

IN THE MATTER OF
THE MORTGAGE BROKERS ACT, R.S.S. 1978, c. M-21,
AND IN THE MATTER OF JOSEPH SIGANSKI

**DECISION OF THE SUPERINTENDENT OF
INSURANCE AND FINANCIAL INSTITUTIONS**

I. Introduction

A complaint by AB was received by the staff of the Superintendent of Insurance and Financial Institutions on May 12, 2010 respecting the actions of Joseph Siganski, carrying on business as Priority Mortgage (hereinafter “Siganski”), in relation to mortgage financing being sought for C and D of Saskatoon.

The complaint states:

“Mr. Siganski intentionally altered and falsified the following documents:

(a) A Letter of Interest dated March 30, 2010 and produced by AB, by inserting an additional section as follows: ‘LENDER FEE: To be 6% of funded amount’ and by blocking out return address information of AB on its letterhead.

(b) an offer to finance dated April 14, 2010 and produced by AB for signature by a borrower, by inserting an additional section as follows: ‘LENDER FEE: To be 6% of funded amount’ and by blocking out return address information of AB on its letterhead as well as his return fax number.

Mr. Siganski intentionally misled the borrower, its legal counsel and AB by portraying a 6% broker fee as a “lender fee” in a Letter of Direction sent to borrower’s legal counsel.

The alterations to the AB Letter of Interest and offer to finance were done without the knowledge or consent of AB.”

AB indicated in the complaint that it feels a fair resolution of its complaint would be “*revocation of Mr. Siganski’s license, and imposition of a significant monetary penalty against him.*”

In the course of my staff’s investigation of the above complaint, evidence came to light respecting Siganski’s other activities during the period from September 22, 2009 to the present time. Accordingly, my staff made further inquiries into the following matters:

1. Evidence that Joseph Siganski was actively engaged in business as or held himself out as a mortgage broker without a valid and subsisting license between September 22, 2009 and March 29, 2010, in violation of s. 3 of *The Mortgage Brokers Act* (the “Act”); and
2. Mr. Siganski’s level of compliance with the conditions of his mortgage broker

license dated March 30, 2010, specifically the filing of monthly reports as to his activities.

In the course of my staff's investigation, Mr. Siganski declined to make himself available in person to be interviewed despite multiple opportunities and a subpoena which was duly served on him to compel his attendance at an interview at my office on Monday, June 21, 2010. He ultimately surrendered his mortgage broker's license by delivering it to my office on Friday, June 18, 2010 along with a note indicating that he would not be attending pursuant to the subpoena.

My investigative authority under s.15 of the Act extends beyond a specific complaint to further investigate any matter I deem expedient for the due administration of the Act. Given the gravity of the complaint, Siganski's history with this office leading to the granting of a conditional license on March 30, 2010, and his refusal to cooperate with the current investigation, I directed my staff to complete the investigation despite the surrender of his licence. I came to this decision due to potential regulatory and criminal repercussions of Mr. Siganski's alleged actions culminating in this investigation. My authority under section 21 of the Act also extends to making recommendations to the Attorney General for the Province of Saskatchewan regarding potential charges to be laid for offences under the Act, and I will be doing so in due course.

II. Background

My staff previously conducted an investigation into Siganski's suitability to be licensed in relation to the activities of his associate, Dario Antic and Priority Mortgage Plus, the entity under which Siganski was previously licensed as a mortgage broker. The results of that investigation were set out in a consent order dated February 12, 2010. The pertinent fact findings in that consent order to the current investigation can be summarized as follows:

1. Siganski was advised by letter dated June 1, 2009 that I had concerns about his suitability to be licensed as a mortgage broker due to facts discovered during the investigation into Dario Antic and Priority Mortgage Plus.
2. On June 10, 2009 Siganski submitted a license application under the Act for the 2009-2010 licensing year.
3. Siganski provided my office with misleading information concerning his role in Priority Mortgage Plus' loan brokering and creditor group insurance activities, due to a lack of care and diligence on his part. In doing so, he conducted himself in a manner that fell below the standard of reliability and professionalism required to be suitable for licensing as a mortgage broker. Further, I found that his actions would make it objectionable to issue him a license unless there were reasonable assurances in place to prevent that conduct from happening again.

4. Siganski arranged mortgage loans for borrowers with lenders not authorized to lend in Saskatchewan, causing borrowers to be unwittingly exposed to risks associated with unregulated lending. These actions also fell below the standard of reliability and professionalism required to be suitable for licensing as a mortgage broker.
5. Siganski maintained his mortgage broker files in disorganized condition that failed to contain some of the information required by s. 24 of the Act, and in doing so his actions fell below the standard of reliability and professionalism required to be suitable for licensing as a mortgage broker.
6. Siganski was not granted a license prior to January 1, 2010 and consented to this, as evidenced by his signature on the consent order.
7. Siganski was permitted to, and did, submit an application to be licensed under the Act thereafter, and a license was granted on March 30, 2009 on the conditions outlined as attached to that license.

III. Notice of Opportunity and the Evidence

A notice of opportunity to be heard outlining in detail my proposed decision and the factual basis for it, dated July 7, 2010 was personally served on Siganski on or about July 9, 2010. That notice provided detail as to the evidence which my staff had gathered, and which is summarized below.

