FST File No. M0073-1999
Decision No. M0073-1999-2

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the Mortgage Brokers Act, R.S.O. 1990, Chapter M. 39, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act" or the "MBA");

AND IN THE MATTER OF the registration of Sussman Mortgage Funding Inc. o/a Mortgage Funding;

AND IN THE MATTER OF a request for hearing pursuant to subsection 7(2) of the Act.

BETWEEN:

SUSSMAN MORTGAGE FUNDING INC.

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE: David E. Wires
Chair of the Panel and Member of the Tribunal

Martha Milczynski
Chair of the Tribunal and Member of the Panel

Judith E. Robinson
Member of the Tribunal and Panel

APPEARANCES: Henry G. Blumberg
Ronald S. Segal
Sussman Mortgage Funding Inc.

Robert Conway
Stephen Scharbach
For the Superintendent of Financial Services

HEARING DATES: October 29, 1999 (Pre-Hearing)
January 18, 2000 (Pre-Hearing continued)
October 27, 2000 (Pre-Hearing continued)
December 14, 1999 (Settlement Conference)

November 11, 23, 29, 1999 (Motion)
February 8-9, 2000 (Hearing)
May 9, 2000 (Hearing continued)
June 6-7, 2000 (Hearing continued)
November 29-30, 2000 (Hearing continued)
December 11, 14-15, 2000 (Hearing continued)
January 17-18, 23-24, 30-31, 2001 (Hearing continued)
February 13-14, 2001 (Hearing continued)
March 27, 29-30, 2001 (Hearing continued)
April 10-12, 18-20, 2001 (Hearing continued)
July 24-27, 30-31, 2001 (Hearing continued)
August 1-3, 2001 (Hearing continued)
December 10, 2001 (Applicant's final written submissions)
December 17, 2001 (Respondent's final written submissions)

This is an application under section 7 (2) of the *Mortgage Brokers Act* R.S.O. 1990 Chapter M 39 (the "MBA" or "Act") in respect of the registration of Sussman Mortgage Funding Inc. ("SMFI") operating as "Sussman Mortgage Funding". The Superintendent of Financial Services issued a Notice of Proposal to Issue an Order ("NOP") dated August 24, 1999 indicating an intention to revoke the registration of SMFI under the Act. The effect of the NOP would be to compel SMFI to terminate business activities of a mortgage broker as that term is used in the Act. SMFI filed a request for hearing to this Tribunal to review the Superintendent's decision. The proceedings have been long and complex and have taken many months to complete.

SMFI is an Ontario corporation that carries on business in premises located in Barrie, Ontario. The company has carried on business as a mortgage broker for many years.

Mortgage brokers must be registered in Ontario. An applicant for registration is entitled to registration subject to the exceptions that are set out in the Act. The Act provides that registration may be denied where the conduct of the officers and directors of a corporate registrant affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty or the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.[1]

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[1] The Act provides as follows:

Registration of mortgage brokers

5. (1) An applicant is entitled to registration or renewal of registration by the Superintendent except where,
(a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or
(b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; or
(c) the applicant is a corporation and,
(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
(d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations; or

The Superintendent asserts that the investigation of SMFI leads to the conclusion that SMFI should not be registered, and thereby issued the NOP to that effect pursuant to section 7 of the Act which provides:

Notice of proposal

> **7.** (1) If the Superintendent proposes to refuse to grant or renew a registration, proposes to impose terms and conditions on the registration of an applicant or a registrant or proposes to suspend or revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons for it, on the applicant or registrant. 1997, c. 28, s. 176 (1).

As noted above, in response SMFI requested a hearing to review the Superintendent's proposal to revoke SMFI's registration. [2]

The jurisdiction of the Tribunal is found in section 7 (4) of the Act. This Tribunal was obliged to hold a hearing pursuant to the provisions of the *Statutory Powers Procedure Act*, the *Financial Services Commission of Ontario Act* and the Tribunal's own rules of procedure and the Act. The Tribunal's jurisdiction is to direct the Superintendent to carry out the terms of the Superintendent's NOP or refrain from carrying out the NOP and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the Act and regulations. [3]

(e) the applicant fails to comply with section 8 or 9, as the case may be. R.S.O. 1990, c. M.39, s. 5 (1); 1997, c. 28, s. 172 (1).

