

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c.29 ("the Act");

AND IN THE MATTER OF the Superintendent's Notice of Proposal to Refuse to Issue a Mortgage Agent's Licence to Ms Patrice De-Ann Gooding, dated August 28, 2008;

AND IN THE MATTER OF Ms Gooding's Request for a Hearing in accordance with Section 21 of the Act

BETWEEN:

PATRICE DE-ANN GOODING

Applicant

- **And** -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Ms. Elizabeth Shilton
Member of the Tribunal and Chair of the Panel

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

Mr. Jeffrey Richardson
Member of the Tribunal and Member of the Panel

APPEARANCES:

Ms Patrice Gooding, the Applicant, in person
Ms Larissa Easson for the Superintendent of Financial Services

HEARD:

November 7, 2008

REASONS FOR DECISION

A. BACKGROUND AND STATUTORY FRAMEWORK

Patrice Gooding has been employed by Ontario Mortgage Action Centre Ltd. (“OMAC”) since 2004 as a mortgage agent. At the time she was first employed by OMAC, mortgage agents were not required to be licensed in Ontario. A licensing requirement was imposed by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c.29 (“the Act”) effective July 1, 2008. On June 11, 2008, Ms Gooding submitted an application to the Superintendent of Financial Services (“the Superintendent”) for a licence as a mortgage agent. On August 28, 2008, the Superintendent responded by issuing a Notice of Proposal (“NOP”) to refuse to issue Ms Gooding a licence. The reasons accompanying the NOP indicated that the Superintendent’s decision was based on his belief that Ms Gooding’s past conduct afforded reasonable grounds for the belief “that Ms Gooding will not deal or trade in mortgages in accordance with the law and with integrity and honesty” (NOP, para. 12). The past conduct relied upon arose in connection with Ms Gooding’s 2005 conviction for fraud over \$5,000. In accordance with s.21(3) of the Act, Ms Gooding requested a hearing before this Tribunal, asking that she be issued a licence.

When confronted with an application for a hearing in circumstances like those before us, the Tribunal has three options:

- a. It may decide that the applicant is not suitable to be licensed, and confirm the Superintendent’s decision by directing the Superintendent to refuse to issue the licence;
- b. It may decide that the applicant is suitable to be licensed, and direct the Superintendent to issue the licence without conditions; or
- c. It may decide that the applicant is suitable to be licensed on such conditions as it determines to be appropriate, and direct the Superintendent to issue a conditional license accordingly.

Based on all the circumstances, we have determined that the third option is the appropriate one in this case. In our view, Ms Gooding should be licensed as a mortgage agent, subject to conditions as discussed below.

The reasons for our decision are as follows.

B. STATUTORY FRAMEWORK

As noted above, the Act requires that mortgage agents be licensed by the Financial Services Commission of Ontario (s.2(3)). Under the Act, mortgage agents can operate only on behalf of mortgage brokerages (s.2(3)); in fact, the licence of a mortgage agent is restricted to operating on behalf of a specific licensed brokerage (s.9(2)). Agents are generally licensed on two-year licensing cycles; at the end of each licensing cycle, they must apply for a renewal of their licence, and have their qualifications and suitability reassessed by the Superintendent (O. Reg. 409/07, s.8.1). According to subsection 8.1(3) of O. Reg. 409/07, the licence of any agent initially licensed between July 1, 2008 and April 1, 2010 expires on March 31, 2010.

The process for obtaining a licence as a mortgage agent is as follows. The applicant makes an application to the Superintendent. Section 14 of the Act provides that on receiving such an application:

(1) The Superintendent shall issue a licence to an applicant who satisfies the prescribed requirements for the licence unless the Superintendent believes, on reasonable grounds, that the applicant is not suitable to be licensed having regard to such circumstances as may be prescribed and such other matters as the Superintendent considers appropriate.

Section 10 of O. Reg. 409/07 outlines the prescribed circumstances referred to in s.14(1):

In determining whether an individual is not suitable to be licensed as a mortgage broker or agent, the Superintendent is required by subsections 14(1) and 16(4) of the Act to have regard to the following prescribed circumstances:

1. Whether the individual's past conduct affords reasonable grounds for belief that he or she will not deal or trade in mortgages in accordance with the law and with integrity and honesty.
2. Whether the individual is carrying on activities that contravene or will contravene the Act or the regulations if he or she is licensed.
3. Whether the individual has made a false statement or has provided false information to the Superintendent with respect to the application for the licence.

