

FINANCIAL SERVICES TRIBUNAL

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

IN THE MATTER OF a Notice of Proposal of the Superintendent of Financial Services to revoke the registration of Walter Muroff and Company Limited;

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

BETWEEN:

WALTER MUROFF AND COMPANY LIMITED

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Mr. Denis Boivin
Member of the Tribunal and Chair of the Panel

Mr. Colin H.H. McNairn
Chair of the Tribunal and Member of the Panel

Ms. Florence A. Holden
Member of the Tribunal and of the Panel

APPEARANCES:

For Walter Muroff and Company Limited
Mr. Arthur Barat, Q.C.

For the Superintendent of Financial Services
Mr. Robert Conway

HEARD:

May 18, 2007

REASONS FOR DECISION

A. Background

Walter Muroff and Company Limited (“Muroff & Co.”) is registered as a mortgage broker pursuant to the *Mortgage Brokers Act*, R.S.O. 1990, c. M.39 (the “*Act*”). Mr. Walter Muroff is the president of Muroff & Co. He is the only individual registered as a mortgage broker working for the company and, apparently, exercises control and direction over the mortgage brokerage business of the company. On July 17, 2006, the Superintendent of Financial Services (the “Superintendent”) issued a notice of proposal to revoke the registration of Muroff & Co. (the “NOP”) based on subsection 6(2) of the *Act*. This provision states, in part, that the Superintendent “may ... suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant”. The reason invoked by the Superintendent in the NOP is based on the language of subsection 5(1)(b) of the *Act*, namely, “the past conduct of the [registrant] affords reasonable grounds for belief that the [registrant] will not carry on business in accordance with law and with integrity and honesty”. In particular, the Superintendent relies on a history of non-compliance by Muroff & Co. with the requirement contained in subsections 7(4.1) and 7(5.6) of Regulation 798 under the *Act* (the “*Regulation*”), that is, the requirement to file audited annual financial statements within 120 days of the fiscal year end.

Pursuant to subsection 7(2) of the *Act*, Muroff & Co. requested a hearing before this Tribunal in respect of the proposal contained in the NOP. At the beginning of the hearing, which was held on May 18, 2007, counsel for the Superintendent advised that his client now maintains that the registration of Muroff & Co. should be suspended for a period of time rather than revoked. Counsel also advised that the parties had reached an agreement, at a meeting on May 9, 2007, that Muroff & Co. would file monthly financial statements with the Superintendent. Accordingly, a suspension of the registration of Muroff & Co. would be appropriate, in the view of the Superintendent, if it were to be also required to file monthly statements with the Superintendent thereafter.

For the reasons that follow, the Tribunal has decided to order the Superintendent to refrain from carrying out the proposal contained in the NOP, but to order the suspension of the registration of Muroff & Co., as a mortgage broker, for a period of nine months and to order Muroff & Co. to file monthly financial statements with the Superintendent, as a condition of registration, commencing at the end of the period of suspension, all as more particularly set out at the end of these Reasons for Decision.

B. The Issues

Although they are intimately related, two separate issues must be addressed in this case. The first question is whether the past conduct of Muroff & Co. affords reasonable grounds for the Superintendent’s belief that the registrant will not carry on business in accordance with law and with integrity and honesty. If the answer is “no”, there would be no legal basis for the NOP issued in July 2006; hence, there would be no basis for taking any form of remedial action

against Muroff & Co., whether revocation or suspension of its registration. However, if the answer is “yes”, the Tribunal must also determine whether the Superintendent’s current submission to suspend the registration of Muroff & Co. for a period of nine months, as long as the registrant files monthly statements, is justified in the circumstances of this case.

C. The Relevant Facts

The Tribunal heard two witnesses during the hearing: (a) Mr. Walter Muroff, the apparent principal of Muroff & Co.; and (b) Mr. Chuck Andrews, Senior Manager with Prudential Compliance, a division of the Financial Services Commission of Ontario, in charge of the enforcement of licensing requirements, including those under the *Act*. What follows is a summary of the undisputed oral and documentary evidence received by the Tribunal. Generally speaking, this evidence can be divided into three main categories: (1) evidence that pertains to when the annual financial statements of Muroff & Co. were filed over the past 18 years; (2) evidence that pertains to why a number of delays in filing occurred; and (3) evidence with respect to the character of Mr. Walter Muroff.

