal found that the criminal proceedings related directly to the individual's honesty and integrity, and concluded that the public interest was best served by revoking the brokerage's licence. In *Alves v. Ontario (Superintendent of Financial Services)*, 2009 CarswellOnt 4122 (Ont.S.C.), an applicant was denied a mortgage broker's licence due to a domestic assault conviction. In his reasons which were later affirmed by the court, the superintendent commented on the type of past conduct that could be relevant to the suitability assessment, stating at paragraph 7:

“ . . . as a matter of statutory construction, any criminal conviction (or other past conduct) could be relevant and (that) the Tribunal is not restricted to the consideration of crimes of a financial nature. Obviously, crimes of dishonesty are a matter of particular concern when considering the licensing of professionals who will stand in a position of trust in matters involving money and property. However, the Tribunal was clearly alive to this issue, and of the importance of connecting the conduct to the context of activities in which the person would be engaged as a mortgage broker.” **[emphasis added]**

I accept that these are the principles to be taken into account when assessing an applicant's suitability in light of criminal charges.

In the end result, it is not the criminal charges themselves that I must consider as far as Quick Response and Mr. Coppola's suitability is concerned. The charges were first reduced in severity, and ultimately stayed. Thus there is no evidence of criminal involvement on which to base any suitability concerns. However, it was only through my staff's independent inquiries at the Regina Provincial Court that the outstanding criminal charges against Mr. Coppola came to light. This was publicly available information which my staff sought out due to Mr. Coppola's otherwise inexplicable resistance to supplying

the requested criminal record check.

I am satisfied on the evidence that it was Mr. Coppola's established intention to create a paper trail to distance himself from the operations of Quick Response. This was based on an apparently misguided interpretation of the advice he had received from able counsel, which was to "step back" from the business and withdraw as its public face until after the charges were resolved.

Although I accept that Mr. Coppola was legitimately trying to step back from the operation of Quick Response to protect the business, I am unable to accept that he genuinely thought that he was complying with my requests and the requirements of the Act. He specifically stated that he was not trying to dodge the Commission's office (referring to my office) at all, and that he was trying to remove himself and comply at the same time. This is difficult to accept given the following:

- Mr. Coppola did not respond directly to any of the requests for a criminal record check for him, despite eventually providing one for Sandra Drayton, for whom requests had been made at the same time;
- Ms. Plese's email states that "This should satisfy all your required documentation for consideration of the application." My office had not, however, indicated that Mr. Coppola's criminal record check was no longer required;
- Mr. Coppola admitted at the hearing that he "should have provided the criminal record check." In hindsight, he wishes he had.

I further find that Mr. Coppola's lack of forthrightness was the effective cause of the disruption to his business.

It is ironic that Mr. Coppola, in trying to shield Quick Response from being adversely impacted by the criminal charges against him, ultimately caused just that to happen. Had he approached my staff with a view to resolving the difficult position he found himself in, the evidence he gave in July would only have supported his contention that the public interest would be adequately protected by him "stepping back" until the charges were resolved. Instead, 6 months of uncertainty ensued, in a manner which I accept has had adverse consequences for him both professionally and personally.

It is not for me to remedy the personal and financial consequences of Mr. Coppola's poor decision, although I may take that into account in assessing what remedy or remedies are appropriate in the final result.

I am not satisfied that Quick Response would be suitable for licensing under the stewardship of Mr. Coppola in a manner befitting its obligations to consumers without the imposition of substantial controls and monitoring. The question is whether such controls can, practically speaking, be imposed in such a way as to safeguard the consumer interest, the reputation of the industry, while not unduly impeding Mr. Coppola's ability to earn an income in the industry in which he has participated since 2003.

The Act requires me to satisfy myself as to whether Quick Response is suitable and not otherwise objectionable to receive a mortgage brokerage licence.

