

FST File No. M0199-2002

Decision No. M0199-2002-3

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");

IN THE MATTER OF the Superintendent's Notice of Proposal to Revoke the registration of Global Mortgage Link Corp;

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

BETWEEN:

**PETER CHATT
GLOBAL MORTGAGE LINK CORP.**

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Ms. Martha Milczynski
Chair of the Tribunal and of the Panel

Mr. Paul Litner
Member of the Tribunal and of the Panel

Mr. Kevin Ashe
Member of the Tribunal and of the Panel

APPEARANCES:

Mr. H. J. Doan
For Peter Chatt and Global Mortgage Link Corp.

Mr. Stephen Scharbach
For the Superintendent of Financial Services

HEARD:

July 9, 10, 2003

REASONS FOR DECISION

Background

This is an application under Section 7(2) of the *Act*, in respect of the registration of Global Mortgage Link Corp. ("Global") as a "mortgage broker" within the meaning of the *Act*. The Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to revoke the registration of Global under the *Act*, dated September 18, 2002 (the "NOP").

Mr. Peter Chatt is the sole director, officer and shareholder of Global. Global and Mr. Chatt filed a request for a hearing before this Tribunal, asking the Tribunal to review the Superintendent's decision in the NOP.

Global is an Ontario business corporation. It is currently registered as a mortgage broker under the *Act*. Global was originally issued a registration under the *Act* in October 1993 under the name Global Financial Inc. In 1999 Global Financial Inc. changed its name to Global Mortgage Link Corp. and thereafter registration was applied for and renewed under this name.

If upheld by this Tribunal, the effect of the NOP would be to de-register Global as a mortgage broker under the *Act*. While this would not prevent Global or Mr. Chatt from reapplying for registration at some future time, the Tribunal notes that the effect of the NOP would essentially be to compel Global to terminate the business activities of a mortgage broker, since no such business may be carried on without proper registration under the *Act*.

The Mortgage Brokers Act

The combined effect of sections 5 and 6 of the *Act* are, in the case of a corporation that is registered as a mortgage broker, that the Superintendent may suspend or revoke a registration where, *inter alia*:

...(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. R.S.O. 1990, c. M.39, s. 5(1) and s. 6(2).

Section 7(2) of the *Act* grants a registrant a right to a hearing before this Tribunal in response to a NOP of the Superintendent proposing to revoke its registration under the *Act*.

The NOP

In the NOP, the Superintendent proposed to revoke the registration of Global under the *Act* for the following reasons:

In the Superintendent's opinion, Global Mortgage Link Corp. is not entitled to registration because the past conduct of its officer or director affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty.

The Superintendent's primary reason for the proposed de-registration of Global, as set forth in the NOP, is the criminal conviction of Mr. Peter Chatt, the sole shareholder and director of the registrant Global, of theft of over \$5,000. The Superintendent placed in evidence before the

Tribunal a copy of the Certificate of Conviction dated June 23, 2003 and a copy of the reasons for judgment of Justice Purvis dated July 29, 2002, in respect of the proof of the criminal conviction. In addition, the Tribunal was provided with a copy of the oral reasons for sentence of Justice Purvis dated May 26, 2003.

The evidence before us was clear that, in the criminal proceedings, Mr. Chatt was found by the Court to have stolen some \$125,000 from a business partner and as a result Mr. Chatt was convicted of the offence of theft over \$5,000 and subsequently sentenced. Mr. Doan, on behalf of the Applicant, admitted into evidence the criminal conviction of Mr. Chatt and the judgment of Justice Purvis.

In the NOP, the Superintendent concluded that Mr. Chatt's conviction of an offence involving dishonesty in a financial transaction is *per se*, a circumstance providing reasonable grounds for his belief that Global's business will not be carried on in accordance with law and with honesty and integrity, within the meaning of the *Act*.