[2] Notice requiring hearing

(2) A notice under subsection (1) shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within fifteen days after the notice under subsection (1) is served, notice in writing requiring a hearing to the Superintendent and the Tribunal. R.S.O. 1990, c. M.39, s. 7 (2); 1997, c. 28, s. 172.

Powers of Registrar where no hearing

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Superintendent may carry out the proposal stated in the notice under subsection (1). R.S.O. 1990, c. M.39, s. 7 (3); 1997, c. 28, s. 172.

[3] Powers of Tribunal where hearing

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Superintendent at the hearing, **may by order direct the Superintendent to carry out the Superintendent's proposal** or refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, **and for such purposes the Tribunal may substitute its opinion for that of the Superintendent**. R.S.O. 1990, c. M.39, s. 7 (4); 1997, c. 28, s. 172.

Conditions of order
(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act. R.S.O. 1990, c. M.39, s. 7 (5); 1997, c. 28, s. 172 (2).

(9) Even though a registrant appeals from an order of the Tribunal under section 30.1, the order takes effect immediately but the Tribunal may grant a stay until disposition of the appeal. 1997, c. 28, s. 176 (2).

The Act defines the business of a mortgage broker as follows:

> "mortgage broker" means a person who carries on the business of lending money on the security of real estate, whether the money is the person's money or that of another person, or who holds himself, herself or itself out as or who by an advertisement, notice or sign indicates that the person is a mortgage broker, or a person who carries on the business of dealing in mortgages;
>
> "mortgage" has the same meaning as in the *Mortgages Act*; ("hypothèque")
>
> > “mortgage" includes any charge on any property for securing money or money's worth; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to the person's estate, interest or right in the mortgaged property; and "mortgagee" includes any person deriving title under the original mortgagee. ("hypothèque", "hypothécaire", "montant de l'hypothèque", "débiteur hypothécaire", "créancier hypothécaire") R.S.O. 1990, c. M.40, s. 1.

The Superintendent argued that the evidence established that SMFI would not conduct business in accordance with law and with honesty and integrity based on the conduct of its principals Murray Sussman and his son Sanford Sussman (the “Sussmans”) from 1996 to 2000. Superintendent's counsel argued that throughout that period the Sussmans demonstrated a pattern of conduct that clearly indicated the Sussmans' unwillingness to comply with important consumer protection provisions of the Act that consequently put at risk third party mortgage investments.

It was certainly clear from the evidence and the demeanour of the principals of SMFI at the hearing that there was an adversarial and confrontational relationship between the Sussmans and the Superintendent’s representatives demonstrated in a strained regulatory relationship over the last eight years. It appeared that the Sussmans perceived the regulator’s representatives demands for records, information, disclosure and explanations to be an unwarranted intrusion on their business activities that disrupted the administration of their undertaking, increased the costs of administration and often gave rise to the need to urgently protest express or implied assertions that they were engaged in activities that circumvented the regulatory scheme of the MBA. The confrontational response to the exercise of the regulator’s powers and authority continued throughout the hearing and made the presentation and admissibility of evidence very formal. In light of the provisions of the *Statutory Powers Procedure Act* and the relief sought by the Superintendent in the proceedings and the effect it would have on the business, reputation and prospects of the respondent, the hearing continued with court-like formality. SMFI requested and received access to broad discovery and disclosure from the Superintendent.

At issue in these proceedings is the Sussmans' compliance with the law, including the *MBA*; and their “honesty” and “integrity”. Accordingly, evidence of conduct that demonstrated whether they were fair and straightforward, truthful, open, sincere, principled, forthright, frank, and above-board and whether they demonstrated adherence to a code of values of reliability, sincerity, trustworthiness, and veracity was relevant.

The evidence covered an extensive chronological period and indeed, as the proceedings occurred the Superintendent's staff continued to monitor SMFI and raise concerns about their activities.

We have concluded that the evidence supports a finding that the past conduct of the Sussmans affords reasonable grounds for belief that SMFI will not carry on or conduct business in accordance with the MBA and with integrity and honesty. Accordingly, the Tribunal directs that the Superintendent carry out the terms of the NOP.

Analysis:

The MBA empowers the Superintendent to act in the public interest to regulate mortgage brokers in Ontario. The Act expressly and implicitly recognizes that both lenders and borrowers entrust mortgage brokers with information, money, and records that substantially affects the lenders' ability to assess the risk of mortgage loans and to recover their investments. It also recognizes the borrower's right to information on which to assess the cost of their mortgage and their rights and obligations under the mortgage deed. The MBA was substantially amended in 1992 to update the mortgage broker regulatory regime and some of the changes appear to have precipitated the course of conduct called into issue in these proceedings.