Information from the following sources was considered in coming to my decision:

1. Complaint dated May 12, 2010
2. Consent Order Dated February 12, 2010
3. License conditions
4. Interviews with Perry Erhardt, Terry Kimpinski, Darryl Lucke, D, and C
5. March 30, 2010 AB Letter of Interest directed to DC Saskatchewan Ltd., original and modified version
6. April 14, 2010 AB Commitment Letter, directed to DC Saskatchewan Ltd., original and modified version
7. May 27, 2010 letter from Michael Redler to Joe Siganski seeking reports required by Siganski's licensing conditions
8. Email and telephone communications between our office and Joseph Siganski between May 28, 2010 and June 21, 2010
9. Subpoena to Joseph Siganski and proof of service

10. Mortgage broker license dated March 30, 2010 and surrender letter
11. March 6 – April 29, 2010 email correspondence between IJ and C and D
12. February 16 – April 12, 2010 email correspondence between IJ and Joseph Siganski
13. May 6 – May 11, 2010 email correspondence between C and D and Leland Kimpinski law firm
14. Facsimile instructions to Leland Kimpinski Law Firm from “Joe at Priority Mortgage”
15. Corporations Branch search result for 101087288 Saskatchewan Ltd.
16. Facsimile package of email correspondence with Joseph Siganski, and Letter of Engagement from AB
17. Dominion Lending Centres contract documents with C and D dated May 13, 2010
18. Dominion Lending Centres Letter of Direction – Fee Agreement
19. Affidavit of EF
20. Affidavit of GH
21. Transcript of examination of IJ
22. Filogix user data printout 11/17/09 through 5/21/2010

IV. FINDINGS

1. Did Joseph Siganski, as alleged by AB, intentionally alter and falsify a Letter of Interest dated March 30, 2010 and an offer to finance dated April 14, 2010 and produced by AB?

IJ, a licensed mortgage broker with Dominion Lending Centres, Team Kehler, contacted Siganski on February 16, 2010 in search of financing for C and D on the purchase of XYZ Avenue U South, Saskatoon ("the CD deal"). IJ knew that Siganski had some private lender contacts, and this was why Siganski was one of the brokers that he contacted with this deal.

Thereafter, Siganski approached GH at AB in Fort Qu'Appelle to finance the deal. Siganski had dealt with both GH and EF at the Fort Qu'Appelle branch in the past. In those prior dealings he learned that AB does not pay mortgage brokers for their services, and that it is up to a borrower and broker to negotiate any compensation arrangements directly between themselves. EF testifies in her Affidavit that she was not aware of what arrangements Siganski had made for remuneration on the CD deal until after the fact.

AB requested further information on the CD deal, and Siganski passed this on to IJ to communicate to the CDs. Further discussions then ensued as to the financing terms AB was in a position to offer. Among the matters under discussion was whether the

financing would be a CMHC insured mortgage with a 35% down payment, or an uninsured mortgage with a lesser down payment in the range of 25%. This was an issue of some significance as the CDs preferred to make a lower down payment if possible, in order to commit less cash up front.

GH's Affidavit dated June 22, 2010 attests to the dealings with AB. After the initial documentation was gathered, a letter of interest was issued to the CDs on AB letterhead by GH, which was faxed out to Siganski at Siganski's request. This letter was dated March 30, 2010. AB's application fee on this transaction was stated on page 1, as follows:

"\$3,000.00 is payable prior to AB Company review, and is 50% refundable if Mortgage not advanced."

A commitment letter dated April 14, 2010 was later issued, and was faxed from GH to Siganski on AB letterhead.

Neither the letter of interest nor the commitment letter issued by AB contained any reference to a "6% lender fee."

In his interview, IJ told my staff about the letter of interest and commitment letter which he received from Siganski via fax. He described and identified receiving from Siganski a three page commitment letter dated April 14, 2010, which had the following final line on the first page:

"LENDER FEE: To be 6% of funded amount."

This is the version he received by fax from Siganski. The AB address and contact information had been removed or deleted from the letterhead, and the following words had also been removed from the version AB issued:

"C/O Joe Siganski
Facsimile: 306-569-5552".

It was this altered version, referencing a lender fee of 6%, that IJ forwarded to the CDs by email, believing it to be the authentic commitment letter issued by AB. The CDs signed this version of the commitment letter, and returned it to IJ by attending at his office to sign it, and left it there for him to forward on to the lender.

Once he received the signed commitment letter back from the CDs, IJ returned it to Siganski. The version which IJ returned to Siganski had the reference to the 6% lender fee on the bottom of the first page.

The version of the commitment letter which AB received back from Siganski on or after April 16, 2010, did not have the alterations on the first page. The original first page was placed back on the document containing the CDs' signatures and corporate seal on page 3. AB relied on this signed commitment letter in proceeding with the rest of the

financing arrangements to go ahead with this deal.

In his interview, IJ testified as follows with respect to Siganski's initial discussions with him on the payment of a lender fee and mortgage broker fees on the CD deal. This was his basis for understanding that a 6% fee would be payable by the CDs:

- Q 170 “. . . In the one email from Joe to you, he says “fees will be 6 per cent with your 1 per cent included.” Do you recall if that was the first time he told you about the 6 per cent, or was it maybe in a telephone conversation before that?
A In a telephone conversation before that he had - - probably right before that - - he would have disclosed that the lender is going to charge a 4 per cent fee.
Q Okay.
A And he says, so 4, 1 and 1.
Q Okay
A Which was what I would have expected, and the fact that it was a lender fee, you know, that's very standard.
- A 167 I think it was at the point where we knew we had a lender and he just asked what - - what are you charging for a fee? And my standard fee on - - on most deals would be one per cent.
Q And that's what you would have told him?
A Yeah, I just said I'm just - - you know, I'm not - - I'm not looking for anything special, I'm just going to charge them one per cent, I like these guys and they've been really good to work with.”
- Siganski emailed IJ on March 10, 2010 at 10:50 a.m. as follows:
“this is what came in today I think 25% down and an appraisal is the way to go. I did find out that interest is 5.75% over 5 years. Fees will be 6% with your 1% included.”
- IJ advised the CDs that same day by email what financing AB was offering, and that “fees will be 6% with or without CMHC.”