Also, the NOP contains certain statements from Justice Purvis' reasons for judgment in the criminal conviction of Mr. Chatt, in which the Court rejected Mr. Chatt's evidence as "entirely untrustworthy" and in respect of which the Court stated:

- "Mr. Chatt's evidence appears vague and evasive on numerous occasions."
- "Such evidence in cross-examination by the accused left a very clear impression that the accused was deliberately attempting to deceive the Court, or at best to be conveniently vague when it suited his interests."
- "I can only find that Chatt's evidence throughout shows the imprint of a plethora of deceit and falsehoods. I reject his evidence as entirely untrustworthy."

Although these statements were referred to in the NOP, the Superintendent did not at the hearing argue that Mr. Chatt's conduct at or during the criminal proceedings was one of the stated grounds for the de-registration of Global under the *Act*.

Order and Oral Reasons for Decision

A hearing was held before a panel of the Tribunal on July 9 and 10, 2003 pursuant to Section 7(2) of the *Act*. Having reviewed the evidence and having heard the submissions of the parties, this Tribunal upheld the Superintendent's NOP, and directed the Superintendent to carry out the terms of the NOP and revoke the registration of Global under the *Act*, with written reasons to follow. These are the promised reasons. A copy of the Tribunal's oral reasons for decision dated July 17, 2003 are attached hereto as Appendix "A".

The Panel

This panel was originally constituted as a three member panel of the Tribunal, in accordance with the provisions of the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28. Ms. Martha Milczynski was originally the Chair of this panel of the Tribunal and presided over the Hearing on July 9 and 10, 2003. She also presided over a procedural motion brought by the Applicant on March 4, 2003. Ms. Milczynski also concurred with the Tribunal's unanimous decision to uphold the NOP and direct the Superintendent to carry out the proposal to revoke

the registration of Global under the *Act*, and she also signed the oral reasons for decision dated July 17, 2003.

Subsequent to the hearing and the issuance of the oral reasons for decision dated July 17, 2003, Ms. Milczynski was appointed as a prothonotary of the Federal Court. As a result of the assumption of her new duties as a prothonotary, Ms. Milczynski was required to resign from the Tribunal forthwith.

Accordingly, these written reasons have been prepared by the remaining members of this panel of the Tribunal.

Discussion

At issue in these proceedings is Mr. Chatt's compliance with the law, including the provisions of the *Act*, and his "honesty" and "integrity" for the purposes of Section 5 of the *Act*. Accordingly, evidence of his past conduct that demonstrates whether Mr. Chatt was fair and straightforward, truthful, open, sincere, principled, forthright, frank and above-board, and whether he adheres to a code of values of reliability, sincerity, trustworthiness and veracity is relevant [See: *Sussman Mortgage Funding Inc.* (August 8, 2002) (Financial Services Tribunal) (No. M00073-1999)].

The central issue to be determined by the Tribunal was whether the evidence before us supports the finding by the Superintendent that the past conduct of Mr. Chatt constitutes sufficient grounds for the Superintendent's belief that Global will not carry on or conduct business in accordance with the *Act* and with integrity and honesty. The focal point in examining this issue is the criminal conviction of Mr. Chatt referred to above and whether that conviction constitutes sufficient grounds to support the revocation of the registration of a mortgage broker under the *Act*.

When examining these issues, it is important for the Tribunal to keep in mind the nature and intent of the *Act*. The *Act* 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' and borrowers' financial and other interests. [See: *Sussman Mortgage Funding Inc.*, *supra*]. It is also apparent that the *Act* constitutes public policy legislation designed to protect the public interest by ensuring that registrants under the *Act* are persons of the highest moral character and trustworthiness, given the particular reliance of consumers upon mortgage brokers in these types of relationships.

The protection of the public interest goal of the *Act* must be balanced against the undeniable fact that to uphold the NOP will have a severe negative impact on the Applicant and its ability to carry on business as a mortgage broker. The Tribunal must weigh these competing interests carefully.

Legal Test for the Tribunal's Review of the NOP

The Superintendent's counsel urged us to accept that the proper test to be employed by this Tribunal in reviewing the NOP is whether the Superintendent made an error in concluding that the past conduct of Mr. Chatt affords reasonable grounds for the Superintendent's belief that Global will not carry on business in accordance with law and with integrity and honesty.

