

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the “Act”), in particular sections 19 and 21, and the Mortgage Brokers and Agents Licensing Regulation, R. Ont. 409/07 (the “Regulation”), in particular, section 10;

AND IN THE MATTER OF the Superintendent’s Notice of Proposal to Revoke the Mortgage Agent’s Licence issued to Ms. Linda Todorovic, dated November 7, 2008;

AND IN THE MATTER OF Ms. Todorovic’s Request for a Hearing before the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 21(3) of the Act.

BETWEEN:

LINDA TODOROVIC

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

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

Mr. John Solursh
Chair of the Tribunal and Member of the Panel

Mr. Shiraz Bharmal
Member of the Tribunal and Member of the Panel

APPEARANCES:

Ms. Linda Todorovic, representing herself
Mr. Joe Nemet, representing the Superintendent of Financial Services

HEARD:

February 27, 2009

REASONS FOR DECISION

A. BACKGROUND

On June 10, 2008, Linda Todorovic submitted an electronic application for a mortgage agent's licence pursuant to the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the "Act"). During one of the mandatory steps of this application, she was asked whether she had ever plead guilty or been found guilty of an offence. She answered "yes" and provided the following details: "In Feb 01 I borrowed money to help out a friend and did not disclose that I was not discharged from my bankruptcy. Discharged April 4/01."

On June 19, 2008, Ms. Todorovic's application was approved and she was issued a licence, effective July 1, 2008. During a subsequent criminal record check, however, staff of the Financial Services Commission of Ontario (the "Commission") discovered that Ms. Todorovic had been found guilty of two counts of fraud over \$5,000 on March 10, 2004, and that she had been sentenced accordingly. An investigation ensued and, in September 2008, the Commission gave Ms. Todorovic an opportunity to explain the circumstances surrounding these offences and her reasons for not disclosing them in her electronic licence application.

Unsatisfied with Ms. Todorovic's explanations, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal (the "NOP") on November 7, 2008, to revoke her licence as a mortgage agent pursuant to s. 19(1) of the Act. On November 27, 2008, Ms. Todorovic requested a hearing before the Financial Services Tribunal (the "Tribunal") pursuant to s. 21(3) of the Act to contest the Superintendent's proposal.

The Superintendent has not made an interim order suspending the licence of Ms. Todorovic pending resolution of his proposal, as he could have done pursuant to s. 19(3) of the Act. Accordingly, because her licence remains effective, Ms. Todorovic has continued to work as a mortgage agent for the brokerage identified in her June 10th application, namely, The Mortgage Group ("TMG"). In effect, she has now been working as a licensed mortgage agent, under the new statutory regime, for over eight months.

B. STATUTORY FRAMEWORK

Pursuant to s. 19(1) of the Act, the Superintendent may revoke the licence of a mortgage agent in any of the circumstances in which he is authorised to suspend a licence under s. 18(1). For present purposes, the relevant ground is set out in s. 18(1)(b) as follows: "if the Superintendent believes, on reasonable grounds, that the licensee is no longer suitable to be licensed having regard to the circumstances, if any, prescribed for the purposes of subsection 14(1) or 16(4), as the case may be, and such other matters as the Superintendent considers appropriate." Sections 14 and 16 of the Act deal with the issuance and renewal of a licence. Accordingly, under the Act, a proposal to revoke or suspend a licence on the basis of a licensee's unsuitability involves a consideration of the same factors as a proposal to deny the issuance or renewal of a licence on the basis of an applicant's unsuitability.

The factors or “prescribed circumstances” that the Superintendent must consider in determining a person’s suitability to work or continue working in the mortgage industry are outlined in section 10 of the *Mortgage Brokers and Agents Licensing Regulation*, Ont. Reg. 409/07 (the “Regulation”). Section 10 of the Regulation reads as follows:

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

1. Whether an 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 the present case, as explained in the reasons attached to the NOP, the Superintendent’s belief in the unsuitability of Ms. Todorovic rests on the circumstances prescribed by sections 10¶1 and 10¶3 of the Regulation, namely, Ms. Todorovic’s conviction of two criminal offences on March 10, 2004, and her failure to disclose said convictions in her licence application of June 10, 2008.

Section 21(4) of the Act provides that if a licensee requests a hearing before the Tribunal, in order to contest a proposal to revoke his or her licence, the Tribunal has the authority to “direct the Superintendent to carry out the proposal, with or without changes, or substitute its opinion for that of the Superintendent” and “may impose such conditions as it considers appropriate in the circumstances”.

C. ISSUE

Technically speaking, the issue to be decided by the Tribunal is whether Ms. Todorovic is “no longer suitable to be licensed” as a mortgage agent within the meaning of s. 18(1)(b) of the Act. However, as noted by counsel for the Superintendent during his closing submissions, the gist of the NOP is that the licence of Ms. Todorovic was issued on the basis of false information and that, had the truth been known, the licence would never have been issued. In other words, the Superintendent contends that the licensee was not suitable to begin with.

