

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

Costs

In reasons dated August 8, 2002 this panel directed that an order issue to the Superintendent under section 7 (4) of the Mortgage Brokers Act to carry out the terms of the Superintendent's Notice of Proposal dated August 24, 1999.

The disposition of this matter provided that costs could be spoken to and the parties have made submissions.

The Interim Rules Of Practice And Procedure For Proceedings Before The Financial Services Tribunal and the Tribunal's Practice Directions provide that the Tribunal may order that the costs of a party be paid by another party and may fix the amount. In determining whether a party is liable to pay the costs of a party the Tribunal shall consider whether the party's conduct unreasonably delayed or prolonged the proceeding, including any failure to comply with undertakings or orders; whether the party's participation assisted the Tribunal in understanding the issues; the parties' degree of success in the proceeding; and any other matter it considers relevant. The Tribunal may also order its costs to be paid by a party or parties.

The panel has considered the submissions of the parties and concluded that this is an appropriate case for the applicant Sussman Mortgage Funding Inc. to pay the costs of the Superintendent fixed in the amount of \$15,000.00.

There is no doubt that the issues in the proceeding were important to the parties and the applicant was entitled to canvass all issues in detailed and at time lengthy cross examination and by leading its own documentary evidence and the evidence of witnesses. The applicant did so. The applicant, however, expanded the proceedings into proceedings unrelated to matters within the jurisdiction of the panel. Implicitly and explicitly the good faith of the Superintendent and the Superintendent's staff were put in issue with the suggestion that they acted in furtherance of some personal grudge against the Sussmans, and in particular Murray Sussman. Allegations were also made that the Superintendent and the Superintendent's staff acted unfairly or for purposes unrelated to their statutory mandate; that they were confrontational and misleading. There is no doubt that the applicant had the right to challenge the respondent's witnesses, however, the challenges were unsubstantiated and the proceedings were extended unduly by the Superintendent's right and obligation to refute each of the express and implied allegations of improper conduct. At other times the applicant argued and lead evidence that their misunderstanding and confusion about the statutory requirements of the Mortgage Brokers' Act should be laid at the feet of their bookkeeper, or their accountant or the Superintendent's staff. Much time was taken dealing with these assertions.

Though the applicant was certainly entitled to present their case as they thought fit, it did so with the understanding that the inquiry into irrelevant matters might well be for their account. This panel finds that to be the case in these proceedings.

Accordingly the Tribunal orders that the applicant pay to the respondent costs fixed in the amount of \$15,000.00.

DATED at Toronto this 25th day of February, 2003.

“D. Wires”

David E. Wires
Chair of the Panel

“M. Milczynski”

Martha Milczynski
Member of the Panel

“J. Robinson”

Judith E. Robinson
Member of the Panel