In support of this position, the Superintendent relied upon the decision of the Ontario Divisional Court in *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesman)*, [1983] O.J. No.

1017, and pointed us to the following passage from the Court's judgment, which the Superintendent argued embodies the standard of review of the Superintendent's decisions in respect of registrations:

The proper question...remains, however, whether the past conduct of the applicant [registrant] affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. Unless the Tribunal can find that it does not, the Tribunal should not order the Registrar to refrain from carrying out his proposal. (*Brenner, supra.* at p. 3)

The Superintendent's counsel also submitted that, in order to overrule the Superintendent, the Tribunal must conclude that the Superintendent was wrong in his decision and that the conduct of the registrant (or its directors and officers) does not afford reasonable grounds for his belief. It is not sufficient for the Tribunal to simply conclude that it would have exercised its discretion differently in the circumstances. [*Re Watt* (January 11, 2001) (*Ontario License Appeal Tribunal*)]

Mr. Doan, on behalf of the Applicant, did not dispute that this was the proper test to be employed by this Tribunal; however, he argued that the standard of review by this Tribunal did not require deference to the Superintendent's decision, a point, which was conceded by Mr. Scharbach.

We note that none of the decisions cited by the Superintendent involved this Tribunal or proceedings under the *Act*. However, in each case the decisions involved administrative tribunals with a function and purpose similar to this Tribunal, and governing legislation that contained a test similar to that under section 5 of the *Act* (namely, whether the past conduct of the registrant affords reasonable grounds for the belief that the registrant will not carry on business in accordance with the law and with integrity and honesty).

Although the decisions of other administrative tribunals are not binding on this Tribunal, and the court's decision in *Brenner* involved a different administrative tribunal with governing legislation different than the *Act*, we find these decisions to be of persuasive value.

Accordingly, we find that the proper test to be applied in these proceedings is that this Tribunal must find, based on the evidence presented to us, that the Superintendent was wrong in his decision and that the conduct of the registrant or its officers and directors (in this case Mr. Chatt) does not afford reasonable grounds for the Superintendent's belief that Global will not carry on business in accordance with the law and with integrity and honesty. Although the Tribunal need not give any deference to the Superintendent's decision, the Tribunal should not overturn the NOP simply because the Tribunal might have exercised its discretion differently than the Superintendent.

The Criminal Conviction

As noted above, Mr. Chatt has been convicted of a serious criminal offence involving the theft of a significant amount of money. In addition, the reasons for judgment of Justice Purvis involved findings by the Court that relate directly to Mr. Chatt's honesty and integrity.

There was some argument before us as to the effect of Mr. Chatt's criminal conviction and whether that conviction was, in and of itself, sufficient grounds for the NOP.

Mr. Doan argued that the criminal conviction was in essence nothing more than a legal conclusion drawn by the judge in those proceedings and was not proof of the underlying facts on which the conviction was based. He submitted that in order to assess Mr. Chatt's credibility, honesty and integrity, this Tribunal would have to hear evidence as to the underlying facts upon which his conviction was based. Mr. Doan did not cite any judicial or other authority in support of his argument.

Mr. Scharbach, on the other hand, argued that a criminal conviction for an offence involving fraud, deceit or theft will, in the absence of exceptional circumstances, be sufficient grounds for revocation of mortgage broker registration. In other words, the Superintendent argued for the position that the criminal conviction *per se* is sufficient grounds for a belief that the registrant will not carry on business in accordance with law and with honesty and integrity, within the meaning of section 5 of the *Act*.

In support of his position, Mr. Scharbach referred us to the following cases: (i) *Luu (Re)* [1994] O.C.R.A.T.D. No. 146 (Ontario Commercial Registration Appeal Tribunal), and (ii) *S.A.M. (Re)* [2002] O.L.A.T.D. No. 244 (Ontario Licence Appeal Tribunal). Mr. Doan did not comment on the applicability of these cases and, although invited to do so by the Tribunal prior to the hearing, declined to make written submissions on this issue.