There were many emailed discussions between IJ and C about the 6% fee as C tried to understand what the fee was for, and whether it was something for which AB could make a further mortgage advance. They can be summarized as follows:

- The first of many questions raised by the CDs around the 6% fee being charged was posed in an email back from C to IJ on March 10, stating:

“ What is the 6% for and is it mortgageable?”

IJ replied by email, “The 6% is their lender / insurance fee. Private lenders self insure so they charge a fee to mitigate risk. Yes, they can be included in the mortgage in most situations.”

- On March 12, 2010, C wrote to IJ asking “What is the 6% fee for? Does that include all fees etc?” IJ replied:

“Hi C, the fee's (sic) cover their insurance, processing and general fee's for the cost of business. They will pay me out of it and their basic fee's. A regular lender would just absorb the fee's (sic) but the private lenders charge fee's (sic) for their services.”

- C wrote again March 16, 2010, passing on a question from D about freeing up as much of their funds as possible:

“D was wondering if there was an option to finance 25-the whole amount of the down payment. He wants to keep as much of his line of credit freed up as possible for incidentals and renovations.”

- On April 5, 2010, C wrote to IJ:

"Do you think April 15th will give us enough time?
Also the 6% fee they want, is that mortgageable?"

IJ forwarded this email to Siganski on April 8, 2010, stating "Please see what was provided to me by the CD's, I have their cheque for the commitment fee and will forward once we know what the are going to do wit the file." (sic)

- On April 12, 2010, IJ replied to a further inquiry from C regarding the 6% fee. IJ advised C by email:

"I have requested that the 6% be included and they said they will consider and let us know after the review is completed. Mostly I am sure they want to make sure the value is there on the appraisal. Will keep you posted as they respond."

- IJ, in his interview, advised that he passed this question on to Siganski repeatedly:

“Q 176 Okay, fair enough. Normally where you’ve got a - - in this case, a 6 per cent total fee in this case, how do the borrowers end up paying it, do they sometimes finance it in, do they usually pay it to their lawyer on closing, or are you even really very involved at that point in the transaction?

A It depends on - - it depends on the lender. If there’s enough value in the property that they can finance it in, they would often finance it in , which was something that we had asked repeatedly of Joe throughout emails and conversations, you know, can we - - can we finance it and he just kind of danced around the question all the time.”

Q 177 Yeah, it looks - - do you ever recall getting a real answer?

A No.

Q 187 Okay. Do you recall whether your clients were ever satisfied with the answer they got on - -

A No, they weren’t.”

IJ confirmed in his interview that he had not known that Siganski never passed on the request to AB to finance in the 6%. The affidavits of EF and GH of AB both corroborate this, both of them testifying that they never received any request from Siganski to finance in the 6%. GH stated at paragraph 34 of her Affidavit:

“Siganski did not ever ask me if an additional fee of 6% or otherwise could be rolled into the financing on the CD deal. The financing amount was determined based on the maximum amount that could be loaned on the property; in this case that was 75% of the purchase price, and loan approval would not have been obtained for a larger amount in any event.”

It was only on May 11, 2010, when IJ contacted GH of AB directly, that he learned that

AB knew nothing of this “6% lender fee” and that this amount did not originate from them.

The Affidavits of EF and GH indicate that both the March 30, 2010 letter of interest and April 14, 2010 commitment letter were faxed out to Siganski at Siganski’s request. They were sent out on AB letterhead showing a return address in Fort Qu’Appelle, and in the case of the commitment letter, showed that it was sent “c/o Joe Siganski.” These letters did not contain a reference to a “Lender fee” at the bottom of the first page. However, the versions that Siganski forwarded on to IJ, and were reviewed and accepted by the CDs, had been altered as follows:

- a. The AB address and phone numbers section of the letterhead had been removed from the first page on both the letter of interest and commitment letter;
- b. The following words were added at the bottom of both first pages and appeared to be part of the original document, matching the rest of the letter in font, size, and format: **“LENDER FEE: To be 6% of funded amount.”**
- c. In the case of the commitment letter, the reference to “C/O Joe Siganski, Facsimile: 306-569-5552” had been removed from the first page as well.

The commitment letter required the signature of the CDs on page 3 in order for AB to proceed with the financing. The CDs advised my staff in their interviews that the commitment letter they signed and returned to IJ’s office was the altered version referred to above, with the lender fee on the bottom of page 1, and no return address for AB.

IJ’s evidence is that he returned the altered version of the signed commitment letter to Siganski by fax, and then by regular mail to be passed on to AB. The version that AB received back from Siganski, however, was the original unaltered version. It was only after GH and IJ spoke on the phone and identified the discrepancies in the documents did they discover that the commitment letter had been altered and signed, then replaced with the original page one by Siganski before being returned to AB in its original form, albeit with the CDs’ signatures on page 3.