(1) The Timeliness of Filings

The NOP does not mark the first time that the conduct of Muroff & Co. as a registered mortgage broker has been the basis of enforcement proceedings by the Ontario regulatory authorities. On May 18, 1995, the Registrar of Mortgage Brokers, a predecessor to the Superintendent as the responsible official under the *Act*, (the "Registrar") issued a notice of proposal to revoke the registration of Muroff & Co. on a number of grounds, including its unwillingness or inability to maintain its books and records on a current basis and in accordance with generally accepted accounting principles. In this notice, the Registrar referred to two convictions entered against Muroff & Co. under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the "*POA*") for the late filing of its annual financial statements, namely: (i) a conviction of August 25, 1992, with respect to the financial statements for 1989, which led to a fine of \$500; and (ii) a conviction of November 29, 1994, for the late filing of financial statements for 1993, which led to a fine of \$1,000. The Registrar also noted problems with the financial statements for 1990 (they were 224 days late), 1992 (the trust records were inadequate) and 1994 (they were unaudited).

Muroff & Co. requested a hearing with respect to the Registrar's notice of proposal of May 18, 1995. However, the parties reached a settlement on the eve of the hearing. Pursuant to an agreement signed June 4, 1996, the Registrar withdrew his proposal to revoke the registration of Muroff & Co. and, in exchange, Muroff & Co. agreed to the addition of a number of terms and conditions to its registration. For present purposes, the most important term and condition reads as follows: “Muroff acknowledges the importance of filing its audited financial statements annually within 120 days of its year-end, as required by subsections 7(4.1) and 7(4.2) of the *Regulation* under the *Act*.” The 1996 fiscal year of Muroff & Co. ended on July 31, 1996, almost two months after the settlement reached with the Registrar. Accordingly, under the *Regulation*, Muroff & Co. had until the end of November 1996 in order to file its audited annual financial statements for 1996. However, these statements were not filed for another twelve months, that is, until November, 1997. This late filing led to another conviction under the *POA*. Pursuant to this

third conviction, Muroff & Co. was fined \$3,500 and Mr. Walter Muroff was personally fined \$3,500.

Following the 1997 conviction, Muroff & Co. complied with the financial statement filing requirements, contained in the *Regulation*, for a period of four consecutive years. The statements for the years 1997, 1998, 1999 and 2000 were all filed within 120 days of the respective year ends. However, this period of compliance was followed by six consecutive late filings – a cycle of lateness that counsel for the Superintendent aptly describes as “chronic”. The following table summarises the delays in question as well as the repercussions on Muroff & Co. to date:

Fiscal Year Ending	Financial Statements Due	Actual Filing Date	Delay	Repercussions on Muroff & Co.
July 31, 2001	November 28, 2001	April 26, 2004	29 months	Guilty plea entered under <i>POA</i> on April 26, 2004 \$2,000 fine
July 31, 2002	November 28, 2002	April 26, 2004	17 months	Guilty plea entered under <i>POA</i> on April 26, 2004 \$600 fine
July 31, 2003	November 28, 2003	October 20, 2005	23 months	Guilty plea entered under <i>POA</i> on October 20, 2005 \$2,000 fine
July 31, 2004	November 28, 2004	October 20, 2005 (unaudited)	11 months (unaudited)	Guilty plea entered under <i>POA</i> on October 20, 2005 \$1,000 fine
		January 19, 2007 (audited)	26 months (audited)	None to date
July 31, 2005	November 28, 2005	January 19, 2007	14 months	None to date
July 31, 2006	November 28, 2006	January 19, 2007	51 days	None to date

The evidence establishes that Muroff & Co. filed its annual financial statements for the four years from 2001 to 2004 on the same days as it entered guilty pleas, for its late filing of those statements, under the *POA*. It filed its overdue statements for 2005 and 2006 on January 19, 2007, after the Superintendent issued the NOP in the present case and approximately two months before the date on which we were originally scheduled to hold the hearing in this matter.