The Tribunal agrees with Mr. Nemet’s manner of framing the issue. In this case, the question is not whether Ms. Todorovic has engaged in conduct following the issuance of her licence which calls into question her suitability to remain licensed, but whether the circumstances that existed on or before July 1st, 2008, provide reasonable grounds to believe that she was not suitable to be licensed.

For reasons that follow, the Tribunal answer’s this question in the affirmative.

D. EVIDENCE

The Tribunal heard testimony under oath from three witnesses during the course of the Hearing: 1) Ms. Todorovic herself; 2) Mr. Albert Collu, a mortgage broker with TMG under whose supervision Ms. Todorovic has worked since June of 2008; and 3) Ms. Michelle Watson, a mortgage agent with whom Ms. Todorovic has worked since November of 2007.

In addition, the Tribunal heard a one-hour recording of an interview with Ms. Todorovic conducted by two investigators of the Commission on September 17, 2008, Mr. O'Brien and Mr. Weller. This interview occurred after the Commission became aware of Ms. Todorovic's criminal record through a routine check and before the Superintendent issued a NOP to revoke her licence.

The parties also submitted a brief two-page Agreed Statement of Facts, marked as Exhibit 1, and an Agreed Book of Documents containing 11 documents, marked as Exhibit 2. Ms. Todorovic adduced into evidence a number of documents that were not included in the Agreed Book of Documents, in particular correspondence between herself and the Commission dated March 12, June 2, and June 27, 2003. These documents were collectively marked as Exhibit 3.

a. The Convictions of March 10, 2004

The only reliable evidence before the Tribunal with respect to the circumstances leading up to Ms. Todorovic's March 10, 2004, convictions is the transcript of the proceedings that took place on the day of her guilty plea (Exhibit 2 – Tab 5). This transcript was not available to the investigators of the Commission on September 17, 2008. Thus, their interview of Ms. Todorovic is of limited value in ascertaining the facts that actually lead to charges being laid, to convictions being entered, and to her sentencing. The answers given by Ms. Todorovic during this interview, not unlike the testimony given by herself during the Hearing, shed some light on her own personal impression of the nature of her wrongdoing. However, these answers shed little reliable light on the past conduct that actually transpired.

What follows is the allocation of facts presented by the Crown attorney on March 10, 2004, after Ms. Todorovic entered a plea of guilty on two counts of fraud over \$5,000 laid against her in the Fall of 2001. During the Hearing before the Tribunal, in response to questions about this transcript, Ms. Todorovic testified under oath that she was not physically present during the criminal proceeding in question. As noted by Counsel for the Superintendent, it is difficult to imagine a criminal lawyer entering a guilty plea and agreeing to an allocation of facts without his or her client being present in court, let alone a presiding judge accepting the plea and sentencing the accused in absentia. More importantly, on five separate occasions throughout the transcript the judge specifically addresses Ms. Todorovic herself, and on three separate occasions she answers him. (Exhibit 2 – Tab 5 at pp. 1, 11, 19, 23 and 24)

The portions reproduced below come from pages 2-9 of the transcript:

Yes, Your Honour. Basically, the accused Linda Todorovic approached the victim, [Mr. P] in the December of 2000 to see if he was interested in some investment opportunities. In this initial approach, [Mr. P] ended up lending \$16,000.00 to Miss Todorovic's sister so she could pay off her credit card debt. This arrangement was at a reduced rate of interest than what she was paying to her credit cards, but at a higher rate of return than [Mr. P] could get from a bank. This arrangement was set up by Miss Todorovic who acted as a Broker for this loan. Apparently to date, [Mr. P] is still receiving payments from the sister in relation to this loan. In January, 2001, Miss Todorovic approached [Mr. P] about other investment opportunities. This time [Mr. P] invested \$25,000.00 with her and Miss Todorovic said she wanted to use the money to make other short-term investments and [Mr. P] told Miss Todorovic that he wanted something to secure his investment. She drew up a contract between her and [Mr. P] with the following conditions: The total amount borrowed was \$25,000.00 at an interest rate of 3% per month on the outstanding principal balance. That the repayment was fully open and the monthly payment was interest only of \$750.00; that's what it was to be. And that the investment is secured by a term deposit guaranteed by the institution of choice and that the Certificate initially would be in the name of both parties and would require authorization by both parties in the event that the Certificate was to be redeemed. Upon repayment of the principal balance of the \$25,000.00 the investor's security would be released to the borrowing [sic] without penalty. And this was to be reviewed annually upon the anniversary of the Certificate. This was dated the 21st day of February, 2001. And this Agreement was signed by both [Mr. P] and Miss Todorovic.