As is standard on a mortgage transaction, AB forwarded an engagement letter to its solicitors, Olive Waller Zinkhan & Waller on April 23, 2010 with instructions and the necessary documents to complete the financing on the CD deal. This letter included no reference to a 6% lender fee.

The CDs retained Terry Kimpinski of Leland Kimpinski to act as their solicitor on the deal.

Siganski also drafted and forwarded a letter of direction to IJ for the CDs’ signature, which stated:

“You irrevocably authorize for the financing of \$318,750 to purchase 124 (sic) Avenue U South, Saskatoon, Sk. the lender fee of 6% (\$19125) which will be deducted on closing by Solicitor from the proceeds.”

That letter of direction did not direct that the funds be paid to any particular person or entity. However, Siganski did provide a three page fax to the Leland Kimpinski law firm which included the letter of direction and the following additional instructions for payment under the letter of direction:

“Funds for Lender Fees are to be paid to 101087288 Saskatchewan LTD. in the amount of \$19,125.00 as indicated in the Letter of Direction.”

On May 6, 2010, paralegal KL was preparing documentation at the office of Leland Kimpinski when she noted irregularities in the above letter of direction that had been faxed to their office. As a result, she contacted their clients, the CDs, to clarify what their instructions were as far as payment of mortgage proceeds. At that time, the CDs still believed that they only needed to provide another \$105,000 and that the lender fee was "going to either come out of the loan proceeds or was a mortgageable amount." C also indicated in reply to Kimpinski's office that:

"the statement provided for costs was slightly confusing as to how the total was arrived at. Do we owe \$105000 in addition to the \$25000 deposit?"

In addition, KL had received a telephone call from an individual identifying himself as Joe with Priority Mortgage, stating that he would be sending a courier over to “pick up the cheque.” Ms. KL conducted a corporations branch search which disclosed Joseph Siganski and his wife, Karen Siganski, as directors of 101087288 Saskatchewan Ltd, the payee disclosed on the fax that Siganski had forwarded to Leland Kimpinski along with the letter of direction.

On May 11, 2010, with these matters still unresolved, Ms. KL telephoned IJ, whom she knew to be the mortgage broker on the file. IJ’s evidence of their conversation was that she telephoned him and started asking him how familiar he was with the letter of direction. He said “well, I know the clients signed a letter of direction, 6 per cent.” He went on to state as follows in his interview:

“187 . . . And she just said, do you know where that’s getting paid? I said, well, it’s going to AB, it’s a lender fee, it has - - it goes back to the lender, the lender will send the money out to the respective brokerages after that. She said, no, it’s not. And she asked me if I had access to a corporate search. . . .

188 . . . So she said, well, you need to know that this is registered in the name of Joe. This numbered company is paying out to Joe Siganski, who is Joe Siganski? I said, well, he’s another broker on it, I co-brokered the deal and explained to her what the situation was. She said, well, he’s being persistent and he’s been calling here looking for money and wondering why this deal hasn’t closed.” (Q 187-188)

. . . 190. . . “that was when I decided I would call AB personally, call the underwriter and find out what’s - - what’s the story on the 6 per cent lender fee, basically.”

He looked up the phone number on the internet, called AB Fort Qu’Appelle, and asked for GH, as he knew it was GH handling the file from the letter of interest and commitment letter. IJ states that he asked her:

“can you please explain to me how the breakdown of the 6 per cent goes? She goes what 6 per cent? She said the interest rate? I said, no, the 6 per cent lender fee. We don’t charge a lender fee. And here we are today as a result of it.” (Q 194).

They began to talk about this lender fee, and were each referring to the commitment letter on their respective files. They soon discovered that they were not referring to the same document, so IJ faxed her the one he was working off. GH described the conversation as follows in her affidavit:

“25. He told me that he had received an inquiry from the office of Terry Kimpinski, solicitor for D and C in response to an odd letter of direction respecting the 6% fee. IJ was wanting to know why AB was taking a 4% fee.

26. I didn’t understand what he was talking about. He kept mentioning a 6% lender fee, and I remember telling him that we don’t charge a “lender fee”, we charge an application fee and it is \$3000.00. He asked me what about the lender fee at the bottom of page 1 on both the Letter of Interest and the Commitment Letter. I told him it couldn’t be our fee, because we had already received our \$3000.00 application fee. I was looking at my copies and I could not understand what he was talking about, until we both realized that we were not working off identical copies.

27. IJ told me that he thought AB was receiving 4% of this, and that he would be receiving 1% with Siganski to receive the other 1%. I think I said ‘oh my god oh my god oh my god’ or words to that effect when we discovered that someone had modified AB’s Letter of Interest and commitment Letter to include this 6% fee.”

IJ then faxed the letter of interest and commitment letter he had on his file to her, and they deduced that both documents had been altered during the time they were in Siganski’s possession.

Both EF and GH have testified that they were aware of no 6% lender fee before the discovery of the altered documents on May 11, 2010.

IJ followed up with an email to the Kimpinski law firm on May 11, 2010, summarizing his discussions with AB:

"Hello KL, I have just spoken with AB (sic) directly and been advised that they never charged any fee's to the CD's other than the \$3,000 acceptance fee and their standard terms and conditions. I am in the process of opening an investigation with them and will most likely have to pursue other action on this with them. Please do not pay out any fee's on this until we receive a release from AB directly."

IJ negotiated a 1% commission directly with the CDs, which was documented and paid by the CDs to the Kimpinski firm. AB was satisfied with the information that had been disclosed and that the financing package was unaffected by the altered documents. As a result, the sale and financing transaction proceeded.