In the late 1980's and early 1990's mortgage brokers developed a mortgage syndication protocol. The syndications enabled mortgage lenders to divide their investment capital amongst a number of mortgages so that default in one mortgage would not deplete all of an investor's capital. Controversial mortgage syndication failures lead the Ontario government to amend the MBA in an update of mandatory standards for investment disclosure and trust fund administration. In June, 1992 amendments were made to disclosure for investor provisions and trust fund administration provisions. Mortgage brokers were required to provide detailed disclosure to lenders; provide a "cooling off period" and satisfy specific trust fund administration and reporting protocols. Borrowers were entitled to a cooling-off period and to disclosure of fees and expenses associated with the loan and repayment terms.

SMFI's principals found compliance with the amended MBA onerous and expensive. It had approximately 30 private mortgage investor clients in 130 mortgages worth $18 million and had to administer monthly mortgage payments on the 130 mortgages by receiving payments and distributing them to investors. From time to time investors in syndicated mortgages terminated their investments and other investors took their place. In each case the MBA required compliance with disclosure and trust administration protocols.

The principals of SMFI or one or both of them caused the incorporation of Sussman Capital Corporation ("SCC"). SCC acted as a trustee for syndicated mortgage investors. Investors forwarded funds to SCC. SCC acted as the lender to borrowers and SMFI forwarded disclosure and accounting documentation to SCC's principals, who were the Sussmans in purported compliance with the provisions of the MBA. Instead of SMFI forwarding lengthy documents repeatedly to individual investors resident in Ontario or temporarily resident in Florida or other retirement communities, records were sent to SCC. SCC acknowledged receipt and returned the record to SMFI. SMFI could then assert that it disclosed to the lender and that the mortgages were administered by SCC.

The Sussmans, or one or the other of them, were either in practice, or on the record, the principal of SMFI and SCC. Consequently, compliance with the investor and borrower provisions of the MBA consisted of father giving notice to his son or son giving notice to his father of financial information related to particular mortgages and the investment of third party funds. Though SCC and SMF were separate legal entities in law, in fact and in practice there was an artificiality in the corporate and contractual structure created by the Sussmans to create an appearance of regularity that made it apparent the corporate structure existed primarily to create a paper trail suggesting that the regulatory requirements of the MBA were satisfied.

The Superintendent is not responsible for monitoring or expressing any view on the investments that investors decide to invest in. The Superintendent does not monitor the business of the broker, the risks undertaken by the investor, the security taken by the investor, or the rates paid by the borrower. The Superintendent's role in the mortgage brokerage industry is strictly defined by the MBA.

A sincere and honest difference of opinion in respect of the scope of regulation or the requirements of a regulatory statute between a regulator and the members of the industry they regulate is not unprecedented. Honest differences of opinion often occur and can be resolved by discussion, legal opinions, or test cases in court.

The evidence in this case demonstrates to the panel that the Sussmans engaged in a protracted pattern of conduct to hide or withhold information from the Superintendent that the Superintendent and her staff were entitled to request and receive within a reasonable time to fulfill their statutory mandate. However, requests for records required by statute and regulation were ignored or delivered incomplete often months after request. Answers to straightforward questions were obtuse, vague or misleading. If it appeared that the cost of complying with requests for records or information was the cause of inadequate responses one might have been sympathetic. If it appeared compliance was a complex process, one might have understood the response. However, representatives of the Superintendent made repeated requests clearly and articulately going so far as to explain to the Sussmans the provisions of the MBA, accounting methods and records management. From time to time, the Sussman's suggested that they were unaware of statutory requirements or how to implement them and sought assistance from the Superintendent's staff. Assistance was given; however, it was often not followed or misinterpreted.

It appears that throughout the period 1996 to 2000, the Sussman's demonstrated an unwillingness or inability to comply with their statutory obligations. At times it appeared to the Superintendent's representatives that an estimated $6.5 million of mortgage investments were at risk. Although no funds were ultimately found to be missing, it took the regulator many months to identify the problem of proper trust reconciliation and record-keeping and compel the Sussmans to follow proper procedures to the required standards.