Miss Todorovic had advised [Mr. P] that this investment was being completed through her own company, Todor Financial Consulting and on signing this Agreement, [Mr. P] wrote a cheque to Miss Todorovic for the amount of \$25,000.00. A day or two later, [Mr. P] called Allan Johnson at the TD Bank and inquired to make sure that Miss Todorovic had obtained the GIC and line of credit with him, because that is what she had told [Mr. P] she had arranged. Allan Johnson advised that Miss Todorovic had indeed arranged for the GIC and line of credit. On March 21st, 2001, [Mr. P] received his first interest payment of \$750.00. However, the cheque for this payment bounced. Following the April 21st, 2001 interest cheque bouncing, [Mr. P] started to do some checking on his investments. He found that no term deposit had been taken out in his name, but a GIC was registered in the name of Todor Financial exclusively, without his name and that [Mr. P] had only received a Power of Attorney for Todor Financial should something happen to Miss Todorovic. He was also informed by Financial Services Commission of Ontario that, Todor Financial was not a registered financial company. [Mr. P] also learned that there was only .65 cents in Todor Financial's bank account and [Mr. P] had been in touch with Miss Todorovic on numerous occasions. Initially, she had agreed to have his \$25,000.00 returned to him in a week, but to this date, he had not received anything, the date of these charges.

On June 22nd, 2001 Detective Vandyke took a statement from Allan Johnson of the TD Bank and Johnson advised the following: That he had met Miss Todorovic at a business networking meeting in early 2000 and initially she brought Johnson various business leads for banking proposals. And that in February, 2001 Miss Todorovic approached Johnson with the following proposals: Credit for \$25,000.00 secured with cash or a GIC. At the time she identified the cash source as being from an investor and that she would use the funds to lend privately to clients. Johnson questioned the need for a line of credit given that she had the cash available directly and she indicated that this was the desired arrangement between her and the investor. As a result of the request, an account was opened in the name of Todor Financial in the sole proprietorship of Linda Todorovic. This account was immediately active on February 21st, 2001. The majority of funds were used within the first three weeks of the account being opened. The account opened was a line of credit that was going to be secured by the \$25,000.00 GIC. Miss Todorovic placed [Mr. P]'s cheque in the account which gave the account a positive balance. The line of

credit application was being processed by the bank and a couple of days later, the bank took the \$25,000.00 from the account to place in the GIC. Miss Todorovic had already used almost \$20,000.00 at that point from the account in the first couple of days, so when the bank placed \$25,000.00 in the GIC, the account was. ..the line of credit account was at a minus balance of \$20,000.00. Miss Todorovic continued to use the account until the line of credit was almost at its limit. A short time after this, the TD Bank found out that Miss Todorovic had an undischarged bankruptcy and decided to void her line of credit, even though it was secured. The TD Bank collapsed the GIC and placed it into Todorovic's line of credit to bring the accounts back to a zero balance. The GIC was the bank's collateral on the line of credit. In other words, the bank received its money back by taking the \$25,000.00 GIC. The money was all but used up, so [Mr. P's] money was gone and Miss Todorovic had yet to pay his money back.

On August 22nd, 2001 a search warrant was executed on her line of credit and GIC accounts and copies of all documents were seized. The transaction record in the accounts showed that the accused certified a cheque for \$16,500.00 to a [Ms. D] the day she deposited the victim's cheque and on the same day, the accused removed \$3,000.00 by writing a cheque to herself. It is unknown what this money was used for. And on the 26th of February, 2001 the accused wrote a cheque to a [Ms. K] for \$3,200.00. And from February 26th, 2001 until approximately March 23rd, 2001 the accused used up the rest of the money in the account. The account transactions show the account was used for rental cars, cash withdrawals, gas purchases, convenience store purchases and groceries.

It is apparent that the accused used the funds for transactions [sic] non-investment uses that were not part of the Agreement, therefore, committing the offence of fraud. The victim has suffered a loss of \$25,000.00 on his principal, plus all interest on the investment. The victim did not receive his first month's interest payment, although it came from his own money drawn on the account that the accused put the victim's money into.

In regards to the next count, the victim, [Mr. R], advises that Miss Todorovic first approached him in the summer of 2000 with a business opportunity. Miss Todorovic advised that the opportunity was a short-term loan with high interest. She would make her money by charging a processing fee. Miss Todorovic continually requested [Mr. R] to invest in this opportunity. He finally agreed and he loaned \$5,000.00 to a client of Miss Todorovic. Miss Todorovic completed all the necessary paperwork to complete the loan and within three weeks he had received \$5,000.00 investment back with \$500.00 interest being paid.

A-short time following this investment, Miss Todorovic again approached [Mr. R] again about another investment opportunity, similar to the one they had just completed. This time Miss Todorovic had two clients who wanted to borrow money. The [Ks] were to borrow \$5,000.00 [sic] and the [Ds] were to borrow the \$500.00.[sic] [Mr. R] advised he withdrew the \$10,000.00 from his account in cash and this money was used to make the loans to the [Ks] and to the [Ds] with Miss Todorovic guaranteeing the loans and acting as agent. The loan to the [Ks] took effect on July 18, 2000 and the loan to the [Ds] took place on August 2nd, 2000. In both loans [Mr. R] was to receive \$500.00 plus interest per month starting one month after the date of the loan. After a period of time, more than one month following the two loans were effective, [Mr. R] had not received repayment or interest on the loan. He approached Todorovic and expressed his concern regarding his investment. Miss Todorovic began making excuses as to why he was not receiving his interest payments and this continued on for some time. Eventually, [Mr. R] approached his lawyer, Bob Evans, and had letters sent to Miss Todorovic, the [Ks] and the [Ds] regarding the default of loans and the [Ks] called [Mr. R] shortly after receiving the letter and advised that they had repaid their loan in full and would try to find the cancelled cheque to prove this.