In this case, the Superintendent based his proposal to refuse Ms Gooding's application solely on "past conduct", as contemplated by s.10¶1 of the Regulation.

Section 14(2) of the Act provides that:

If the Superintendent proposes to refuse to issue a licence to the applicant, the Superintendent shall take the steps required by section 21 or 22.

Under s. 21(2),

The Superintendent shall give written notice of the proposal to the applicant or licensee, including the reasons for the proposal; the Superintendent shall also inform the applicant or licensee that he, she or it can request a hearing by the Tribunal about the proposal and shall advise the applicant or licensee about the process for requesting the hearing.

If the applicant does request a hearing, the statute provides that upon hearing the case:

The Tribunal may, by order, direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent and the Tribunal may impose such conditions as it considers appropriate in the circumstances.

Tribunal jurisprudence to date makes it clear that the Tribunal hears these cases *de novo*; the Tribunal must make its own independent determination as to the suitability of the applicant to be

licensed: see *Henderson v. Superintendent of Financial Services*, FST Decision No. M0319-2008-1, p.8; *Alves v. Superintendent of Financial Services*, FST Decision No. M0315-2008-1, p.10; *Anandappa v. Superintendent of Financial Services*, FST Decision No. M0320-2008-1, p.8; *Glaude v. Superintendent of Financial Services*, FST Decision No. M0325-2008-1, p.7. This is not an appeal, and the Tribunal owes no deference to the Superintendent's determination in coming to its own conclusions.

C. THE FACTS

Much of the evidence in this case was placed before the Tribunal through an Agreed Statement of Facts and an Agreed Book of Documents. In addition, the applicant Ms Gooding testified herself, and called one additional witness, Mr. Michael Mullis, a licensed mortgage agent who has worked with her in the Brampton office of OMAC. The Superintendent called no additional evidence.

The evidence as a whole established that in 2004, Ms Gooding was charged with fraud over \$5,000. Subsequently, on November 25, 2005, she was convicted of this offence and received a conditional sentence of two years less a day. Because the sentence was conditional, Ms Gooding was not required to serve custodial time. The sentence also included a restitution order in the amount of \$71,575. She was given 5 years to make restitution, in the amount of \$14,315 per year. In order to ensure that she continued to be under court supervision until restitution was complete, the sentence also included three years probation, to be served at the end of her conditional sentence. She continues to meet with a probation officer every six months to monitor the restitution order. Her probation and the five year period in which restitution must be made will expire two years from now, in November of 2010. There is no evidence before the Tribunal that Ms Gooding has failed to meet any of the terms of the sentence imposed on November 25, 2005, including the terms of her probation order.

The circumstance under which this offence took place are described in the Agreed Statement of Facts as follows:

The facts giving rise to the conviction arose as follows. At the relevant time, Ms Gooding was employed as a Financial Associate with TD Canada Trust, dealing with lending and investments. Sometime in or about 1997, she had used a line of credit, opened in the name of an extended family member, to pay for her immediate family's expenses, without the knowledge of the extended family member. She continued to do so until the limit on that line of credit, \$20,000 had been reached. Ms Gooding then opened overdraft accounts on other chequing accounts to pay the monthly installments on the line of credit, which she could not otherwise afford to pay; and eventually opened a further line of credit and further overdraft accounts to meet payment and interest obligations. She used the personal information from other family members to open all these accounts in their names, again without their consent. She moved money back and forth between accounts in an attempt to keep up payments, to pay her house bills, and to hide her conduct, for a period of 6 years.

In June 2003, her employer discovered what Ms Gooding was doing and she was dismissed from her job. She was charged with the offence of fraud over \$5,000 in 2004.

The total amount of debt she had accumulated in her family members' names was \$108,000.00; or \$71,575.00 without interest. (Agreed Statement of Facts, paras.3-5)

On June 11, 2008, Ms Gooding submitted an electronic application to the Superintendent for a mortgage agent's licence (Agreed Book of Documents, Tab 1). In Step V of the electronic application, she answered "yes" to a question regarding any past criminal convictions and provided the following details:

Fraud over \$5000.00 Criminal charges in 2005. I fraudulently operated Creditline of family members and could not payback all at once. I was ordered by the court to payback \$14315.00 annually for the next 5 years. I did a 2 year conditional sentence which is now completed. I am very remorseful for my actions and it will never happen again.