Siganski confirmed to EF and my staff that he altered these documents. Siganski’s statement to EF when she told him that changing a AB document in the way he did was illegal was “I didn’t think of it that way.” Siganski also stated to her that he didn’t

understand what the problem was adding a 6% lender fee to the AB documents. Siganski indicated to Ms. Harasen of my office that “It was my screw up and I admitted it.” Siganski also told her that he has dealt with other private lenders in the past who “take the investment coming in and they put the information on the bottom of the form.” However, Siganski was unable to give a specific example of this being done when asked for further details.

My staff contacted Siganski on June 3, 2010 to arrange an interview to respond to the complaint of AB. He agreed to attend for an interview at our office at Suite 600, 1919 Saskatchewan Drive, Regina, on June 9, 2010 at 9:00 a.m. However, on that day at the appointed time, Siganski telephoned our office and advised the receptionist that he had a family emergency and would not be able to make the interview. Ms. Harasen emailed Siganski later that morning asking to reschedule for the following week, and an email exchange followed. Our office also attempted numerous times to reach him by telephone, but was unsuccessful. Ms. Harasen was able to speak to an individual at Siganski’s place of business, "Retirement Plus," identifying himself only as Mark. He indicated he would leave Siganski a message. However, no call back was ever received. Siganski’s e-mail reply indicated that he would be tied up until about June 23rd. When Ms. Harasen asked what would make him unavailable for a period of two weeks, Siganski responded:

“We are having to deal with the death of my wifes (sic) mother who lives in Winnipeg. Her dad has asked us to help out as the funeral will be some times (sic) next week.”

The obituary for CMM, survived by “Karen (Joe) Siganski” in the Portage Daily Graphic shows that the funeral service was held May 29, 2010 in Winnipeg. Ms. Harasen advised Siganski of this and requested a response, but none was forthcoming. Accordingly, in order to obtain his testimony and complete my investigation in a timely fashion, I issued a subpoena compelling Siganski’s attendance at an interview scheduled for Monday, June 21, 2010 at 1:30 p.m. This subpoena was served on Siganski personally on June 16, 2010.

Siganski’s mortgage broker license and an undated typewritten note from him were hand delivered to my office on the afternoon of June 18, 2010, indicating:

“I hear by (sic) voluntarily surrender my license as I will no longer be working as a Mortgage Broker.”

Ms. Harasen replied by email, indicating that I still wished to complete the investigation and Siganski were not released from the subpoena for Monday afternoon. His reply, received by email Monday morning, June 21, 2010, was as follows:

“On advice of council (sic) I have surrendered my licence and as I will not be seeking to get it back I will not be attending today.

As to answer what you have asked below here is my response.

1 Yes this was done by me as this was the only way I knew how to do fees and it was to include not only broker fee but lender and legal fees.

2 This was done with another person legal (sic) under the act and I administered the files.

3 I miss read (sic) the act and thought the report request was for the supervising broker alone once

notified and clarified with my lawyer I sent in the revised report.”

Based on the foregoing evidence, I find that Siganski intentionally altered and falsified two documents authored by AB, by making the following alterations:

- a. inserting an additional section as follows:

“**LENDER FEE:** To be 6% of funded amount”

- b. blocking out return address information of AB on its letterhead.

- c. In the case of the commitment letter dated April 14, 2010, the following typewritten addressee information was also removed from the first page:

“C/O Joe Siganski
Facsimile: 306-569-5552”

Specifically, this was done to both a letter of interest dated March 30, 2010 and a commitment letter dated April 14, 2010. The commitment letter was a contractual offer of financing which required the borrowers’ signatures. Acceptance of this offer of financing by executing and returning the document to AB would constitute a binding contract. This would then enable the financial institution to proceed with the financing arrangements.

The weight of the evidence outlined above satisfies me that Siganski made these changes with the intent that C and D and IJ act upon the altered documents in the belief that this 6% fee originated from and would be collected by AB. Further, I am satisfied that after Siganski obtained C and D’s signatures on the altered commitment letter, he intentionally replaced the original, unaltered first page of the commitment letter before faxing and returning it to AB. This was done by Siganski knowingly and so as to prevent AB from discovering that he had altered the document.

I find that all of these actions were carried out with the knowledge that AB did not charge such a lender fee and would not be receiving the stated fee in the transaction. Siganski carried out these actions without the knowledge or consent of AB.

I also accept the evidence of IJ, supported by email records, as to what Siganski intended Mr. IJ and the CDs to believe about the intended distribution of this "6% lender fee." I accept that Siganski advised Mr. IJ it would be divided "4-1-1", meaning that AB would receive 4%, and each of him and Mr. IJ would receive 1%. However, Siganski never intended AB to receive any of these proceeds whatsoever, as he never advised AB of this fee, nor did Siganski ever provide AB a copy of the altered document. I find that Siganski’s actions in this endeavor were consistent only with the intention to deceive AB, IJ and the CDs.

In the case of AB, I am satisfied that it was Siganski’s intention to cause them to believe

that he never altered their letter of interest or commitment letter, and for them to never suspect that he would collect the additional 4% and retain it himself.

In the case of IJ and C and D, the evidence of IJ supported by email records establishes that Siganski intended to make them believe that 4% was going to AB. In actuality, Siganski always intended the 4% plus an additional 1% to remain in his hands. It was only when the astute paralegal at the Leland Kimpinski firm discovered the intended destination of the funds under the letter of direction, that this scheme was uncovered.