Much of the Superintendent's concern focused on the operations of Sussman Capital Corporation, an unregistered company and its business relationship with SMFI. It appeared that SCC was operating a mortgage brokerage business in whole or in part. The evidence supports the conclusion that the Sussmans attempted to minimize detection of non-compliance by misrepresenting to the regulator that a mortgage investment segment of their operation at Sussman Capital Corporation consisted only of

their family investments. Eventually when the regulator attempted to obtain detailed information the Sussman's withdrew from the disclosure process.

In May, 1998 Sussman Capital Corporation, Murray Sussman and an officer of SCC was prosecuted on the charge of failing to furnish records for inspection. There was a guilty plea by SCC in May, 1999. During the period February to May, 1999 there was an attempt by the regulator to examine Sussman Capital Corporation records. The examination could not be completed because of accounting record irregularities and a refusal to produce guaranteed investment certificate records. Without those records the Superintendent's staff could not verify certain mortgage transaction records because mortgage funds and guaranteed investment certificate funds were co-mingled in a single SCC account.

In April, 1999 the Superintendent seized all records of SMFI and SCC because the Sussmans prohibited photocopying of records during onsite premises examinations. Finally in August, 1999 the Superintendent issued the Notice of Proposal to Revoke registration together with certain freeze orders, investigation orders and a cease and desist order.

From August to September, 1999 there was a second examination of the Sussman Capital Corporation records and finally in October, 1999 there was an application for an order requiring a full accounting by the Sussmans by December 31, 1999 and requiring information to enable the Financial Services Commission to determine whether further contraventions of the MBA might have occurred after the Notice of Proposal was issued. These issues were resolved by Minutes of Settlement dated November 29, 1999. Alternative acceptable accounting methods were formulated and the accounting was provided on December 10, 1999 together with information requested in respect of yet another investigation of even further contraventions after the Notice of Proposal was issued.

In January, 2000 a Notice of Further and Other Particulars (#1) was issued alleging contraventions of the Act and breaches of the freeze orders from August, 1999. In October, 2000 there was a further Notice of Further and Other Particulars (#2) alleging contraventions since the issuance of the Notice of Further and Other Particulars (#1) in January, 2000.

It is the position of the Superintendent that the Sussmans are ungovernable. Even after these proceedings commenced and while these proceedings were ongoing, the Superintendent argues the Sussmans engaged in activities that gave rise to further or ongoing monitoring or investigation.

It seems clear in reviewing the MBA that amendments made in 1992 were intended to provide greater disclosure to investors, greater regulation of administration of trust funds and protection to borrowers and lenders by way of enhanced disclosure. Accordingly, the Superintendent's mandate in enforcing the MBA is to maintain the protections contemplated by the legislation.

The MBA specifically addresses trust funds. The administration of trust fund provisions were aimed at mortgage activity collateral to syndication being administration of mortgages consisting of brokers receiving monthly payments and distributing them to investors. The administration assumes responsibility for enforcing investors remedies in

the event of default. These trust accounting requirements require a broker to pay an investor only out of funds which the broker receives on account of an investor's mortgage; to record receipt and disbursement of monthly mortgage payments in compliance with generally accepted accounting procedures and to have their compliance with new accounting requirements audited annually.

It was Sandford and Murray Sussman's evidence that it was extremely difficult for mortgage brokers to arrange and administer a mortgage in light of the detailed requirements of the amended *Mortgage Brokers Act*. Murray Sussman suggested in his evidence that the effect of the amendments was to make life difficult for the private mortgage brokerage industry and make it less difficult for banks to take a greater portion of the mortgage business.

The evidence supports a finding that the Sussmans from 1993 to 1998 used a corporate structure, whereby Sussman Capital Corporation and SMFI operated to circumvent the *MBA.* When asked about the administration of mortgages by the Superintendent's staff they did not disclose that SMFI did administer mortgages directly or indirectly. When the regulator asked the Sussmans in 1995 and 1997 about the business activity of Sussman Capital Corporation, the Sussman's replied that it managed a mortgage portfolio funded by Murray Sussman and his family and that Sussman Capital Corporation did not invest third party funds in mortgages. Murray Sussman used the phrase "family of investors", an ambiguous term suggesting that family members were investing in mortgages but later clarified in evidence to mean a group of long standing third party investors with whom Mr. Sussman had a close relationship. We find that the answers to the Superintendent's questions and questions from SMFI's auditor about the nature of SCC's business operations were misleading.