In Step V of the application, Ms Gooding also disclosed that she had declared bankruptcy as a result of the fraud charges, and that her employment with TD Bank had been terminated in 2003 "because of this fraudulent [sic] charge".

On June 27, 2008, a representative of the Superintendent sent a letter to Ms Gooding requesting a full explanation of the circumstances surrounding the charges disclosed in the electronic application and of the corresponding court disposition (Agreed Book of Documents, Tab 2). In a letter dated July 3rd, 2008, Ms Gooding responded by facsimile to the Superintendent's request for further information (Agreed Book of Documents, Tab 5). However, because of a mistake in the facsimile's transmission, this letter was not received by the Superintendent until July 16, 2008, after a second notice was sent to Ms Gooding. On July 18, 2008, the Superintendent also received an email from Claire Providenti, OMAC's Principal Broker, indicating that she was aware of Ms Gooding's offence and the nature of that offence, and that she was willing to have Ms Gooding licensed under her Brokerage (Agreed Book of Documents, Tab 8).

In her oral testimony, Ms Gooding addressed both the circumstances of the offence and the nature of her current duties at OMAC. Under cross-examination, she testified that although she did not "own up" to her fraudulent conduct until confronted by her employer in May of 2003, she was fully aware that she was doing wrong and had ceased taking additional moneys in 2001. When confronted by her employer at TD Canada Trust, she provided a full confession of her misconduct, and pleaded guilty at trial. She testified to her remorse, and her desire to rebuild her life and her career. In her testimony, she made no attempt to excuse or minimize the nature or the seriousness of her offence.

Ms Gooding also testified that when she applied for the mortgage agent's position with OMAC in 2004, she was "honest and truthful" with the broker about her past. Her testimony was that the brokerage wanted to help her rebuild her career, and worked with her to set up a system in which all her work is double-checked before it goes outside the company by both Mr. Mullis, another mortgage agent (now licensed) in OMAC's Brampton office, and by Claire Providenti, the

Principal Broker working out of OMAC's head office. Ms Gooding testified that she was very willing at that time to work under these arrangements, and continues to be willing to do so.

Ms Gooding also called Mr. Michael Mullis, licensed mortgage agent, as a witness. Mr. Mullis has worked with Ms Gooding at OMAC for the past four years, and gave evidence both about her work at OMAC, and her character. He testified that OMAC in general kept a "tight handle" on the work done under its auspices, and was very much in favour of the new and tighter regulatory regime for the mortgage industry. He described Ms Gooding as a "perfect fit" with OMAC's ethical philosophy. He corroborated Ms Gooding's evidence that all her files were reviewed and signed off both by himself, and by the broker, Ms Providenti. It was his evidence that OMAC values Ms Gooding's services and she is popular with clients. He testified that no complaints have ever been made about her work as a mortgage agent (a fact acknowledged by the Superintendent). He noted that since July 1, 2008, OMAC has kept her on doing work for which a licence is not required. He further noted, however, that there isn't much work of that sort at OMAC, and it is clear that Ms Gooding's long-term prospects with OMAC depend on the outcome of this hearing.

D. THE DECISION

i. General

The issue before us in this case is whether Ms Gooding is suitable to be issued a licence as a mortgage agent, and if so, whether that licence should be issued on conditions. The Tribunal takes a contextual approach to these issues, bearing in mind that determinations of suitability are questions of fact, to be made on an individual basis, having regard to the unique circumstances of each particular case. In all cases, of course, the Tribunal is mindful of the important role of the licensing process in the protection of the public interest, from the perspective both of protecting the public from fraudulent and unethical conduct by persons engaged in the mortgage industry, and of protecting public confidence in the mortgage industry as a whole. However, while the public interest is paramount, in making its assessment of suitability the Tribunal must also be mindful that denial of a licence may have very severe consequences for the applicant: see *Henderson, supra*, p.8; *Alves, supra*, p.10; *Anandappa, supra*, p.8; *Glaude, supra*, p.7.