The evidence also establishes that Muroff & Co. has been late in filing financial statements for nine separate fiscal years (1989, 1990, 1996 & 2001-2006) during a period of eighteen years, that is, from 1989 to 2006. The evidence indicates that, during this same period, Muroff & Co. filed financial statements on time for the years 1992, 1994 (although the statements were unaudited), 1997, 1998, 1999, and 2000. There is no evidence before the Tribunal with respect to the years 1991 and 1995, although one can reasonably assume that these statements were filed on time since counsel for the Superintendent would have likely brought it to our attention if it were otherwise. Over the course of the past eighteen years, Muroff & Co. has been late as many times as it has been on time. What’s more, the average delay in filing audited statements for the last six fiscal years (2001-2006) has been 18.5 months.

Lastly, the evidence establishes that, during the period from 1989 to 2006, there have been seven separate convictions entered against Muroff & Co. under the *POA* with respect to the late filing of its annual financial statements. These convictions have led to the imposition of fines totalling \$10,600 against Muroff & Co. (fines of \$3,500 have been entered against Mr. Walter Muroff personally in respect of similar conduct).

(2) Explanations for the Delays

Counsel for Muroff & Co. tendered evidence to explain some of the delays identified above. In particular, the Tribunal received oral testimony and documentary evidence outlining a number of administrative, logistical and human resource difficulties encountered by Muroff & Co. over the past years. These problems can be summarised as follows:

- The requirement to file annual financial statements that were audited became effective on June 13, 1992. This change substantially increased the administrative workload of Muroff & Co. and its costs of compliance.
- Initially, there was a disagreement between the parties with respect to the interpretation of the new filing requirements. However, it should be noted that by the time the parties reached an agreement on June 4, 1996, these requirements were seemingly understood.
- The accountant used by Muroff & Co. (Mr. Alexander R. Menzies) is a sole practitioner and, according to his interpretation of the law, he is now required to have an outside chartered accountant participate in the audit process.
- During April 1999, Muroff & Co. lost four long-term members of its loan development staff. According to Mr. Muroff, this situation caused a major disruption in the operation of his business.
- Muroff & Co. is a small mortgage company and it encountered difficulties in finding replacement employees, due to competition from large “super brokerages” and to the proliferation of new small companies in the local industry.
- The computerised systems of Muroff & Co. were based on the New Views Accounting System, a software program that is apparently not widely used and not known by many potential replacement employees.
- Sadly, Mr. Muroff’s wife became very ill in July 2005 and, although she began a gradual recovery, she suffered a relapse in August 2006. This difficult situation affected his ability to work long hours.

(3) Character Evidence

The Tribunal also received evidence with respect to the character of Mr. Walter Muroff. By way of background to this evidence, we note that Muroff & Co. has been carrying on business as a registered mortgage broker for nearly 50 years, that is, since July 5, 1960. The company has always been physically located in Windsor, Ontario. During this period of operation, there have been no reported consumer complaints against Mr. Muroff personally or against Muroff & Co. Since the registration of Muroff & Co., the primary compliance issue that has been raised by the Superintendent, and his predecessor, the Registrar, has been the lateness in filing annual financial statements.

The Tribunal received evidence with respect to the many offices, directorships, and memberships held by Mr. Muroff in the Windsor community, including the following positions: President of the Windsor Mortgage Lenders Association (1987-1988); President of the Society of Mortgage Finance (1978-1981); President of the Ontario Mortgage Brokers Association (1970-1971); Director of the Ontario Development Corporation (1989-1997); Director of Transit Windsor (1989-1993); Commissioner of the Windsor Tunnel Commission (1990-present); Director of the Ontario Mortgage Brokers Association (1960-1993); Member of the Windsor Chamber of Commerce (1960-present); and Member of the Windsor Essex County Real Estate Board (1965-1992). Clearly, over the past fifty years, Mr. Muroff has not contented himself with operating a mortgage brokerage; he has contributed countless hours to the social, economic and political fabric of his local community.

Counsel for Muroff & Co. also submitted three letters of reference regarding Mr. Walter Muroff. These letters are written by individuals who have known Mr. Muroff for many decades and who have had numerous social and business dealings with him. With varying degrees of detail, each letter attests to the sincerity, integrity, and professionalism of Mr. Muroff.