[Mr. R] kept approaching Miss Todorovic about the money owed to him and on March the 13th, 2001 Miss Todorovic wrote [Mr. R] a cheque for \$10,410.00 to cover both loans, the [K] loan and the [Ms. D] loan. This cheque was returned 'non-sufficient funds'. [Mr. R] advised that he did receive a cash payment from Miss Todorovic of \$2,500.00 before August 18th, \$2,000.00 regarding the [K] loan, but no other monies were received.

[Ms. D] was interviewed regarding this investigation and she acknowledges that she owes [Mr. R] the money, but she has had a hard time and was unable to pay the money back.

[Ms. K] was interviewed regarding this investigation and advised that she paid the interest on her loan every month as required and she paid the interest to the accused. She also stated that on December 18th, 2001 she repaid her loan in full with accrued interest to Todorovic to clear the loan. And she believed that Miss Todorovic would forward the funds to [Mr. R] to settle the loan, which was not done.

Those are the facts.

The lawyer representing Ms. Todorovic indicated that his client admitted the facts read into court. Thereafter, the judge found Ms. Todorovic guilty of both counts of fraud and, after hearing submissions from both counsel, he sentenced her to an 8 month custodial sentence, to be served in the community (a.k.a. "house arrest"), and a 12 month probation period to begin after her custodial sentence.

With respect to her past conduct, the testimony of Ms. Todorovic before the Tribunal essentially echoed the answers given to investigators of the Commission during the interview of September 17, 2008: in her opinion, the reason why she was accused and convicted of fraud in March 2004 was because she had failed to disclose her status as a non-discharged bankrupt.

b. The Application of June 10, 2008

On June 10, 2008, approximately 4¼ years after her convictions and 2½ years after completing the terms of her sentence, Ms. Todorovic submitted an application in electronic form to the Superintendent for a mortgage agent's licence (Exhibit 2 – Tab 2). In Step V of the application process, she was asked seven "yes" or "no" questions under the heading "Background Information" (Exhibit 2 – Tab 1). At the very beginning of this section, applicants such as Ms. Todorovic are warned that providing false, misleading or incomplete information is an offence under the Act and may provide sufficient grounds for rejecting their application or for revoking their licence. Applicants are also given the following caution: "A criminal record search is part of the regular screening process. Your name WILL be searched." [Emphasis in original]

Question 2 of Step V asked the following: "Have you ever pleaded guilty or been found guilty of an offence under any law of any province, territory, state or country, or are you currently the subject of any charges?" In her application, Ms. Todorovic answered "yes" to this question. By giving this answer, a new window opened in her electronic application and Ms. Todorovic was asked to "provide a full explanation in [her] own words". In her application, her response was as follows: "In Feb 01 I borrowed money to help out a friend and did not disclose that I was not discharged from my bankruptcy.

Discharged April 4/01.” Ms. Todorovic gave one other affirmative answer in Step V. Indeed, in response to Question 4, she stated that she had declared bankruptcy in the past and provided the name and address of her trustee in bankruptcy.

In Step VII of the electronic application process, Ms. Todorovic was asked to confirm the information provided throughout her application, including the answers given under the “Background Information” section. The seven questions of Step V were reproduced again, in their entirety, along with the answers and explanations that she provided. At the end of Step VII, there was a confirmation button that Ms. Todorovic clicked in order to submit her application. Immediately above this button, in bold characters, she was again warned about the ramifications of providing false, misleading or incomplete information. Moreover, she was cautioned that by clicking the “Confirmed” button, she swore to have truthfully answered all of the questions on the application form.

The electronic licence application of June 10, 2008, was not the only official Commission document in which Ms. Todorovic responded to questions regarding her past. Prior to July 1st, 2008, mortgage agents were not required to be licensed in order to deal in mortgages in Ontario for remuneration. However, pursuant to regulations made under the previous *Mortgage Brokers Act*, R.S.O. 1990, c. M.39, mortgage brokers were required to notify the Superintendent of the name of every person employed or authorized to arrange or deal in mortgages on behalf of the mortgage broker: R.R.O. 1990, Reg. 798, s. 3(9). Thus, in early 2003, Mr. Cameron Strong of Invis Inc. submitted a “Notification of New Agent” form (the “Notification”) to the Commission listing Linda Todorovic as a new agent of his brokerage. According to a confirmation letter sent by the Commission to Mr. Strong on March 12, 2003, Ms. Todorovic had answered “yes” to the following question in the Notification: “Have you been convicted under any law of any country ... of any offence, or are there proceedings now pending?” (Exhibit 3 – Letter of March 12, 2003). However, according to this letter, Ms. Todorovic had not provided any explanation regarding her answer. Accordingly, Mr. Strong was asked to provide this missing information at his earliest convenience.