2. **Objectionability**

I must also be satisfied that the issuance of the mortgage brokerage licence is not for any reason objectionable. The courts have defined objectionability to mean that the regulator must bear in mind the need to ensure that public confidence in the industry is maintained (*Cooper v. Hobart*, [2001] 3 S.C.R. 537, see also *Pugliese v. Clark*, 2007 BCSC 391)

In *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 CarswellBC 609 (B.C.C.A.), the tribunal emphasized how a criminal conviction could affect public perception:

“... negative effect on his personal and business reputation that results in being unsuitable to be registered. In addition, it is my belief that his proposed registration is objectionable because to register Pugliese would negatively impact the public and industry confidence in the financial services sector.” (at para. 21)

When assessing an applicant whose past conduct is of concern, financial regulators have employed a number of tools. These are outlined in *Henderson v. Ontario (Superintendent of Financial Services)*, 2008 CarswellOnt8737 (F.S.T.), where a range of factors was identified as relevant to determining whether an applicant with a criminal record, or alternatively, who had made a false statement to the regulator, was nevertheless suitable for licensing.

V. **Result**

I am prepared to issue a licence to Quick Response as a mortgage brokerage with Sergio Coppola as principal broker based on the imposition against Quick Response of an administrative penalty, costs and licence conditions.

A. **Administrative Penalty and Costs**

Mr. Tochor made submissions at the hearing as to the imposition of an administrative penalty and an award of costs in the event I conclude that Quick Response is suitable for licensing but has breached the Act.

I concluded above that Quick Response breached the Act. The result of Mr. Copolla's ill-advised decision to not provide a criminal record check and disclose the criminal charges he was facing was to mislead me and drag out a licensing process that need not have been so difficult. Consequently, in these circumstances it would have been appropriate to have imposed a very significant administrative penalty for the breaches of the Act and costs proportionate to the resources expended by my office in dealing with this matter.

However in this case, I have determined to impose an administrative penalty of \$1000.00 and costs of \$2500.00 against Quick Response. The administrative penalty and costs are minimal amounts because I have taken into account the fact that Quick Response has not operated since December, 2010 and this has resulted in loss of income for the shareholders. Regarding costs, my staff and I devoted significant time to this matter over several months. While the amount of \$2500.00 does not adequately represent all the staff resources that were devoted to this matter, it does indicate that investigations and hearings cost time and money and breaches of the Act have consequences. If Mr. Coppola had been forthright from the beginning about the criminal charges he was facing our valuable staff resources would not have been wasted. Other applicants who faced criminal charges during this same period were very forthright with my office and disclosed as required, particulars of charges they were facing. As a result, these individuals were able to “step back” from their mortgage brokering businesses under appropriate licensing conditions without the same negative business and financial consequences Quick Response has faced.

B. Licence Conditions

It is apparent to me from Mr. Coppola’s actions throughout this matter that he does not fully understand the obligations imposed by the Act on a mortgage broker and the responsibilities of a principal broker.

Accordingly, pursuant to section 13 of the Act I considered imposing terms and conditions on a licence issued to Quick Response as a mortgage brokerage.

In determining what licence conditions to impose on Quick Response I sent the following email message to Mr. Tochor on May 16, 2011.

Hello Mr. Tochor:

Further to our telephone conversation this afternoon, attached are draft licence conditions that I’m considering imposing on Quick Response as a result of the Notice of Opportunity and subsequent hearing.

I have nearly completed my decision with reasons and I will finalize it on my return at the end of May. However, in the interim I felt it advisable to indicate to you the conditions upon which I am prepared to issue a licence to Quick Response, particularly since the new conditions # 1, 5, 8 and 9 that I am considering were not discussed at the hearing. This will provide you and Mr. Coppola with the opportunity to review the new conditions and make written representations to me regarding the new conditions prior to finalization of the conditions and my decision.