In making its determination as to whether or not a particular applicant is suitable to be licensed, each case must be addressed on its own merits. For the Superintendent, Ms Easson drew our attention to the factors outlined in *Henderson v. Superintendent of Financial Services, FST File No. M0319-2008* (p.9), as relevant to a determination as to whether past misconduct continues to afford reasonable grounds for a belief that the applicant will not deal or trade in mortgages in accordance with the law and with integrity and honesty. That list of factors includes the length of time that has elapsed since the impugned conduct occurred, the prolonged or repetitive nature of the misconduct, whether the conduct was advertent or inadvertent, the extent to which the conduct calls into the question the applicant's integrity and honesty, and the closeness of the nexus between the misconduct and the activities of a mortgage agent. All the listed *Henderson* factors were clearly relevant in the *Henderson* case, and we have no doubt that many of them would be relevant in most cases involving past misconduct. As the *Henderson* case itself makes

clear, however, this list of factors was not intended as a definitive checklist to be applied in all cases involving past misconduct. As noted by the Tribunal in *Glaude*,

The considerations in *Henderson* are not an exhaustive list nor must the Applicant be able to provide a positive response to all of them. Rather, the past conduct must be evaluated in light of various considerations which must be evaluated and weighed by the Tribunal to determine suitability for licensing. (p.9)

We approach the evidence in this case from that perspective.

ii. Is Ms Gooding suitable to be granted a license as a mortgage agent?

In her submissions on behalf of the Superintendent, Ms Easson emphasized the following facts in connection with Ms Gooding's past conduct:

- Ms Gooding was convicted of an indictable offence, fraud over \$5,000, which clearly calls into question her integrity and honesty;
- The offence involved an abuse of trust, and there is a close nexus between the type of misconduct for which she was convicted, and the work of a mortgage agent;
- The offence was not a "momentary aberration", but instead involved a deliberate course of conduct over a period of six years;
- The offence is still relatively recent; and
- Ms Gooding is still on probation; she has not yet completed her restitution, and is still under the supervision of the court until November 2010.

In support of her submission that the NOP should be upheld, Ms Easson argued that in licensing mortgage agents, regard must be had to the public interest, including both the safety of the public in dealing with agents, and the confidence of the public in the licensing regime. She drew our attention to *Alves*, supra, in which the Tribunal commented that a licence constitutes a government endorsement to the public (p.13). In Ms Easson's submission, public confidence in the system would be eroded if a licence were issued to Ms Gooding.

It is clear under the Act that the Tribunal is entitled – indeed, obliged – to make an independent assessment of whether or not there are reasonable grounds to deny a license. In doing so, the Tribunal is entitled to substitute its own opinion for that of the Superintendent. Grounds which may appear reasonable to the Superintendent may not appear so to the Tribunal. We have taken into account the facts urged upon us by Ms Easson. We have also, however, taken into account the evidence of the applicant, which included the following significant countervailing facts:

- Ms Gooding is genuinely remorseful for her past conduct, did not seek to minimize her conduct before FSCO or before this Tribunal, and appears to accept full responsibility for it;
- She fully disclosed her past misconduct to FSCO in the course of the application procedure;

- She fully disclosed her past misconduct to her broker in 2004, prior to her conviction and at the time she was first employed in the mortgage industry, and cooperated with the broker in the implementation of appropriate safeguards for reviewing her work;
- She was successfully engaged in the industry as a mortgage agent for four years, until the licensing requirement came into effect, and her Principal Broker, with full knowledge of the facts, is committed to continuing her employment if she is licensed;
- While she continues to be on probation, the extended probation order was put in place simply to facilitate the repayment of her restitution order over a period of five years; if she had been in a financial position to pay the entire amount immediately, her sentence would almost certainly have expired in November 2007, at the end of her conditional sentence.

In addition to reviewing the evidence, we have also carefully reviewed the authorities placed before us by Ms Easson. To date, the Tribunal has decided four cases under the new licensing regime. In all these cases, it has confirmed the Superintendents' Notice of Proposal to refuse to issue a license. While these decisions are instructive, they are also very fact-based, and consequently none of them can be determinative in addressing the question of whether Ms Gooding is suitable to be licensed.