In 1997 when the regulator asked the Sussmans for written confirmation that Sussman Capital Corporation was not investing third party funds they declined to respond for over a year. Only when the regulator initiated a prosecution in May of 1998 for failure to furnish records for inspection did the Sussmans admit they could produce records and make any attempt to do so. While negotiating a resolution of the charge in January, 1999 the Sussmans again withheld critical information about the length of time for which Sussman Capital Corporation records were available. The explanation provided by the Sussmans was a computer problem. Apparently all records were kept on a relatively simple computer program that failed. After two years of non-disclosure and only after Sussman Capital Corporation had been charged with failure to furnish records, were limited records ever produced. Again, however, Sandford Sussman waited several months to provide the examiners with copies of two important computerized files of mortgage data. He prohibited the examiners from photocopying documents making it necessary for the regulator to seize all documents in order to photocopy them and review them.

It is clear on the evidence that SMFI administered mortgages notwithstanding the evidence by the Sussmans to the contrary. A monthly administration fee was paid by each investor directly to SMFI because it provided support services for administration to the mortgages. Sandford Sussman testified that SMFI had always provided the services for administration. Murray Sussman testified SMFI paid all the overhead bills. Sandford testified that because SMFI provided services for administration the auditor reclassified monthly administration payments to SMFI from SCC as "other fees". In previous years the payments were "recovery of expenses". It is clear on the evidence that Sandford

Sussman and Murray Sussman maintained that Sussman Capital Corporation administered the portfolio mortgages. That assertion is contrary to the documentary record and the totality of the evidence. When the auditor of SMFI asked whether the company was indirectly administering mortgages he was led to believe the contrary. He was clear on the evidence that Sandford Sussman was vague in responding to answers by the auditor and mislead the auditor as to the substance of SMFI's and Sussman Capital Corporations activities and the interrelationship between them. Under accounting guidelines and the actual business operations of SMFI and SCC, SMFI was indirectly, and from time to time, directly administering mortgages registered in the name of SCC.

In any event it is clear that SMFI and Sussman Capital Corporation were related companies in the way they conducted business. They shared the same office premises, telephone and fax numbers, used the same employees and SMFI was the de facto administrator of mortgages held in trust by Sussman Capital Corporation as a bare trustee. Sandford Sussman was an officer and director of both companies. Murray Sussman was an officer and director of record for SMFI and acted or purported to act as if he were an officer of Sussman Capital Corporation.

SCC used letterhead identifying it to be a "mortgage banker", which term Murray Sussman conceded in his evidence was an American term that meant "mortgage broker".

It is clear that the Sussmans failure to provide information was intended to prevent detection to the fact that Sussman Capital Corporation was carrying on business as a mortgage broker while unlicenced and not complying with important safeguards for investors including providing prospective mortgage investors with prescribed information about the risk of a loan, including a form 1; failing to provide a 48 hour "cooling off period" to ensure a prospective investor had the prescribed credit worthiness information 48 hours before the broker received money from the investor or entered into an agreement to receive money; and used only payments of principle and interest paid by the borrower under the mortgage to make payments to the investors and to maintain specified accounting records and to have them audited yearly.

The evidence leads one to the inevitable conclusion that Sussman Capital Corporation was carrying on business as a mortgage broker while unlicenced. There was a total inadequacy in accounting records kept by Sussman Capital Corporation and SMFI and those records that were available were virtually inaccessible to the regulator.

The Sussmans did not produce proper records of Sussman Capital Corporation from July, 1997 to January, 1999 and when the Superintendent's staff examined the records they were unable to verify that all assets could be properly accounted for. The freeze of assets caused inconvenience to mortgage investors some of whom depended on monthly interest income from the mortgages to meet living expenses but it took the Sussman's from February, 1999 to December, 1999 to provide an acceptable accounting of approximately $6.5 million in mortgage assets.

When proper records were disclosed it appeared that the Sussmans had improperly made payments to investors from funds received on other mortgages and that the Sussmans had circumvented the disclosure requirements to investors.

After the freeze orders were served and in place the regulator determined that the Sussmans made payments to Sussman Capital Corporation and deposited them to a new bank account not covered by the freeze order. The account was opened in the name of SMC Inc. another Sussman Corporation the next day after the Superintendent's NOP and freeze orders were served. The Sussmans suggested that the six mortgage payments were deposited to the SMC account to ensure the continuity of their business after the Superintendent refused permission for SMFI to open a second *Mortgage Brokers Act* trust account. The record, however, shows that the request to open a new account made no mention about mortgage payments. Rather the Sussman's needed an account to handle guaranteed investment certificate funds since the frozen Sussman Capital Corporation account was no longer available for that purpose.