We agree with the Superintendent that the foregoing cases provide support for the proposition that the Superintendent is entitled to rely on the fact of a criminal conviction as sufficient grounds for denying or revoking a registration under section 5 of the *Act*, without the need to re-litigate the facts underlying the conviction. In the absence of exceptional circumstances, none of which were established on the evidence before this Tribunal, the criminal conviction *per se* constitutes sufficient grounds for the Superintendent's belief that the registrant's business will not be carried on in accordance with law and with honesty and integrity, within the meaning of section 5 of the *Act*.

Given the public policy nature of the *Act* and the goal of protection of the public interest that such registration requirements are designed to achieve, we are of the view that the criminal conviction of Mr. Chatt is, in and of itself, sufficient grounds for the Superintendent's proposal to revoke the registration of Global as described in the NOP.

In view of the legal test which we are to employ in reviewing the NOP, as described above, that finding is sufficient to dispose of this matter, since there was nothing else presented to us in evidence that would indicate that the Superintendent's decision to revoke registration as outlined in the NOP was otherwise in error.

However, given the other evidence that was presented to this Tribunal by both parties in respect of Mr. Chatt's integrity and honesty, we feel compelled to comment on some of that evidence and the weight which we have given to it in reaching our decision.

Other Grounds

Much evidence was presented by the Superintendent in respect of a separate civil proceeding between Mr. Chatt and one of his former partners in a business transaction, Mr. Paul McCreary (who was also the victim in the criminal proceeding). Paul McCreary did not appear before this Tribunal. Instead, his mother, Ms. Pearl McCreary, appeared to give testimony as to the behaviour of Mr. Chatt in connection with her son in that transaction, and the effect that his actions had upon the other parties to that failed transaction.

Much of the evidence given by Ms. McCreary was hearsay. As a tribunal governed by the *Statutory Powers Procedure Act* (Ontario), we are given great latitude to accept hearsay and other forms of evidence. However, although we admitted Ms. McCreary's testimony into evidence, we gave it very little weight, as we found her testimony to be vague, inconclusive and of little relevance to the proceedings before us.

Mr. Chatt appeared before the Tribunal to testify as to his involvement in the transaction underlying his criminal conviction and the civil proceedings involving Mr. Paul McCreary. He also testified that there were other mitigating circumstances explaining his behaviour (namely, his personal illness) and he attested to his integrity and honesty.

In cross-examination, Mr. Chatt conceded that over sustained periods between 1993 to 2000 (i.e. ever since Global had been registered under the *Act*), he had prepared and filed with the Superintendent false or misleading annual information returns ("AIR") in respect of Global's registration under the *Act*. For example, two of the questions on the AIR to be filed by a mortgage broker under the *Act* are as follows:

6. Are there any unpaid judgments outstanding against the applicant? If yes, submit a copy of each judgment. State the amount outstanding and repayment arrangements.

7. Have you ever been convicted or found guilty of an offence under any law of any country, or state, or province thereof or are any such offence proceedings pending? If "yes" give full particulars in a separate statement signed, dated and attached to this application.

On the AIRs filed with the Superintendent by Global from 1993 through 2001, which were entered in evidence before this Tribunal, Mr. Chatt signed the AIR on behalf of Global and answered "no" to each of the foregoing questions.

Yet on cross-examination, Mr. Chatt admitted that he had a prior conviction against him from 1984 and his explanation offered for not reporting that on the AIR was simply that he thought he had obtained a pardon. He did not produce a copy of that pardon and subsequently conceded that pardon had not officially been obtained, he simply believed that he had the pardon when he completed the AIRs.

Moreover, evidence was put before us of separate civil proceedings and judgments against Mr. Chatt from 1997, including the civil proceedings involving Mr. Paul McCreary. Notwithstanding that Mr. Chatt had previously testified in a sworn affidavit that he was aware of the McCreary action in 1997, the AIRs from 1998, 1999 and 2000 all answered "no" in response to the question as to whether there were any unpaid or outstanding judgments against the applicant. Mr. Chatt's explanation was that he simply photocopied and filed the forms without bothering to check for the accuracy of any information therein.