Siganski's actions in amending the two AB documents for his own purposes changed the contractual documents of a financial institution in a material way, with the intent that his co-broker and clients would act upon them. I find that the CDs were Siganski's clients just as they were the clients of IJ, and that he owed them a duty of fidelity in this regard.

The material change to the financial terms of the documents by adding the 6% lender fee was not the only material change Siganski made with an intent to deceive. Siganski also removed the return address and the reference to himself as addressee, as well as his own fax number from the commitment letter. I find that these also were significant changes which signified his intention to deceive not only the CDs and IJ, but AB as well. I find that the only purpose Siganski could have had in doing so was to prevent the altered documents from coming to the attention of AB. This alteration is consistent with his other actions which could only have been intended to prevent the altered documents from coming to the attention of AB: after Siganski obtained C and D's signature on the altered commitment letter, Siganski intentionally replaced the original, unaltered first page of the commitment letter before faxing and returning the original signed copy to AB. I conclude that this was done by Siganski knowingly and so as to prevent AB from discovering that he had altered the document.

I find that Siganski conducted himself in this fashion all the while knowing that AB did not charge any such lender fee, and further, knowing that AB was already charging its application fee which appeared on the face of the modified documents. All of this was done by Siganski knowing that AB would not be receiving any portion of this 6% fee, while his co-broker and his clients the CDs believed that AB would be receiving the vast majority of the fees. This was all done without the knowledge or consent of any of the other parties to the transaction, with a view to profiting by these actions himself.

These actions were clearly to the detriment of IJ, AB, and C and D. In respect of AB, Siganski's alteration gave the impression that AB was collecting a substantial fee, something of which in reality it had no knowledge. This alteration also had the potential to detrimentally affect AB's level of risk as a lender: this additional liability would clearly have affected the borrowers' debt service ratio, on a deal where the evidence is clear that AB had assessed the loan at the maximum the borrowers were capable of servicing.

I find that Siganski's actions also had the potential to damage IJ's reputation, for being involved in a transaction where he was misled as to the nature of the fee, but could also

have been viewed as being complicit in the scheme. Only through the diligence of Leland Kimpinski's paralegal was a further fraud and loss avoided for all of the other parties involved. Had this not been discovered, the CDs would have had to come up with some way to make up the difference of approximately \$19,000.00 to close the deal.

Finally, Siganski's actions in relation to the borrowers, C and D, were a clear breach of his obligations to them as clients. As a co-broker with IJ, Siganski had a responsibility to the CDs to ensure that their instructions were followed and that they received adequate disclosure of the nature and details of the transaction. As indicated above, I find that Siganski had a duty of fidelity to the CDs as his clients. Siganski failed in this duty by failing to respond adequately or at all to the CDs' repeated request to have the 6% financed in with the mortgage. I accept the evidence of C and D, corroborated by IJ's email evidence, that they continually inquired as to the possibility of the 6% fee being included as additional financing, as they were concerned about liquidity. Despite this, no response was ever received from Siganski and I conclude that Siganski avoided responding in order to avoid his deception on the two AB documents from being detected.

Siganski was given multiple opportunities to attend for an interview with my staff to provide his side of the story in this affair. He failed to do so and failed to attend in response to a lawful subpoena issued by me. I find that by his actions in response to my staff's efforts to obtain his evidence as to how events transpired, Siganski has waived his right to be heard in my investigation into this matter. I am satisfied that my staff made every effort to have Siganski attend and be heard as to how events transpired. Thus, I have been forced to make my findings absent evidence from him beyond his brief telephone conversation with my staff, his statements to EF of AB, and the evidence of his written communications provided by other witnesses.

Siganski did admit, both to EF and Ms. Harasen of my office, that he changed the AB documents. His response to EF was that he didn't think of it as something illegal. Siganski admitted to Ms. Harasen that "It was my screw up and I admitted it." This indicates that in hindsight he was aware that what he did was wrong.

Siganski also claimed to Ms. Harasen that other private lenders have done this in the past. However, I do not find this or his other actions in the course of this investigation to be credible. I find that Siganski attempted to mislead Ms. Harasen as to his reasons for not attending for an interview, and ultimately failed to appear in response to a subpoena lawfully served. All of his actions surrounding my staff's efforts to secure his attendance at an interview, along with the corroboration among the other witnesses' testimony, lead me to prefer the credibility of the other witnesses to Siganski's in this matter wherever there is a conflict.

- 2. Did Joseph Siganski actively engage in business as or hold himself out as a mortgage broker without a valid and subsisting license between September 22, 2009 and March 29, 2010, in violation of s. 3 of *The Mortgage Brokers Act*?**

As outlined above, Siganski did not have a valid and subsisting mortgage broker license between July 3, 2009 and March 30, 2010. On March 30, 2010, my office issued "Joseph Siganski, doing business as Priority Mortgage" a conditional license under *The Mortgage Brokers Act*. Evidence which came to light in the course of my investigation respecting his activities as a mortgage broker while unlicensed is as follows.

GH of AB indicated in her Affidavit that she began dealing with Siganski on the CD matter in late February 2010. This is consistent with IJ having forwarded Siganski the package of information on the deal on February 16, 2010. Ms. GH testified that she had been in contact with Siganski since September 2009 on a number of possible loans. She stated at paragraph 5:

"Through the entire time I have received inquiries from Siganski from late September 2009 until May 2010, I believed he was qualified to act as a mortgage broker."