In addition to the licence conditions, I intend to impose an administrative penalty of \$1000.00 and costs of \$2500.00. I consider these to be minimal amounts given the lack of Mr. Coppola’s forthrightness, until the hearing in this matter, in dealing with my office and complying with the requirements of the Act and the significant staff resources my office expended which could have easily been avoided had Mr. Coppola advised us he was “stepping back” together with the reasons for so doing. These amounts would have been significantly higher but for the fact that Quick Response has not been licensed for a number of months with a resulting loss of income to the

shareholders. I am providing this brief explanation of the penalty and costs amounts to give you a fuller picture of the requirements for licensing when you review the new proposed conditions.

The reason for new condition # 1 is that Mr. Coppola has not demonstrated that he has the requisite knowledge and understanding of the role of principal broker. Taking the required broker education course will assist him in carrying out his duties as principal broker coupled with condition # 5.

Condition # 2 was discussed at the hearing.

Condition # 3 is part of the licence conditions previously agreed to by Quick Response pursuant to the Consent Order in 2009.

Condition # 5 is an expansion of condition # 3 to ensure compliance with the new Act and the duties of the principal broker and is intended to complement condition # 1.

Condition # 6 is a carryover from the previous reporting requirements. Mr. Coppola had undertaken to do client surveys but as I indicated at the hearing I was not satisfied with Mr. Coppola's fulfillment of this undertaking. Consequently, the survey will be done and reported on by the independent consultant.

Conditions # 8 and 9 are included because Quick Response's application under the new Act indicated that Quick Response would not be dealing with reverse mortgages or private lenders. For a mortgage broker to deal in either of these activities would require meeting additional disclosure requirements under the new Act, advance notification to our office and a review of the mortgage broker's policies and procedures.

I'll be back in my office on May 30, 2011. If you have any written representations you wish to make regarding the new conditions I will consider them upon my return and in the process of finalizing my decision.

Thank you for your assistance.

Jim Hall

On June 3, 2011 Mr. Tochor responded to me as follows:

Dear Mr. Hall:

Re: Quick Response Mortgage Services Ltd. and Sergio Coppola
Our File: 48533.2

Thank you for your email of May 16th. We have reviewed it and will restrict our comments to the new conditions (numbers 1, 5, 8 and 9), that you have provided notice of.

Mr. Coppola has no representations to make with respect to proposed conditions 1 and 5. We have, however, some questions with respect to proposed conditions 8 and 9.

With respect to the proposed condition 8, we seek further guidance on the interpretation of "advance" mortgage loans. From your email, we understand this to mean "reverse" mortgages, and not construction loans. Quick Response has often brokered mortgages for clients who are in

the process of building homes and this would represent a significant portion of Quick Response's business. Thus, we seek clarification as to whether proposed 8 is limited to reverse mortgages. If it is so limited, we have no objection to including that condition.

With respect to condition 9, we note that private lenders [sic] are not included on the list. However, we seek confirmation that this restriction applies to *individual* private lenders, not to *institutional* lenders such as, for example, Prime West Mortgages. A large part of the consumer market seeks mortgages from private lenders such as Prime West, and this type of lending has been a significant portion of the past business of Quick Response. If this proposed condition is only meant to prohibit the brokering of mortgages with private individuals, we have no objection to that condition.

If our interpretation is incorrect on either of these two points, we would appreciate the opportunity to discuss this further with you.

Yours truly,

MacPherson Leslie & Tyerman LLP

Per:

Michael D. Tochor, Q.C.

Following Mr. Tochor's response I spoke with him to clarify licence conditions 8 and 9 and agreed that licence condition 8 should refer to reverse mortgages rather than advance mortgages as stated in the draft.

Accordingly, having heard Mr. Tochor's concerns, I direct that the following conditions attach to the mortgage brokerage licence of Quick Response when such licence is issued.

CONDITIONS ATTACHED TO LICENCE # <number>

QUICK RESPONSE MORTGAGE SERVICES LTD.