D. The Analysis

(1) The Legal Basis for the NOP

The registration process established by sections 4 to 7 of the *Act* serves a dual purpose. First, the requirement that every mortgage broker operating in Ontario must be registered allows the Superintendent to perform a gate-keeping function in the public interest. This requirement ensures that only certain individuals and corporations are allowed to perform mortgage transactions with the public; individuals and corporations that are financially responsible and that are likely to carry on their businesses with integrity, honesty and in accordance with the law. Second, the continuous nature of the registration process allows the Superintendent to perform a supervisory role in the public interest. When a registrant fails to live up to the requirements of registration, the Superintendent has the discretion to refuse to renew, suspend, revoke or impose conditions on a mortgage broker's registration. The ability to broker mortgage transactions in Ontario is a privilege, not an inherent right. This privilege is subject to a number of requirements that must be met on an on-going basis.

The statutory basis for the proposal contained in the NOP is found in subsection 6(2) of the *Act*. This provision states that the Superintendent "may refuse to renew or may suspend or revoke" a mortgage broker's registration for either of two reasons, namely, a reason that would disentitle a registrant to registration under s. 5 of the *Act* or a breach by the registrant of a term or condition of registration. In the present case, the terms of the NOP indicate that the Superintendent has invoked, as the reason for taking remedial action, the fact that Muroff & Co. would be disentitled to registration under section 5 of the *Act*, in particular because its past conduct "affords reasonable grounds for belief that [Muroff & Co.] will not carry on business in accordance with law and with integrity and honesty" (see subsection 5(1)(b)).

This Tribunal has the authority, under subsection 7(4) of the *Act*, to make an order, following upon its hearing, directing the Superintendent to carry out the proposal in the NOP or to refrain from carrying out that proposal “and to take such action as the Tribunal considers the Superintendent ought to take in accordance with [the] *Act* and the [*Regulation*], and for such purposes the Tribunal may substitute its opinion for that of the Superintendent.” By the terms of subsection 7(5) of the *Act*, the Tribunal may also attach such terms and conditions to its order or to the registration of Muroff & Co. as it considers proper to give effect to the purposes of the *Act*.

(2) *The Standard of Review*

The first issue that the Tribunal must address is whether the grounds invoked by the Superintendent in his NOP provide a sufficient basis for taking some kind of remedial action against Muroff & Co. under subsection 6(2) of the *Act*, as read with subsection 5(1)(b) of the *Act*. In addressing this issue, the Tribunal must keep in mind the case-law that interprets subsections 5(1)(b) and 7(4) of the *Motor Vehicle Dealers Act*, R.S.O. 1990, c. M. 42, two provisions that are identical to subsections 5(1)(b) and 7(4) of the present *Act*. In particular, in reviewing the grounds invoked by the Superintendent in his NOP, there is no reason in principle or logic to depart from the legal test adopted in *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)*, [1983] O.J. No. 1017 (Div. Ct.) (*Brenner*), as clarified in *Ontario (Motor Vehicle Dealers Act, Registrar) v. Shine Car Sales*, [2003] O.J. No. 603 (Div. Ct.) (*Shine Car*). These cases make it clear that, under the *Motor Vehicle Dealers Act*, it is not necessary to establish that the Registrar was wrong in having concluded that there was reason to doubt that the registrant would carry on business appropriately. Moreover, it is not necessary to show deference to the Registrar in reviewing his decision. The proper test is stated in para. 12 of *Brenner*:

The proper question at the rehearing remains, however, whether the past conduct of the applicant 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.

Accordingly, the Tribunal must determine whether the past conduct of Muroff & Co. affords reasonable grounds to believe that it will not carry on business in accordance with law and with integrity and honesty such that some form of disciplinary action is appropriate.