On June 2, 2003, a second request for information was sent by the Commission regarding the Notification submitted by Mr. Strong (Exhibit 3 – Letter of June 2, 2003). In a letter addressed to Ms. Todorovic personally, she was informed that it had come to the attention of the Commission that she may have been “convicted / charged / accused or found guilty of” offences described as follows in bold characters: “Accused of Fraud Over x 2 and Theft Over on July 1, 2000 for which the court date was set for March 5, 2003.” Ms. Todorovic was asked whether or not she was the person referred to in this description and, if so, to provide a full explanation including “specific details of the circumstances surrounding the offence, location and date of the findings, the police force involved and the court disposition”.

On June 27, 2003, Ms. Todorovic sent a fax to the author of the Commission’s June 2nd letter. The cover sheet contains the following message, signed by Ms. Todorovic: “Attached is the letter mailed to me June 2/03. I have responded on the last page to your questions. Please confirm that your office has received this response. I will keep your office informed of the outcome – keep in mind the situation is accused and not

convicted.” On the last page in question, the following response is hand-written and signed by Ms. Todorovic: “I have been charged not convicted. I have never been convicted under any law of any country, state or province thereof, of any offence, however the matter of fraud is pending in court. And south Simcoe police. Invis has been informed of the ongoing proceeding.” [Emphasis in original]

With respect to her electronic licence application, the testimony of Ms. Todorovic before the Tribunal essentially echoed the answers given to investigators of the Commission during the interview of September 17, 2008: the reason why she failed to provide the details of her convictions was because she believed the Commission already had this information in their possession, given her previous exchange of correspondence with them. Moreover, notwithstanding the wording of her own letter of June 27, 2003, Ms. Todorovic testified under oath that the concepts of being “charged” and being “convicted” of an offence are the same in her mind, and that this was the reason why she had not updated the Commission after her March 2004 convictions.

c. Character Evidence

During the Hearing, Ms. Todorovic testified that she has worked in the mortgage industry since early 1995, after leaving the banking industry. She has worked with a number of different brokerages throughout the years, including most recently Invis (2003-2008) and TMG (from June 2008). She observed that the conduct in question transpired 8 years ago and that she has done nothing wrong since then – or prior to the charges in question. In Exhibit 3, there are a number of documents (an email, a letter, three client feedback forms, and a Christmas card) attesting to the quality of Ms. Todorovic’s services as a mortgage agent.

Albert Collu testified on behalf of Ms. Todorovic. He is the president of TMG and has known her for approximately 6 years. Mr. Collu testified that he first became aware of “issues” surrounding Ms. Todorovic’s past conduct in March or April of 2008. He had met Ms. Todorovic in order to discuss her potential move to his brokerage and, in this context, had been told by her about a past bankruptcy. He was not given specifics, but was left with the impression that charges had perhaps been laid in connection to this bankruptcy. Mr. Collu also testified that he had discussed Ms. Todorovic’s situation with his partners in June of 2008, once she had completed her electronic application and had answered “yes” to question 2 of Step V. He testified that, at that time, they were not aware of the fact that she had been convicted of two counts of fraud and had been sentenced accordingly. In fact, Mr. Collu testified that these specifics only became known to him on September 17, 2008, when he accompanied Ms. Todorovic to her interview with the Commission. During the Hearing, Mr. Collu stood by the decision made by TMG and himself to support Ms. Todorovic: he believes she came forward to him during the Spring of 2008 and that this attests to the strength of her character. However, he candidly testified that measures have been taken by TMG since this episode to increase the “checks” done with respect to potential recruits.

Michelle Watson also testified on behalf of Ms. Todorovic. She has worked with TMG since June of 2008 and has known Ms. Todorovic since November 2007. Both agents

essentially came to TMG at the same time and it is in the context of making this move that Ms. Watson first became aware of her partner's past conduct. Sometime between April and June 2008, Ms. Watson was speaking on the telephone with Ms. Todorovic and was informed by the latter that she had been found guilty of fraud. According to her testimony, Ms. Watson did not receive much detail and did not ask for any, but the expressions "convicted of fraud", "house arrest" and "restitution" were definitely used by Ms. Todorovic during this conversation. In addition, Ms. Watson testified that her colleague has a wealth of knowledge as a mortgage agent and, in her opinion, has always acted with the best interests of her clients in mind.

E. ANALYSIS

a. Preliminary Observations

The Tribunal has released reasons in eight matters decided under s. 21(3) of the Act. All of these hearings involved the suitability of a person to be licensed as a mortgage agent or broker under the new statutory regime. In each case, the Superintendent was proposing to deny a licence application on the basis of the applicant's past conduct, on the basis of false information provided in his or her application, or on the basis of both grounds conjunctively. As such, none of these previous hearing involved a proposal to revoke a licence issued by the Superintendent. However, as noted earlier in these reasons, the difference between the NOP issued to Ms. Todorovic and the proposals at stake in these eight precedents is one of form, rather than substance. The penultimate question remains the suitability of Ms. Todorovic to be licensed as a mortgage agent.