EFFECTIVE <date of licence>

The following licence conditions are attached to and form part of licence number <number> issued under *The Mortgage Brokerages and Mortgage Administrators Act* (the "Act") to Quick Response Mortgage Services Ltd. (the "Licensee"):

1. The Licensee is required to provide documentary evidence to the Superintendent of Financial Institutions (the "Superintendent") by June 30, 2012 that the Licensee's principal broker has successfully completed a broker education program that is an approved education program as defined in *The Mortgage Brokerages and Mortgage Administrators Regulations* (the "Regulations").
2. The Licensee and its directors, officers, mortgage brokers and associates, employees and representatives are prohibited from conducting any other business activity on its business premises other than that authorized by the licence issued pursuant to the Act or as permitted in writing by the Superintendent.

3. The Licensee shall:
 - (a) prohibit its directors, officers, employees and representatives from entering into personal transactions with clients where doing so may place the director, officer, employee or representative in a conflict of interest with the client;
 - (b) prohibit its directors, officers, employees and representatives from entering into personal transactions with clients where, taking into account all of the details concerning the terms of the transaction and its formation, the entering into of the transaction would not be consistent with the standards of honesty, reliability, integrity and professionalism required to be suitable for licensing as a mortgage broker under the Act, or where it could negatively affect the public's view of the mortgage broker industry; and
 - (c) prevent staff unavailability that could lead to a lack of care and attention on client matters, including unavailability due to extended absences from the office, illness or other personal issues.
4. The Licensee shall file with the Superintendent the reports of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting on the Licensee's compliance with licence condition #3.
5. The Licensee shall file with the Superintendent the reports of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting whether:
 - a. the Licensee has implemented policies and procedures that are reasonably designed to ensure:
 - i. that the Licensee and each broker and associate authorized to broker mortgages on behalf of the Licensee complies with every requirement of the Act and the Regulations;
 - ii. that each broker and associate authorized to broker mortgages on behalf of the Licensee has been adequately supervised; and
 - iii. that the Licensee's principal broker complies with every requirement established pursuant to the Act and the Regulations; and
 - b. the Licensee's principal broker has taken reasonable steps to ensure that the Licensee, and each broker and associate authorized to broker mortgages on behalf of the Licensee, complies with every requirement established pursuant to the Act and the Regulations.
6. The Licensee shall file with the Superintendent the report of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting the results of surveys of borrowers who accessed the Licensee's services. The scope, extent and specific questions of the surveys shall be approved by the Superintendent prior to the surveys being carried out, and will include questions regarding whether borrowers:
 - a. Are satisfied that the broker or associate brokering on behalf of the Licensee obtained an understanding of their mortgage needs and other circumstances;
 - b. Are satisfied with the range of products offered by the Licensee;
 - c. Understand the mortgage product obtained;
 - d. Paid any fee to the Licensee, and if so, whether they understood this fee in advance to the fee being paid or becoming payable;
 - e. Believe the mortgage broker or associate looked after their best interests; and
 - f. Any other information the Superintendent considers appropriate.

7. The reports in licence conditions 4, 5 and 6 shall be provided for the following periods, and shall be provided by the following dates:
- a. Period from date of licence to December 31, 2011: to be provided by January 31, 2012;
 - b. January 1, 2012 to June 30, 2012: to be provided by July 31, 2012; and
 - c. July 1, 2012 to December 31, 2012: to be provided by January 31, 2013.

In preparing and submitting these reports, the reports required by two or more of the licence conditions may be combined into a single report.

8. The Licensee is prohibited from brokering reverse mortgage loans,
9. The Licensee shall restrict its mortgage brokerage activities to assisting borrowers in obtaining mortgage financing from the following entities:
- a) A bank or authorized foreign bank as defined in the *Bank Act* (Canada);
 - b) A corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997* as a financing corporation, loan corporation or trust corporation;
 - c) A credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*; and
 - d) An insurer licensed pursuant to *The Saskatchewan Insurance Act*.