(3) *Sufficiency of the Superintendent’s Grounds*

We have concluded that the grounds for the proposal, contained in the NOP, that were invoked by the Superintendent provide a sufficient basis for taking remedial action against Muroff & Co. under subsection 6(2) of the *Act* as read with subsection 5(1)(b) of the *Act*. On this point, the evidence with respect to the timeliness of the registrant’s filings speaks for itself. As revealed by this evidence, the Superintendent and his predecessor, the Registrar, have had to deal with numerous failures by Muroff & Co., over the past two decades, to comply with the financial statement filing requirements imposed by the *Regulation*. The explanations provided by Mr. Muroff may justify some of the delays that occurred when these delays are viewed in isolation. As we shall discuss, these explanations may also be relevant when assessing the nature of the remedial action proposed by the Superintendent. However, the administrative, logistical, and

human resource difficulties encountered by Muroff & Co. cannot excuse altogether a serious problem that has been diagnosed as early as May 1996 and that has manifested itself on a recurring basis.

In challenging the grounds upon which the Superintendent based his proposal, counsel for Muroff & Co. places considerable emphasis on the character evidence with respect to Mr. Walter Muroff described above. He does not dispute the fact that his client knowingly failed to observe the law, that is, the requirement for filing audited financial statements within 120 days of the end of each fiscal year. However, he argues that such illegal actions do not impugn the integrity or honesty of Muroff & Co. or its president, notwithstanding their recurring nature. According to counsel, a mere breach of the law is not a sufficient ground for taking remedial action against a mortgage broker under subsection 6(2) of the *Act*; the breach must be of such a nature to throw into question the moral rectitude of the registrant. To support this claim, counsel for Muroff & Co. not only relies on evidence of Mr. Muroff's good character, but he also points to the conjunction placed between "in accordance with law" and "with integrity and honesty" in subsection 5(1)(b) and to the fact that the only precedent uncovered in which similar wording was interpreted (*Peter Chatt and Global Mortgage Link Corp. v. Superintendent of Financial Services* (July 17, 2003) (Financial Services Tribunal) (No. M0199-2002-2) in which subsection 5(1)(c)(ii) was interpreted) involved conduct of a criminal nature, namely, the theft of some \$125,000 committed by the sole shareholder and director of the registrant corporation.

The Tribunal acknowledges that the wording of subsection 5(1)(b) of the *Act* is unclear and that this language is open to at least two interpretations. Interpreted literally, it would appear that this provision requires conduct that is **more** than merely illegal in order to justify a decision to revoke, to suspend or to refuse to renew a mortgage broker's registration; said conduct should **also** call into question the integrity and honesty of the broker. Otherwise, it can be reasonably argued, the legislature would have chosen the word "or" in order to separate the qualifiers found in subsection 5(1)(b). Stated differently, a literal approach suggests that the "and" placed between "in accordance with law" and "with integrity and honesty" should be interpreted conjunctively rather than disjunctively. This interpretation is supported by the fact that the disciplinary measures found in subsection 6(2) can have serious repercussions on a mortgage broker's ability to earn a living, and thus should not be available with respect to a technical breach of the law that is immaterial to the mortgage industry; a danger that could materialise under a disjunctive interpretation of subsection 5(1)(b).

However, there is an alternative interpretation for subsection 5(1)(b). Conceivably, the expression "in accordance with the law and with integrity and honesty" should not be divided into two distinct components that must be interpreted either conjunctively or disjunctively, but should be interpreted as a whole in conformity with the legislative objectives of the registration process established by sections 4 through 7 of the *Act*. As previously noted, these provisions give the Superintendent discretion to exercise both a gate-keeping role and a supervisory role in the public interest, that is, to protect the public from individuals and corporations who may jeopardise the financial interests of the stakeholders of the mortgage brokerage industry. Under a purposeful interpretation, subsection 5(1)(b) is triggered when the past conduct of the applicant or registrant affords reasonable grounds to believe that the public may be endangered unless the

Superintendent takes some form of remedial action such as imposing terms or conditions on registration, refusing to register, or revoking, suspending or refusing to renew registration. Under this approach, the threshold question is not **how** to qualify the past conduct of the applicant or registrant, but **whether** said conduct provides reasonable grounds for discipline given the fact that the registration requirements embodied in section 5 of the *Act* are designed to protect the public interest. Accordingly, the danger expressed in the previous paragraph disappears: under a purposeful interpretation, a decision to refuse to renew, to revoke or to suspend a mortgage broker's registration cannot be based on a technical breach of the law, unrelated to the underlying regulated activity.