In a recent decision, the Tribunal summarised four principles that have consistently been applied in the context of suitability hearings held pursuant to s. 21(3) of the Act:

1. Hearings held pursuant to s. 21(3) of the Act are *de novo* hearings. The Tribunal need not show any deference to the Superintendent's determination with respect to the applicant's suitability to be licensed as a mortgage broker or agent. Rather, the Tribunal must make its own assessment of suitability having regard to the prescribed circumstances invoked by the Superintendent and the evidence adduced during the hearing.
2. In determining whether there are reasonable grounds to conclude that the applicant is not suitable to be licensed, within the meaning of s. 14(1) of the Act, the Tribunal must be mindful of two overriding considerations: 1) the Act and Regulation are designed to protect the public interest and enhance public confidence in the mortgage industry; 2) a decision to refuse to issue a licence under the Act can have severe financial consequences for the applicant.
3. In determining the weight that should be given to the prescribed circumstances listed in sections 10¶1 (past conduct) and 10¶3 (false statement) of the Regulation, in the context of its assessment of the applicant's suitability to be licensed, the Tribunal should adopt a contextual approach. In *Henderson*, the Tribunal identified a series of 9 relevant considerations with respect to s. 10¶1 (at p. 9). In *Alves*, the Tribunal identified a series of 4 relevant considerations with respect to s. 10¶3 (at p. 14). Neither of these lists was meant to be exhaustive, nor to represent a hierarchy of factors that must be addressed in each and every case.

4. The prescribed circumstances listed in sections 10¶1 (past conduct) and 10¶3 (false statement) of the Regulation can be considered conjunctively in determining whether there are reasonable grounds to conclude that the applicant is not suitable to be licensed.

Robert Kostrubiec v. Superintendent of Financial Services (FST Decision No. M0327-2008-1) at pp. 10-11 (*Kostrubiec*)

In the following sub-sections, the Tribunal will apply these four guiding principles to the evidence adduced during the Hearing.

b. Past Conduct

In determining whether Ms. Todorovic's past conduct affords reasonable grounds to believe that she will not deal or trade in mortgages in accordance with the law and with honesty and integrity, within the meaning of s. 10¶1 of the Regulation, the Tribunal must weigh a number of considerations: *Ian Douglas Henderson v. Superintendent of Financial Services* (FST Decision No. M0319-2008-1) at p. 9 (*Henderson*). With respect to the factors listed in the *Henderson* decision, the Tribunal makes the following observations and findings:

1. *The time that has elapsed since the conduct:* The two convictions of fraud over \$5,000 entered against Ms. Todorovic on March 10, 2004, stem from a series of facts that occurred during the years 2000 and 2001, that is, approximately seven years ago. This period of time is significant and would have been given more weight in our final determination of Ms. Todorovic's suitability, but for her reluctance to come forward and explain herself openly and candidly to the Commission, not only in her licence application, but also during the subsequent investigation conducted by Mr. O'Brien and Mr. Weller. The time that has elapsed since the impugned conduct is also mitigated by Ms. Todorovic's reluctance to accept responsibility for her actions, a point that will be discussed below, and by the fact that full restitution to the victims of her frauds was only made on March 10, 2004.
2. *The prolonged or repetitive nature of the conduct:* As described in the transcript of her guilty plea, Ms. Todorovic's convictions do not stem from an isolated event, but from two separate financial transactions involving two victims (Exhibit 2 – Tab 5). Moreover, both frauds were crystallised over a period of time, rather than instantaneously, and involved victims who were each deprived of their assets for over three years. Consider the case of Mr. P. This victim was approached by Ms. Todorovic in January 2001 with an investment proposal. An agreement was reached on February 21, 2001, and the sum of \$25,000 was transferred to Ms. Todorovic. She subsequently used these funds for various non-investment purposes, contrary to her agreement with Mr. P. Over time, Mr. P not only failed to receive the monthly interest payments that had been promised by Ms. Todorovic, but the capital he entrusted with her had been completely depleted. In fact, it is not until March 10, 2004, the date of Ms. Todorovic's guilty plea, that he received restitution from her with respect to his capital investment. With respect to the other victim, Mr. R, the transcript reveals a similar pattern of prolonged wrongdoing: he was approached by Ms. Todorovic in the

summer of 2000; he accepted to transfer a total of \$10,000 to two clients represented by her in exchange for a fixed return and for a personal guarantee from Ms. Todorovic; he did not receive the monthly interest payments promised; he was unable to execute the guarantee given by Ms. Todorovic; and full restitution of his capital investment was not completed until March 10, 2004.