Ms. GH also provided my staff with a package of email records disclosing that Siganski approached her with between 10 and 15 mortgage deals between September 22, 2009 and March 29, 2010. Specifically, these records indicate Siganski was seeking financing for clients on the following matters:

- BC, purchase and equity tie-in re February 2009 appraisal on commercial property/vacant raw land
- "GA" 2 rental houses in Weyburn
- PE duplexes, refinance
- CH and common law partner, Prime West Saskatoon foreclosure
- JD Refinance
- IS
- XYZ Halifax purchase
- DR 40 acres for residential development
- LM
- CO
- RK refinance
- JK development
- RS commercial building
- JS Refinance
- AH 123 MacDonald Street, 123 South Railway

EF of AB also testified in her affidavit that she believed Siganski was qualified and authorized to act as a mortgage broker from September 2009 to May 2010.

Filogix, an online subscription service which provides mortgage brokers with credit bureau data and submission services to lenders, has advised my office that Siganski accessed their service numerous times between August 10, 2009 and October 16, 2009. Their records also indicate that Siganski accessed their service numerous times between

June 2, 2009 and June 29, 2009 through an ID registered to an entity known as Pioneer West. Pioneer West was not licensed to mortgage broker in Saskatchewan during that period.

Ms. Harasen of my office advised Siganski on June 8, 2010 that one of the issues being investigated arising out of AB's May 12, 2010 complaint was the following:

“2. that you were actively engaged in business as or held yourself out as a mortgage broker without a valid and subsisting license in violation of s. 3 of *The Mortgage Brokers Act*, R.S.S. 1978 c. M-21 during the following time period: September 22, 2009 to March 29, 2010.”

Siganski responded to this in his email of June 21, 2010 to my office, stating

“This was done with another person legal under the act and I administered the files.”

Nowhere does he indicate who this “other person” was or the basis of his belief that this made it legal.

Based on the foregoing evidence, I conclude that Siganski continued to carry on business as a mortgage broker in the province of Saskatchewan between September 22, 2009 and March 29, 2010 while he was not licensed to do so. In the absence of evidence that Siganski was brokering on behalf of another individual properly licensed pursuant to the Act, I must infer that Siganski was acting on his own behalf in mortgage brokering between the above dates. This is supported by the fact that Siganski consistently utilized the same email address, "showme@sasktel.net", in his dealings with AB and IJ both before and after his license was reinstated on March 30, 2010.

Siganski indicated in his June 21, 2010 email to my office that “this was done with another person”, suggesting that this made his actions lawful pursuant to the Act. However, there is no evidence whatsoever that Siganski operated any differently before and after March 30, 2010 when Siganski obtained a valid and subsisting mortgage broker's licence or that Siganski advised any of his clients or financial institutions that he was acting under another person's mortgage broker's license, as an employee or otherwise.

It is also significant that AB and IJ were led to believe that Siganski was authorized to broker mortgages during that period, and that he made no effort to correct their understanding.

Specifically, I conclude based on the evidence that Siganski held himself out to AB as a licensed mortgage broker by attempting to negotiate mortgage financing for between 10 and 15 different clients before his mortgage broker's license was reinstated on March 30, 2010. This was a violation of s. 3 of the Act which specifically requires a person to hold a valid and subsisting license in order to carry on business as a mortgage broker.

3. Did Joseph Siganski fail to comply with the conditions of his mortgage broker license dated March 30, 2010?

The conditions attached to Siganski's mortgage broker license issued March 30, 2010 were agreed to by a February 12, 2010 consent order issued by my office. The matter at issue is his compliance with condition number 4, which provides:

"4 the Licensee shall:

- a. cause his closed client files to be reviewed on a monthly basis by a licensed mortgage broker (the "supervising mortgage broker"), who shall be approved in advance by the Superintendent;
- b. cause the supervising mortgage broker to file with the Superintendent a written report on or before the 15th day of each month stating whether in the previous calendar month the Licensee:
 - i. complied with the conditions set out in licence conditions 1, 2, and 3 (above); and
 - ii. carried out all mortgage broker transactions appropriately and in a manner reflecting the best interests of the borrower; and
- c. file a written report with the Superintendent on or before the 15th day of each month commencing May, 2010 that:
 - i. is signed by Joseph Siganski;
 - ii. states whether compliance was maintained with licence conditions 1, 2 and 3 (above) during the previous calendar month;
 - iii. states whether, during the previous calendar month, all mortgage broker transactions were carried out appropriately and in a manner reflecting the best interests of the borrower; and
 - iv. sets out the particulars of any instances where compliance was not maintained during the previous calendar month."

On May 27, 2010, Michael Redler of my office sent Siganski a letter indicating that the filing deadline for his first report pursuant to the above condition was May 17, 2010 and that the required reports had not yet been received. Siganski provided my office with the following faxed response:

"Report for Superintendent from Joe Siganski.

Since license approval I have been setting up with Axiom mortgage and Martin Kaytor. I was just given access to Filogix as of May 17, 2010 which allows me to take applications for clients and pull credit bureau. My understanding of the delay was due to licensing issues for Axiom.

As a result I have not been able to submitted any applications. Since May 17, 2010 I have 3 deals submitted and pending." (sic)

Mr. Redler made a further request indicating that a report was required from Martin Kaytor, the supervisor I approved under condition 4(b) above.