Counsel for Quick Response and Mr. Coppola, and the principal of OMG Consulting Ltd., or another independent consultant suitable to the Superintendent, are free to seek further direction from me regarding the above conditions and compliance therewith.

Pursuant to section 79 of the Act, any person who is directly affected by this decision may appeal the decision to the Court of Queen's Bench on a question of law, such appeal to be made within 30 days after this decision.

DATED this 30th day of June, 2011, at the City of Regina, in the Province of Saskatchewan.

"J. M. Hall"

J. M. Hall
Superintendent of Financial Institutions

IN THE MATTER OF

The Mortgage Brokerages and Mortgage Administrators Act

AND

**IN THE MATTER OF Quick Response Mortgage Services Ltd.
and Sergio S. Coppola**

ORDER

WHEREAS on March 20, 2003 the Superintendent of Financial Institutions (the “Superintendent”) issued licence 309176 to Quick Response Mortgage Services Ltd. which authorized Quick Response to carry on the business of mortgage brokering pursuant to *The Mortgage Brokers Act*, R.S.S. 1998 c. C-45.2 (the “Former Licence”);

AND WHEREAS by Consent Order dated June 26, 2009 the Superintendent imposed certain additional conditions on Quick Response’s Licence which are set out in Schedule A of the Licence (the “Conditions”);

AND WHEREAS on September 23, 2010 Quick Response made application pursuant to *The Mortgage Brokerages and Mortgage Administrators Act*, S.S. 2007 c. M-20.1 for a mortgage brokerage licence effective October 1, 2010;

AND WHEREAS the Superintendent provided Quick Response with an opportunity to be heard to determine whether he was satisfied that Quick Response ought to be granted a licence;

AND WHEREAS on April 8, 2011, a hearing was conducted;

IT IS HEREBY ORDERED, pursuant to sections 75 and 78 of *The Mortgage Brokerages and Mortgage Administrators Act*, S.S. 2010 c. M-20.1, that Quick Response pays the following amounts to the Minister of Finance for Saskatchewan:

1. \$1000.00 as an administrative penalty, such amount to be paid on or before July 15, 2011, or prior to the issuance of a mortgage brokerage licence is issued to Quick Response, whichever date is the earlier; and
2. \$2500.00 as costs, such amount to be paid on or before July 15, 2011, or prior to the issuance of a mortgage brokerage licence is issued to Quick Response, whichever date is the earlier.

AND WHEREAS the Superintendent is satisfied that upon payment by Quick Response of the above administrative penalty of \$1000.00 and costs of \$2500.00 within the specified times, and the imposition of licence conditions to be attached to a mortgage brokerage licence as set out below and in accordance with any other licensing requirements of *The Mortgage Brokerages and Mortgage Administrators Act* and *The Mortgage Brokerages and Mortgage Administrators Regulations*, Quick Response is suitable to be licensed as a mortgage brokerage and such licence would not be objectionable;

AND IT IS HEREBY FURTHER ORDERED, pursuant to section 13 and subsection 21(10) of *The Mortgage Brokerages and Mortgage Administrators Act* that Quick Response Mortgage Services Ltd., upon being licensed as a mortgage brokerage, Quick Response shall immediately comply and maintain compliance at all times with the following licence conditions:

SCHEDULE A

CONDITIONS ATTACHED TO LICENCE # <number>

QUICK RESPONSE MORTGAGE SERVICES LTD.