3. *The advertent or inadvertent nature of the conduct:* With respect to this consideration, the Tribunal cannot overlook the fact that Ms. Todorovic pled guilty to the two criminal offences in question. Moreover, the Tribunal must consider the specific nature of these offences. By entering a plea of guilty, Ms. Todorovic has admitted that she wilfully deceived both victims. During her testimony before the Tribunal, and during her interview with investigators of the Commission, Ms. Todorovic attempted to downplay the advertent nature of her behaviour, stating that her only wrongdoing was not disclosing to both victims the fact that she had declared bankruptcy and was not discharged at the relevant time. However, as revealed from the transcript of her guilty plea, Ms. Todorovic's failure to disclose her bankrupt status was only part of the deceit that led to her charges and subsequent convictions. In the case of Mr. P, for example, she used the \$25,000 entrusted to her for non-investment purposes. Whether or not Ms. Todorovic accidentally failed to disclose her bankruptcy, before she was entrusted with Mr. P's money, there was nothing inadvertent about her subsequent actions.
4. *The extent to which the conduct can be taken to call into question the integrity, honesty and law abiding nature of the individual:* There is little room for debate with respect to this consideration: two convictions of fraud over \$5,000 seriously call into question the moral rectitude of Ms. Todorovic. If she had expressed remorse for her actions during the Hearing or during the interview conducted by investigators of the Commission, or at least shown some acknowledgment of the seriousness of her actions, the Tribunal might have been persuaded to view these incidents as momentary lapses of judgment. However, on the contrary, Ms. Todorovic's persistence on characterising her wrongdoing as one of non-disclosure remains a reliable indicator of significant concern with respect to her ability to distinguish right from wrong.
5. *The closeness of the context of the conduct to the context of activities in which the individual would be engaged as a mortgage agent or broker:* As noted by Counsel for the Superintendent, there is a very close rational connection between the investment activities involving Ms. Todorovic that led to her 2004 convictions and the typical business activities of mortgage agents. In the mortgage industry, lenders rely on the honesty, integrity and competence of agents and brokers when advancing funds to borrowers. Their reliance on brokerage intermediaries is necessary not only to ensure a rate of return commensurate with their best interests, but also to preserve the capital actually advanced. Likewise, Mr. P and Mr. R relied on the honesty, integrity and competence of Ms. Todorovic when advancing their funds. True, the amounts involved were smaller than in a typical mortgage transaction and they were not given a mortgage to guarantee their investment. However, both lenders relied on Ms. Todorovic to preserve their capital and to provide the revenue promised.

6. *The fairness of the process followed in the disciplinary proceeding:* With respect to her convictions of March 10, 2004, Ms. Todorovic was represented by a criminal attorney and there is no credible suggestion of any procedural defects which may have led to her guilty pleas or to her sentencing. As noted earlier in these reasons, the Tribunal rejects as non-credible Ms. Todorovic's suggestion that she was not physically present during the criminal proceeding in question. The proof of her presence is in the transcript itself: on five separate occasions throughout the transcript the judge specifically addresses Ms. Todorovic herself, and on three separate occasions she answers him. (Exhibit 2 – Tab 5 at pp. 1, 11, 19, 23 and 24)
7. *The seriousness with which the disciplinary body treated the conduct as reflected in the severity of the sanction it imposed:* After noting that Ms. Todorovic had made full restitution of the amounts defrauded and that she had no prior criminal record, the presiding judge nonetheless determined that a period of custody totalling 8 months was necessary in view of the circumstances. This is not a light sentence, even though Ms. Todorovic was allowed to serve her custodial sentence at home and in the community by way of a conditional sentence order. She was also sentenced to a 12 month probation order, to commence once her custodial sentence was served.
8. *Any unusual and severe pressure the individual was under at the time of the conduct that would explain the conduct but is unlikely to reoccur:* During the March 2004 criminal proceedings, in his submissions with respect to sentence, Ms. Todorovic's attorney offered two reasons to explain his client's conduct: the recent death of her husband and difficult financial circumstances facing his client. During the interview conducted by the Commission, in September 2008, Ms. Todorovic also suggested that the funds in question had been obtained in order to help out an acquaintance, Ms. D, who herself was facing financial hardship. (Indeed, of the \$25,000 advanced by Mr. P, it appears from the March 2004 allocation of facts that \$16,500 was transferred by Ms. Todorovic to Ms. D.)
9. *Any consistent and prolonged pattern or reformed or redeeming behaviour on the part of the individual since the conduct occurred:* Linda Todorovic has worked in the mortgage industry since early 1995. She worked with a number of different brokerages throughout the years, including Homeguard (1995-1997), Crescent Mortgages (1997-2003), Invis (2003-2008), and TMG (from June 2008). There is no evidence before the Tribunal of any complaints being made against her, from past clients or employers, with respect to her mortgage activities during this period. In addition, Ms. Todorovic has submitted a number of documents (an email, a letter, three client feedback forms, and a Christmas card) attesting to the quality of her services. Likewise, the testimony of Mr. Collu and Ms. Watson, her current supervisor and co-worker, paint a picture of an experienced and competent mortgage professional. Nonetheless, the Tribunal has serious concerns with respect to her failure to acknowledge the seriousness of her past actions. During her testimony before the Tribunal, and during her interview with the Commission, Ms. Todorovic has repeatedly downplayed the nature of her crimes, saying that she would not have been in this predicament had she disclosed her bankruptcy status – a characterisation that is also reflected in the answer she gave on her electronic licence application, an

issue that will be addressed separately below. This attitude shows a serious and ongoing lack of redemption on her part.

c. False Information

Based on the considerations outlined in the previous sub-section, the Tribunal doubts whether Ms. Todorovic is able to deal or trade in mortgages in accordance with the law and with integrity and honesty. However, the Tribunal does not rest its determination of Ms. Todorovic's unsuitability to be licensed on her past conduct alone. Indeed, the false information submitted to the Superintendent in June of 2008 provides additional grounds for reaching this conclusion.