The Tribunal concludes that it is not necessary, in this case, to choose between the two competing interpretations of subsection 5(1)(b) of the *Act* because the grounds invoked by the Superintendent are supported by both approaches. Indeed, even if the “and” placed between “in accordance with law” and “with integrity and honesty” is interpreted conjunctively, the past conduct of Muroff & Co. affords reasonable grounds for the Superintendent's proposal. In essence, counsel for the registrant asks the Tribunal to determine whether the failure to file audited financial statements on time shows a lack of integrity and honesty on the part of his client. In other words, counsel asks the Tribunal to characterise an omission that has already occurred and to label it accordingly in view of the character evidence adduced during the hearing. However, we would pose the question differently, that is, prospectively. Subsections 5(1)(b) and 6(2) of the *Act* allow the Superintendent to suspend, to revoke or to refuse to renew a broker's registration when “the past conduct of the [registrant] affords reasonable grounds for belief that the [registrant] **will not carry on business** in accordance with law and with integrity and honesty” [emphasis added]. Accordingly, even when this provision is interpreted literally, the question is not whether the past illegal conduct of Muroff & Co. also demonstrates a lack of integrity and honesty on its part, but whether there is a reasonable likelihood that this pattern of behaviour will continue in the future. Indeed, if the evidence suggests that the registrant will probably continue to knowingly disrespect the timing requirements imposed by the law, how can it be said that the registrant “will [...] carry on business in accordance with the law and with integrity and honesty”? Surely, with respect to mortgage brokers, indicia of integrity and honesty include the willingness to obey legal requirements that are known, that have been acknowledged as being important, and that have led to multiple convictions under the *POA*. Otherwise, the hands of the Superintendent would be literally tied: the registrant could continue breaking the law with relative impunity, at least in so far as subsection 6(2) of the *Act* is concerned. In this case, the evidence discloses that Muroff & Co. has both knowingly and repeatedly failed to observe the filing requirements imposed by the *Act* and its regulation. Given this evidence, the likelihood of a future infringement is real, notwithstanding the evidence adduced with respect to the character of Mr. Muroff.

The Superintendent's proposal can also be supported by a purposeful interpretation of subsection 5(1)(b). Indeed, the conduct at issue is neither a technical violation of the law nor behaviour immaterial to the field of mortgage transactions. Muroff & Co. has repeatedly and knowingly failed to submit its audited financial statements on time. Without the **timely** filing of these statements, the Superintendent may be unable to exercise his supervisory function effectively. The financial statements of a mortgage broker can reveal problems that put the public at risk and

call for regulatory action against that broker. There was no evidence to suggest that any borrowers or lenders were actually jeopardised by the delays in the filing of financial statements by Muroff & Co. However, this is not the issue. The question is whether something **could** occur in the future if nothing is done to make this broker understand the importance of timeliness. The disciplinary measures taken over the past years, including the agreement reached in 1996 and the many convictions under the *POA*, have not produced this awareness. Thus, notwithstanding the character evidence adduced by counsel for Muroff & Co., the Superintendent is justified in taking further remedial action under subsection 6(2) of the *Act*, as read with subsection 5(1)(b) of the *Act*.

Having reviewed the evidence and having heard the submissions, the Tribunal concludes that the past conduct of Muroff & Co. provides grounds that are both reasonable and substantial to support the Superintendent's belief that, unless some disciplinary measure is undertaken, the registrant will not carry on business "in accordance with the law and with integrity and honesty".

(4) Proposed Remedial Action

Although the Superintendent's belief is founded on reasonable grounds, the Tribunal must now address the appropriateness of the remedial action proposed. Subsection 6(2) of the *Act* gives the Superintendent discretion to impose one of three distinct measures: (1) refusal to renew a registration; (2) suspension of a registration; and (3) revocation of a registration. Naturally, there should be a rational connection between the grounds invoked by the Superintendent and the proposed remedy. Circumstances that may justify a refusal to renew a registration or a suspension thereof may not be sufficient to justify a decision to revoke a mortgage broker's registration. Likewise, there will be a difference in the circumstances that may justify a three-month suspension and those that may justify a three-year suspension.