It should be noted, however, that in all four cases, the Superintendent relied on not one but two "prescribed circumstances" as set out in s.10 of O.Reg. 409/07: the applicant's past conduct, and the making of false statements or the provision of false information in the course of the application process. In *Henderson*, the Tribunal was satisfied that the applicant's recent loss of his licence to practice law was sufficient to establish unsuitability for a license and did not proceed to make a determination on the false statement/false information issue (p.11). In all three subsequent cases, however, the Tribunal found both allegations established, and based its subsequent finding of unsuitability on the combination of the two prescribed circumstances: *Alves*, p. 4; *Anandappa*, p.13; *Glaude*, pp.8, 12. In this case, Ms Gooding made full disclosure from the outset; the Superintendent seeks to uphold his position based on past misconduct alone.

We also note that three of the four previous cases involve very recent convictions or professional discipline proceedings; *Henderson* lost his licence to practice law in 2007, *Alves* was convicted in March 2008, and *Glaude* in March of 2008. The sole exception is *Anandappa*, who like Ms Gooding, was convicted in 2005. There is one very important feature of *Anandappa's* case, however, which distinguishes it from Ms Gooding's. Like Ms Gooding, *Anandappa* was employed in the industry as a mortgage agent prior to the introduction of the new licensing regime for mortgage agents. The evidence in his case, however, established that he failed to disclose his past conduct to either of the brokerages who had employed him. This failure to disclose his past misconduct to prior employers (as well as to regulators) was part of a pattern of "repetitive misconduct" (p.9) which the Tribunal took into account in concluding that *Anandappa* had failed to demonstrate "a consistent pattern of reformed or redeeming behavior during the period since September 17, 2004, when the conduct took place" (11-12). By contrast, Ms Gooding has, in our view, demonstrated a consistent pattern of reformed or redeeming conduct.

In her submissions, Ms Easson argued that the issue in this case ultimately boiled down to two questions: (1) what is the relevance of the fact that Ms Gooding is still on probation? and (2) has “enough time” passed since her involvement in the offence of fraud? She put particular emphasis on the fact that Ms Gooding continues to be on probation for the offence in question. She drew our attention to a recent decision of the Ontario Licence Appeal Tribunal, *Re Laprise*, [2007] O.L.A.T. No. 530, which dealt with an application for a licence as a motor vehicle salesperson under the *Motor Vehicle Dealer Act*. In that decision, the Tribunal commented that the principle that “some time must elapse between the expiration of any period of probation and an application for registration... has been so consistently applied that this Tribunal has been unable to find a single instance where registration has been granted to an Applicant who was still on probation” (paras. 19-20). While Ms Easson cautioned us, on behalf of the Superintendent, that the expiry of a sentence would not necessarily mean that an applicant was suitable, she urged us to adopt the position that an applicant who was still on probation for an offence such as fraud was *per se* unsuitable.

This position was also urged upon this Tribunal by the Superintendent in the *Glaude* case. Like the *Glaude* panel, we do not agree that a *per se* rule with respect to the relevance of probation can or should be adopted. As noted in *Glaude*, even when the applicant is on probation:

...the past conduct must still be evaluated on relevant considerations. Where an individual is on probation it may be unlikely that a sufficient time will have elapsed for an individual to have an opportunity to exhibit a sufficient degree of redeeming behaviour to allow a conclusion to be reached that unlawful behaviour will not reoccur, but each case must be considered on its own facts. (p.9)

In other words, an outstanding probation order is relevant to the issue of whether the applicant, after an initial misstep, has been able to demonstrate a pattern of redeeming behaviour of sufficient length and consistency as to persuade the Tribunal that issuing her a licence no longer poses a hazard to the public interest.

The question with respect to the outstanding probation order, then, is simply this: is the Tribunal persuaded that despite the fact that she is still on probation, will Ms Gooding deal or trade in mortgages in accordance with the law and with integrity and honesty? We can make that judgment only by examining all of the evidence, including the evidence on her conduct over the five year period since she was terminated by TD Canada Trust and subsequently charged with fraud. The evidence on that issue is that Ms Gooding commenced her pattern of redemptive conduct prior to her conviction and sentencing. In 2004, she disclosed her past conduct to the Principal Broker of OMAC as part of her application process to work as a mortgage agent on behalf of that brokerage, and worked out terms and conditions under which her work would be monitored. She worked successfully under that regime for four years, earning the respect of her colleagues, the loyalty of her clients and the confidence of her Principal Broker. She disclosed fully the nature of her offence and the circumstances surrounding it in the course of making this application. She was frank with this Tribunal, and we have no doubt, based both on her substantive evidence and her demeanour while testifying, of the genuineness of her remorse or the sincerity of her desire to perform her duties as a mortgage agent with honesty and integrity. Ms Easson submitted that we must decide this case on the evidence and with due regard to the