The account was not opened in the same bank branch or even the same bank as the frozen Sussman Capital Corporation account or the SMFI *Mortgage Brokers Act* trust account. It would not have been discovered by the Superintendent staff but for the inquiry from the branch manager. The explanations for opening the account by the Sussmans were vague and at times contradictory. In any event it facilitated the Sussmans receiving money paid on mortgages and putting them in an account under their control outside the investigation of the Superintendent’s staff and outside the bank accounts frozen by the Superintendent.

By receiving and depositing cheques Sandford Sussman continued offering Sussman Capital Corporation services to the public as a trustee contravening the temporary order that Sussman Capital Corporation and others immediately cease offering Sussman Capital Corporation services to the public as a trustee. He also contravened an order to refrain from withdrawing or dealing with any funds and to hold all funds, securities or assets in their possession or control in trust for the Superintendent. Sandford Sussman should not have dealt with any cheques without the consent of the Superintendent. His explanations for doing so suggest that he was entitled to determine whether the orders were or were not to be complied with. As the Notice of Further and Other Particulars sets out, mortgages (i.e. T-44) were discharged and their proceeds paid out to investors in contravention of the Superintendent's freeze orders. The Tribunal finds Sandford Sussman's explanation that this occurred as a result of his signing a blank mortgage discharge when the mortgage term had commenced, and which discharge was left with the mortgagor's solicitor to be untenable.

During a visit in March, 2001 the Superintendent staff noticed that a mortgage numbered C-53 had payments reduced from $12,487.50 to $9,375.00 in November or December, 1999. On further inquiry about the sudden drop in interest payments and the effect it may have on new investors in the mortgage Sandford Sussman indicated that the mortgage was an "inside deal" with the mortgagor with whom another of Murray Sussman's sons worked and whom Murray Sussman described as doing SMFI "a favor". The "deal" was that monthly payments could be reduced to any amount provided the investors receive 7.5% interest. Sandford Sussman testified that the rate of interest was reduced by 2.49% in recognition of an additional administration fee paid to SMFI for extra administrative work required in having so many investors in and out of the C-53 mortgage. The additional administration fee was not disclosed to the investors in mortgage C-53. The flexibility in the amount payable on the mortgage caused concern to the Superintendent's staff. The mortgage appears to generate revenue different from that disclosed to investors possibly because of the relationship between the mortgagor's principals and SMFI's principals. The explanation provided by the Sussmans for the

administration of the mortgage was unsatisfactory and inconsistent with the written record of the terms of the mortgage provided to investors.

SMFI was required to submit a monthly trust listing in reconciliation to the Superintendent in each month in 2000. The Sussmans bookkeeper Kris Tabler testified that the failure to submit the trust listing and reconciliation stemmed from the fact that she did not realize that more was required than a simple bank reconciliation. Bank reconciliations do not identify the owners of funds currently in a bank account. It is clear that Kris Tabler was not preparing proper trust reconciliations. It is also clear that notwithstanding correspondence from the Superintendent's staff detailing the statutory requirements, she was not advised to meet those requirements by the Sussmans. She was not aware that a letter had been sent that contained a request for such a reconciliation. The Sussmans seemed to pass responsibility for compliance to Ms. Tabler while withholding from her the detailed information provided by the Superintendent. The responsibility was the registrant's. It was clear that the auditor was not aware of the request or the problem until September, 2000 when he began to do a yearly audit for SMFI. Again, the Sussmans seem to have withheld the request from the SMFI auditor.

In the totality of the evidence shows that the Sussmans were unwilling to comply with important requirements on order to broker accounting from 1996 forward. They contested requests for documents and information repeatedly and gave inaccurate vague or misleading answers to questions asked by the Superintendent's representatives. They demonstrated an unwillingness to comply with directions and orders of the Superintendent. The entire approach of the Sussmans was one of confrontation.

In the result, an order will issue to the Superintendent under section 7 (4) of the MBA to carry out the terms of the Notice of Proposal dated August 24, 1999.

Costs may be spoken to in writing within the next thirty days.

DATED at Toronto this 8th day of August, 2002.

"David E. Wires"

David E. Wires
Chair of the Panel

"Martha Milczynski"

Martha Milczynski
Member of the Panel

"Judith E. Robinson"

Judith E. Robinson
Member of the Panel