In this case, the disciplinary measure proposed in the NOP is no longer being sought. Although the NOP proposes to revoke the registration of Muroff & Co., in view of the registrant's chronic lateness in filing financial statements, counsel for the Superintendent made a different submission at the hearing. He argued that a nine-month suspension would be appropriate, provided the registrant agrees to submit unaudited financial statements on a monthly basis. Muroff & Co. is prepared to make this commitment. However, its counsel argued that such an agreement would be sufficient, by itself, in order to prevent future late filings. In his view, a suspension is not required in light of the circumstances of this case. In this respect, counsel for Muroff & Co. relies primarily on the explanations given by his client over the years and on the character evidence presented with respect to Mr. Walter Muroff. Counsel also argued that a suspension would have serious financial repercussions on his client. However, during his cross-examination, Mr. Muroff refused to provide details about the alleged financial implications of a suspension.

In determining what remedial action is appropriate under subsection 6(2) of the *Act*, the Superintendent should take into consideration the explanations provided by the registrant for the conduct under review. In the present case, nothing suggests that the Superintendent disregarded the reasons given by Muroff & Co. over the years. In fact, the Superintendent and his

predecessor the Registrar have demonstrated considerable restraint in this respect. They have proposed to revoke Muroff & Co.'s registration only after other enforcement measures – the agreement reached in 1996 and the seven prosecutions under the *POA* – have failed to result in timely compliance with the filing requirements. Even now, after six consecutive late filings, the Superintendent simply proposes, in argument before the Tribunal, that we suspend (not revoke) the registration of Muroff & Co. for a relatively short period of time, namely, nine months. This change of position, coupled with the restraint exercised by the Superintendent in the past, suggests that the Superintendent carefully weighed the facts before intervening and chose a remedy tailored to the circumstances of this case.

Much the same can be said about the character evidence adduced by counsel for Muroff & Co. Such evidence may be relevant in determining what action is required under subsection 6(2) of the *Act*. In this case, the absence of any consumer complaints against the registrant, the involvement of Mr. Muroff in his local community, and the long-standing presence of his company in Windsor cumulatively suggest that revocation of his company's registration may not be a proportional response to the problem diagnosed by the Superintendent. However, the appropriateness of revocation is a moot point in light of the position now taken by the Superintendent.

Having reviewed the evidence and having heard the submissions, the Tribunal concludes that the submission made on behalf of the Superintendent is both sensible and reasonable. The proposed disciplinary measure is directly proportional to the grounds invoked by the Superintendent, namely, the chronic lateness of Muroff & Co. in filing its financial statements. Not only does this measure sanction the registrant for past shortcomings, it is tailored to ensure future compliance with the filing requirements imposed by the law.

E. The Order

The Tribunal, therefore, orders with effect from the date of these Reasons for Decision as follows:

1. The Superintendent is directed to refrain from carrying out the proposal contained in the notice of proposal, dated July 17, 2006, to revoke the registration of Walter Muroff and Company Limited, as a mortgage broker, under the *Mortgage Brokers Act*.
2. The registration of Walter Muroff and Company Limited, as a mortgage broker, under the *Mortgage Brokers Act*, is suspended for a period of nine months from the date of this order.
3. The registration of Walter Muroff and Company Limited, as a mortgage broker, under the *Mortgage Brokers Act*, shall have attached thereto the following additional terms and conditions:
 - (a) Within 45 days of month-end, the registrant will file with the Superintendent a statement of profit and loss and a balance sheet and, if the registrant has held money or assets in trust or under administration, directly or indirectly, at any time during the month reported

on, the registrant will also file a trust reconciliation for that month;

(b) The first monthly filing will be due 45 days after the first day of the month which follows the nine month suspension of the registration of the registrant.

4. The terms and conditions that are attached to the registration of Walter Muroff and Company Limited, as a mortgage broker, under the *Mortgage Brokers Act*, by this order shall remain in force subject only to variation or removal by the Superintendent of Financial Services.

DATED at the City of Toronto, this 10th day of August, 2007.

“Denis Boivin”

Denis Boivin
Member of the Tribunal and Chair of the Panel

“Colin H.H. McNairn”

Colin H.H. McNairn
Chair of the Tribunal and Member of the Panel

“F. Holden”

Florence A. Holden
Member of the Tribunal and of the Panel