public interest, and not on any sympathy we may have for the applicant. We agree. But we are not persuaded that the public interest requires that Ms Gooding be denied the opportunity to continue to work in a capacity in which she has performed successfully and to the satisfaction of her Broker for four years, simply because she is still on probation for purposes of monitoring the payment of her restitution order.

The Superintendent does not allege that at any time since the termination of her employment in 2003, Ms Gooding engaged in any behaviour that should be cause for concern about her suitability to act as a mortgage agent, nor is there any evidence of any such behaviour. Ms Easson argued, however, that not enough time has passed since Ms Gooding's offence to establish a pattern of redemption. We certainly agree that the passage of time is a relevant consideration in determining whether there is sufficient evidence to justify reposing public confidence in an applicant again. However, we note that Ms Easson did not take any specific position on how much time would be "enough" in cases of this type. Nor would it be appropriate to do so. There can be no hard and fast rule about how much time is "enough"; it is a matter that must be determined by the Tribunal based on all the circumstances of the case.

There is no doubt that Ms Gooding's offence was a serious one, with a nexus to the financial services industry. In the absence of the pattern of redeeming behaviour of sufficient length and consistency established by the evidence before the Tribunal, we would have been disposed to confirm the Notice of Proposal. Having regard to all the circumstances, however, we cannot find that Ms Gooding's past conduct continues to provide reasonable grounds to believe that she will not conduct herself lawfully, with honest and integrity, in the role of mortgage agent.

In our view, any lingering public interest concerns about Ms Gooding's past conduct, particularly in regard to public perception and public confidence as it relates to the integrity of the licencing system, can be adequately addressed by attaching conditions to her licence. We turn now to that issue.

iii. Conditions

Both the Superintendent and the Tribunal have the authority to attach conditions to any mortgage agent's licence. We sought submissions from the parties as to what conditions might be appropriate to attach to Ms Gooding's licence in the event that we determined that she should be licensed on conditions. In response, Ms Easson forcefully reiterated the Superintendent's position that the license should be refused altogether. In the alternative, however, she submitted that the following conditions should be attached to the licence:

1. Ms Gooding should be required to deal in mortgages only with her current broker for the next two years;
2. All documents produced by Ms Gooding, including access to the credit-checking computer system, should be supervised by Mr. Mullis, the mortgage agent in Ms Gooding's office, and Ms Providenti, the Principal Broker, as has been done so far;
3. If either Mr. Mullis or Ms Providenti should leave the employ of OMAC, the Superintendent should be notified and given the opportunity to approve alternative supervisory personnel;

4. The Superintendent should be notified immediately if Ms Gooding is charged or convicted of any new offence.
5. The Principal Broker should notify the Superintendent immediately if any problems are identified in monitoring Ms Gooding's work;
6. The Principal Broker should submit a bi-annual report re Ms Gooding's activities as agent, and the monitoring which has taken place.

Ms Gooding did not oppose any of these conditions.

We have considered the parties' submissions on conditions. In our view, it is not necessary to require that Ms Gooding continue to work for a two year period with OMAC. Under s.9(2) of the Act, Ms Gooding's licence will authorize her to deal in mortgages only on OMAC's behalf in any event. Furthermore, according to subsection 8.1(3) of O. Reg. 409/07, the licence which is the subject of this order will expire on March 31, 2010, before two years have passed.

We do agree that it is appropriate to order that Ms Gooding continue to work under the monitoring regime to which she and Mr. Mullis testified. We are not persuaded, however, that the particular identity of the licenced agent and broker who do the monitoring is material. We agree that the Superintendent should be notified immediately of any further charges or convictions involving Ms Gooding. We are likewise persuaded that a report to the Superintendent every six months on the issue of compliance with the condition of the licence is appropriate; in our view, it is more appropriate to impose this requirement on the Applicant, however, rather than on the Principal Broker, although she will not be able to comply with it if her broker is not willing to countersign her report. We are not prepared, however, to accede to the Superintendent's request to be notified of "any problems" which may arise in the course of the monitoring process. In our view, a term like "any problems" is far too vague to be enforceable, and fails to distinguish between serious and trivial concerns. And finally, we believe that compliance with the outstanding court order arising out of Ms Gooding's criminal conviction should be made a condition of her licence, since failure to comply with the restitution order might give rise to legitimate licencing concerns.