Siganski submitted a second report on May 27, 2010, which stated:

"I just talked to Martin there was nothing to report as of May 15 as what I have in the mill is closing over the next month or so. In his conversation with you he tells me that you had informed him if there was nothing to report not to worry about it. Did he get this information wrong. (sic) I was going by what he told me.

Joe"

Based on the foregoing, I find that Siganski failed to file reports pursuant to license condition number 4 on or before May 17, 2010 and June 15, 2010, or that the reports filed were noncompliant. Specifically, Siganski's first report due May 17, 2010 under condition no. 4 was overdue, and was only submitted after he was given a reminder by our office. Secondly, the report that was eventually provided was deficient in the following respects:

1. It did not state whether compliance was maintained with licence conditions 1, 2 and 3 during the previous calendar month;
2. It did not state whether, during the previous calendar month, all mortgage broker transactions were carried out appropriately and in a manner reflecting the best interests of the borrower; and
3. It did not set out the particulars of any instances where compliance was not maintained during the previous calendar month.

Licence Condition 4(c) required Siganski to file a report specifying a number of particulars surrounding his mortgage brokering activities. If the answers to any of those questions were in the negative, it is my expectation that the report would provide a nil response and be submitted in any event.

Secondly, I have never received the second report required under condition no. 4 on or before June 15, 2010, or at all, as required by the licence.

V. CONCLUSION

Pursuant to section 6 of *The Mortgage Brokers Act*, I may refuse to grant a licence where I am of the opinion that the applicant for the licence is not suitable to be licensed or the proposed licensing is for any reason objectionable. Pursuant to section 10 of the Act, I may cancel a licence for any reason for which I may refuse to grant a licence under the Act. Accordingly, where I am of the view that a person who has been granted a licence is no longer suitable to be licensed, or the continued licensing of that person would be objectionable, I may cancel that person's licence.

Siganski surrendered his licence before I had an opportunity to complete my investigation and render a decision as to AB's May 12, 2010 complaint. However, my authority under the Act extends beyond simply licensing and investigating subsisting complaints. Section

15 grants me the authority to investigate and inquire into any matter which I deem expedient for the due administration of the Act. Sections 20-23 also set out offences and penalties for violations of provisions of the Act, including carrying on business as a mortgage broker other than as set forth in a licence. Further, Siganski's actions in this case may constitute offences not only under *The Mortgage Brokers Act* but also under the *Criminal Code* of Canada.

The rationale of public protection and the benefits of finality in a matter such as this are also important features of my investigative and decision-making authority. Accordingly, I have concluded that it is expedient for the due administration of the Act to issue this decision at this time notwithstanding Siganski's surrender of his licence. This is of benefit to the proper administration of my office and protection of the public should Siganski apply for licensing in the future.

"Suitable to be licensed" is a commonly used criterion in regulatory legislation. The former Commercial Appeals Commission of British Columbia has considered these criteria for licensing in the context of the *Real Estate Act (British Columbia)*. The Commission held that "suitability" refers to the qualities or attributes that a person should have in order to be licensed, including honesty, reliability, integrity and professionalism (see: *Khosla v. Real Estate Council of British Columbia*, [2000] B.C.C.O. No. 11). In *Pugliese v. Clark*, 2007 BCSC 391, the British Columbia Supreme Court considered the "objectionable" criteria as it was relied upon by the British Columbia Registrar of Mortgage Brokers to refuse to register Mr. Pugliese as a mortgage broker in that province. The Court held that public confidence in the industry is a key factor to consider in determining whether the licensing of an applicant would be objectionable. I agree with these views.

Refusal to grant or renew a licence on the basis of dishonesty has been addressed by the Ontario Superior Court of Justice in *Alves v. Ontario (Superintendent of Financial Services)*, 2009 WL 2039906 (Ont. Div. Ct.), 2009 CarswellOnt 4122. In that decision the court upheld the tribunal's decision not to grant a licence to an individual who had misled the regulator with regard to the individual's criminal record.

Joseph Siganski's actions in this matter demonstrate a course of conduct that is entirely inconsistent with the attributes that makes one suitable to be licensed as a mortgage broker under the Act, namely honesty, reliability, integrity and professionalism. Accordingly, I find that Siganski is unsuitable to be licensed as a mortgage broker under the Act. His carrying on business without a licence for a period of time is further evidence of his unsuitability as a licensee. I have also concluded that Siganski failed to file reports pursuant to license condition number 4 on or before May 17, 2010 and June 15, 2010, respectively. Although this is by far the least egregious of the violations I have found on the evidence, it establishes Siganski's unsuitability based on an inability to comply with even the most minimal of requirements. In my view this is a demonstration of his inability to exhibit the minimum level of competency an applicant must exhibit to be suitable for licensing under the Act.

In addition, if the public were to be made aware of such conduct by a member of the industry, it would surely negatively impact the public's confidence in the industry, and thus his continuing to be licensed would be objectionable as well.

Based on my findings, there also exists the potential for a prosecution for offences committed under *The Mortgage Brokers Act* and/or the *Criminal Code*. Upon service of this decision on Joseph Siganski, I will be forwarding a report of my findings to the Attorney General for Saskatchewan seeking an opinion as to whether charges ought to be laid under either *The Mortgage Brokers Act* or *The Criminal Code* in relation to his actions in this matter.

DATED this "29th" day of July, 2010 at the City of Regina, in the Province of Saskatchewan.

"J.Hall"
J. M. Hall, Superintendent of Insurance
and Financial Institutions