In determining whether an individual is unsuitable to be licensed on the basis of a false statement made or on the basis of false information provided, within the meaning of s. 10¶3 of the Regulation, the Tribunal must weigh a number of considerations: *Alexandre Jose Alves v. Superintendent of Financial Services* (FST Decision No. M0315-2008-1) at p. 14 (*Alves*). With respect to the factors listed in the *Alves* decision, the Tribunal makes the following observations and findings:

1. *The nature of the false statement or false information:* Technically speaking, Ms. Todorovic truthfully answered question 2 during Step V of her electronic licence application. The problem, however, relates to the explanation she gave in order to justify her answer. In the details provided, nowhere does she mention the fact that she was charged and convicted of two counts of fraud over \$5,000 in March of 2004, or the fact that she was sentenced for her crimes to 8 months of custodial "house arrest" and 12 months of probation – a sentence that expired at the end of 2005. Instead, she writes that she borrowed money to help a friend in February 2001 and failed to disclose her bankruptcy status, adding that she was discharged in April 2001. Viewed in the best light possible, the details provided by Ms. Todorovic were half-truths. In any event, this information clearly misled the Superintendent and his staff because it led them to approve her application and issue her licence, decisions they would not have made but for her failure to disclose the truth.
2. *The advertent or inadvertent nature of the falsehood:* During her testimony at the Hearing, and also during her interview with the Commission, Ms. Todorovic suggested that her failure to disclose her past convictions was accidental rather than intentional. However, on the basis of the testimony received from Ms. Watson and Mr. Collu, the Tribunal questions the veracity of her testimony. Indeed, in her own testimony before the Tribunal, Ms. Watson indicated that she had been told about the convictions by Ms. Todorovic herself in the Spring of 2008 (somewhere between April and June 2008) when the two of them decided to make the move to join the brokerage TMG. On the other hand, Mr. Collu testified that he and the other brokers at TMG did not know about the charges and convictions of fraud until after they had hired Ms. Todorovic and her licence had been issued. When they discovered that she had answered "yes" to question 2 of Step V, Mr. Collu and his colleagues discussed whether they should continue their association with Ms. Todorovic. However, on the basis of her assurance that full disclosure to the Commission had been completed, and

on the basis of the references attesting to her abilities, Mr. Collu and his colleagues decided to stand by her application. In fact, according to his testimony, it is not until the September 2008 interview with Mr. O’Brian and Mr. Weller that Mr. Collu became aware of Ms. Todorovic’s convictions for fraud and of her custodial sentence. Obviously, Ms. Todorovic knew the difference between full and partial disclosure: she told her partner about the convictions before the two of them changed their business plans, but she did not tell her future employer about said convictions, even after she was approached about her affirmative answer on the application. From this testimony, the Tribunal infers that Ms. Todorovic knowingly misrepresented the truth when submitting her licence application.

3. *The explanations provided by the individual for the falsehood:* In order to explain herself, Ms. Todorovic provided the following rationale during her testimony before the Tribunal and during the September 2008 interview: she assumed that the Commission was already aware of the offence in question, given the communications exchanged between herself and the Commission in the Spring and Summer of 2003. However, as emphasised by Ms. Todorovic in her fax of June 27, 2003, she had been charged at the time but “not convicted” and had “never been convicted” [emphasis in original]. In the cover sheet to this fax, she assured the Commission that she would keep them apprised of any future developments and, once again, reminded the recipient of the fax that “the situation is accused and not convicted”. Thus, despite claiming the contrary during her testimony, Ms. Todorovic clearly understood the difference between a charge and a conviction. The Tribunal did not hear any evidence that the Commission was, in fact, told of the relevant developments in Ms. Todorovic’s status following her convictions of March 10, 2004. Accordingly, the Tribunal is lead to conclude that the true rationale for the half-truth given by Ms. Todorovic on her electronic application lies within her knowledge of the impact that full disclosure would have on her application. In other words, she misled the Commission for the same reason that she misled Mr. Collu: in order to preserve her financial interests.
4. *The circumstances in which the falsehood is made, including any unusual and severe pressure the individual was under at the time the false statement was made:* There is no evidence before the Tribunal to suggest that Ms. Todorovic was under any unusual and severe pressure during the summer of 2008, at the time when she submitted her licence application.

d. Conclusion

The Tribunal concludes that Ms. Todorovic is not suitable to be licensed as a mortgage agent in view of her past conduct and of the false information she provided to the Superintendent. Having reached this conclusion, the Tribunal need not address the question of whether conditions should be attached to her licence.

F. ORDER

The Tribunal orders the Superintendent to carry out his Notice of Proposal to revoke the mortgage agent's licence issued to Ms. Todorovic.

DATED at the City of Toronto, this 27th day of March, 2009.

"Denis Boivin"
Denis Boivin, Member of the Tribunal
and Chair of the Tribunal

"John Solursh"
John Solursh, Chair of the Tribunal
and Member of the Panel

"Shiraz Bharmal"
Shiraz Bharmal, Member of the Tribunal
and Member of the Panel