We have determined, therefore, that it is appropriate to attach the following conditions to Ms Gooding's licence:

1. Ms Gooding shall work as a mortgage agent only on the basis that her work shall continue to be reviewed by another licensed mortgage agent in her office, and by a licensed broker for Ontario Mortgage Action Centre Ltd.;
2. Ms Gooding shall notify the Superintendent of Financial Services immediately in the event that she is the subject of any further criminal charges or convictions;
3. Once every six months from the date her licence is issued, Ms Gooding shall provide to the Superintendent of Financial Services a statement signed by both herself and her supervising broker, certifying that she has complied with the conditions of this license; and
4. Ms Gooding shall continue to comply with the terms of the probation order imposed upon her by the Ontario Court of Justice as a result of her conviction on November 25, 2005.

E. ORDER

Accordingly, we direct the Superintendent to withdraw the NOP and to issue a Mortgage Agent's Licence to Patrice De-Ann Gooding, subject to the following conditions:

1. Ms Gooding shall work as a mortgage agent only on the basis that her work shall continue to be reviewed by another licensed mortgage agent in her office, and by a licensed broker for Ontario Mortgage Action Centre Ltd.;
2. Ms Gooding shall notify the Superintendent of Financial Services immediately in the event that she is the subject of any further criminal charges or convictions;
3. Once every six months from the date her licence is issued, Ms Gooding shall provide to the Superintendent of Financial Services a statement signed by both herself and her supervising broker, certifying that she has complied with the conditions of this license; and
4. Ms Gooding shall continue to comply with the terms of the probation order imposed upon her by the Ontario Court of Justice as a result of her conviction on November 25, 2005.

DATED at Toronto, Ontario, this 25th day of November, 2008

"Elizabeth Shilton"

Elizabeth Shilton, Member of the Tribunal
and Chair of the Panel

"Denis Boivin"

Denis Boivin, Member of the Tribunal and of
the Panel

"Jeffrey Richardson"

Jeffrey Richardson, Member of the Tribunal
and of the Panel

ADDENDUM

On November 25, 2008, after the Tribunal issued its decision in this matter, counsel for the Superintendent sent a letter to the Registrar of the Tribunal seeking clarification as to how long the conditions imposed by the Tribunal's Order are to remain in place in connection with Ms Gooding's licence, and asking that the clarification address the issue of the expiry date of Ms Gooding's probation order.

While we believe the answer to Ms Easson's query is implicit in our reasons, in view of her inquiry we consider her request for clarification as identifying an ambiguity in our reasons warranting an addendum under Rule 12.03.

Rule 12.03 of the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* provides that:

The Tribunal may at any time correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in an order or direction issued by it, or in the written reasons for an order issued by it.

As noted in our reasons, mortgage agents are licensed on two-year licensing cycles. Licences issued between July 1, 2008 and April 1, 2010 expire on March 31, 2010. Accordingly the licence at issue in this case will expire on March 31, 2010. Our Order relates only to this initial licensing period, and the conditions ordered are intended to expire with that licence. The Order is not intended to fetter the statutory discretion of the Superintendent should Ms Gooding seek to be licensed for the period after March 10, 2010. At that time, the conditions imposed by the Tribunal's Order will have expired, and the factual basis for making a determination about licensing Ms Gooding will inevitably be different than it is today, if only because of the passage of time.

Ms Easson's request for us to address the impact of the expiry date of Ms Gooding's probation is accordingly premature, since it falls outside the initial licensing period.

DATED at Toronto, Ontario, this 1st day of December, 2008

"Elizabeth Shilton"

Elizabeth Shilton, Member of the
Tribunal and Chair of the Panel

"Denis Boivin"

Denis Boivin, Member of the
Tribunal and of the Panel

"Jeffrey Richardson"

Jeffrey Richardson, Member of the
Tribunal of the Panel