EFFECTIVE <date of licence>

The following licence conditions are attached to and form part of licence number <number> issued under *The Mortgage Brokerages and Mortgage Administrators Act* (the "Act") to Quick Response Mortgage Services Ltd. (the "Licensee"):

1. The Licensee is required to provide documentary evidence to the Superintendent of Financial Institutions (the "Superintendent") by June 30, 2012 that the Licensee's principal broker has successfully completed a broker education program that is an approved education program as defined in *The Mortgage Brokerages and Mortgage Administrators Regulations* (the "Regulations").
2. The Licensee and its directors, officers, mortgage brokers and associates, employees and representatives are prohibited from conducting any other business activity on its business premises other than that authorized by the licence issued pursuant to the Act or as permitted in writing by the Superintendent.
3. The Licensee shall:

- (a) prohibit its directors, officers, employees and representatives from entering into personal transactions with clients where doing so may place the director, officer, employee or representative in a conflict of interest with the client;
 - (b) prohibit its directors, officers, employees and representatives from entering into personal transactions with clients where, taking into account all of the details concerning the terms of the transaction and its formation, the entering into of the transaction would not be consistent with the standards of honesty, reliability, integrity and professionalism required to be suitable for licensing as a mortgage broker under the Act, or where it could negatively affect the public's view of the mortgage broker industry; and
 - (c) prevent staff unavailability that could lead to a lack of care and attention on client matters, including unavailability due to extended absences from the office, illness or other personal issues.
4. The Licensee shall file with the Superintendent the reports of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting on the Licensee's compliance with licence condition #3.
5. The Licensee shall file with the Superintendent the reports of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting whether:
- (a) the Licensee has implemented policies and procedures that are reasonably designed to ensure:
 - i. that the Licensee and each broker and associate authorized to broker mortgages on behalf of the Licensee complies with every requirement of the Act and the Regulations;
 - ii. that each broker and associate authorized to broker mortgages on behalf of the Licensee has been adequately supervised; and
 - iii. that the Licensee's principal broker complies with every requirement established pursuant to the Act and the Regulations; and
 - (b) the Licensee's principal broker has taken reasonable steps to ensure that the Licensee, and each broker and associate authorized to broker mortgages on behalf of the Licensee, complies with every requirement established pursuant to the Act and the Regulations.
6. The Licensee shall file with the Superintendent the report of an individual independent of the Licensee, who is to be approved in advance by the Superintendent, reporting the results of surveys of borrowers who accessed the Licensee's services. The scope, extent and specific questions of the surveys shall be approved by the Superintendent prior to the surveys being carried out, and will include questions regarding whether borrowers:
- (a) Are satisfied that the broker or associate brokering on behalf of the Licensee obtained an understanding of their mortgage needs and other circumstances;
 - (b) Are satisfied with the range of products offered by the Licensee;
 - (c) Understand the mortgage product obtained;
 - (d) Paid any fee to the Licensee, and if so, whether they understood this fee in advance to the fee being paid or becoming payable;
 - (e) Believe the mortgage broker or associate looked after their best interests; and
 - (f) Any other information the Superintendent considers appropriate.

7. The reports in licence conditions 4, 5 and 6 shall be provided for the following periods, and shall be provided by the following dates:
- (a) Period from date of licence to December 31, 2011: to be provided by January 31, 2012;
 - (b) January 1, 2012 to June 30, 2012: to be provided by July 31, 2012; and
 - (c) July 1, 2012 to December 31, 2012: to be provided by January 31, 2013.

In preparing and submitting these reports, the reports required by two or more of the licence conditions may be combined into a single report.

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- (a) A bank or authorized foreign bank as defined in the *Bank Act* (Canada);
 - (b) A corporation licensed pursuant to *The Trust and Loan Corporations Act, 1997* as a financing corporation, loan corporation or trust corporation;
 - (c) A credit union incorporated, continued or registered pursuant to *The Credit Union Act, 1998*; and
 - (d) An insurer licensed pursuant to *The Saskatchewan Insurance Act*.

Pursuant to section 79 of the Act, any person who is directly affected by this order may appeal the order to the Court of Queen's Bench on a question of law, such appeal to be made within 30 days after this decision.

DATED this 30th day of June, 2011, at the City of Regina, in the Province of Saskatchewan.

“J. M. Hall” _____

J. M. Hall
Superintendent of Financial Institutions