In our view, filing false or misleading returns with the Superintendent is also in and of itself reasonable grounds for the Superintendent's belief that a registrant's business will not be carried on in accordance with the law and with integrity and honesty. Although we have already found based on the fact of the criminal conviction of Mr. Chatt that such grounds exist, combining this with Mr. Chatt's admission that he completed false and/or misleading AIRs with the Superintendent over a period of time, we have no hesitation in finding that the Superintendent has sufficient and reasonable grounds for his belief that Global's business will not be carried on in accordance with law and with integrity and honesty and, as such, for revoking Global's registration under the *Act*.

Finally, based on Mr. Chatt's testimony and his admissions under cross-examination, much like the decision of Mr. Justice Purvis in the criminal proceedings, we found Mr. Chatt's evidence to be vague, evasive and, in short, entirely untrustworthy.

Conclusion

While this Tribunal recognizes that to uphold the NOP will have a severe and negative impact on the ability of Global to carry on the business of mortgage broker, and may in fact cause it to cease that business altogether, the Tribunal must weigh this against the fact that Mr. Chatt has been convicted of a serious criminal offence involving the theft of a significant amount of money, findings by the Court in those proceedings that relate directly to his honesty and integrity and his admission to this Tribunal that he repeatedly filed false and/or misleading AIRs with the Superintendent. The Tribunal must also recognize that the registration requirements embodied in Section 5 of the Act are designed to protect the public interest.

The Tribunal must weigh these competing interests carefully. Having taken into account the requirements of the Act, and all of the facts and surrounding circumstances of this case as presented to the Tribunal, the Tribunal concludes that the interests of the public must be protected, particularly having regard to the trust placed in mortgage brokers and their dealings with third parties and the public.

Order

Accordingly, as noted in the oral reasons for decision dated July 17, 2003, the Tribunal upholds the Superintendent's Notice of Proposal and directs the Superintendent to carry out the terms of the proposal to revoke the registration of Global Mortgage Link Corp.

Any party wishing to make submissions with respect to costs may do so within 30 days following the issuance of these reasons.

Dated at the City of Toronto, this 12th day of January 2004.

"Paul Litner"

Paul Litner

Member of the Tribunal and the Panel

"Kevin Ashe"

Kevin Ashe

Member of the Tribunal and the Panel

APPENDIX "A"

FST File No. MO199-2002

Decision No. M0199-2002-2

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");

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

BETWEEN:

**PETER CHATT
GLOBAL MORTGAGE LINK CORP.**

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Ms. Martha Milczynski
Chair of the Tribunal and of the Panel

Mr. Paul Litner
Member of the Tribunal and of the Panel

Mr. Kevin Ashe
Member of the Tribunal and of the Panel

APPEARANCES:

For Peter Chatt and Global Mortgage Link Corp.
Mr. H. J. Doan

For the Superintendent of Financial Services
Mr. Stephen Scharbach

HEARD:

July 9, 10, 2003

ORAL REASONS FOR DECISION

Global Mortgage Link Corporation is the registrant under the *Mortgage Brokers Act* whose registration the Superintendent has proposed to revoke by way of the Notice of Proposal dated September 18, 2002.

Mr. Peter Chatt is the sole director, officer and shareholder of the corporate registrant.

Having heard and reviewed the evidence and submissions of the parties and with written reasons which will follow, the Tribunal upholds the Superintendent's Notice of Proposal and directs the Superintendent to carry out the terms of the proposal to revoke the registration of Global Mortgage Link Corp.

Any party wishing to make submissions with respect to costs may do so within 30 days following the issuance of the Tribunal's written reasons.

DATED at the City of Toronto, this 17th, day of July, 2003.

“M. Milczynski”

Martha Milczynski
Chair of the Tribunal and of the Panel

“P. Litner”

Paul Litner
Member of the Tribunal and of the Panel

“K. Ashe”

Kevin Ashe
Member of the Tribunal and of the Panel