



THE MANITOBA
SECURITIES
COMMISSION

January 10, 2022

IN THE MATTER OF: THE MORTGAGE BROKERS ACT

- and -

**AND IN THE MATTER OF: SIGMAR MORTGAGE SERVICES Ltd. and
THOMAS HAROLD STANDING**

DECISION ON MOTIONS - DATED JANUARY 10, 2022

Appearances: August 11, 2021 and October 25, 2021

Date final written submissions filed: December 19, 2021

Panel:

Hearing Chair:	Ms. L.A. Vincent
Member:	Mr. C.D. Burns
Member:	Mr. D.A. Huberdeau-Reid

Appearances:

C. Besko)	Counsel for The Manitoba Securities Commission
F. Trippier)	On behalf of Sigmar Mortgage Services Ltd. and Thomas Harold Standing
Mr. B. Caplan (present at October 25, 2021 appearance only))	Caplan and Company Ltd.

Introduction

This hearing panel (Panel) of the Manitoba Securities Commission (Commission) was convened on an urgent basis on August 11, 2021 to hear submissions on the Motions (as defined below). The respondents, Sigmar Mortgage Services Ltd. (Sigmar) and Thomas Harold Standing (Standing) (collectively the “Respondents”) were represented by counsel. Following submissions, the Panel requested additional information and legal research from Counsel for Staff of the Commission (Staff Counsel). In addition, the Panel directed Staff Counsel to ensure that all parties that could be impacted by the orders being requested be served with the relevant materials.

The Panel re-convened on October 25, 2021 following the filing of additional written submissions from Staff Counsel. The Respondents were also represented by counsel at this appearance. Also present on October 25, 2021 was Mr. Bruce Caplan, in his role as the representative of Caplan and Company Ltd. Following submissions, the Panel requested additional information and legal research from Staff Counsel, together with copies of certain reports that had been made to the Commission by Sun Mortgage Corporation.

On December 19, 2021 the Panel was provided with additional written submissions from Staff Counsel.

Staff Counsel’s motions (the “Motions”), seek;

- a. An order, pursuant to section 38(2) of *The Mortgage Brokers Act C.C.S.M. c.M210* (the “MBA”), that Surety Bond No. EM1048070 (the “Bond”), dated April 31, 2005 and filed with the Commission in connection with the registration of Sigmar, as a mortgage broker, be forfeited due to the fact that Sigmar is a bankrupt, as defined in the *Bankruptcy and Insolvency Act R.S.C., 1985, C. B-3* (BIA) and that the proceeds of the Bond be paid to the Trustee (as defined below);

- b. An order that monies held pursuant to Commission Order No. 2803 be released to the Trustee, or, in the alternative,
- c. An order that Commission Order No. 2803 be revoked.

Background Facts

1. Sigmar is a corporation based in Winnipeg, Manitoba and, at all material times, was registered with the Commission as a mortgage broker under the provisions of the MBA.
2. Standing is the sole director and officer of Sigmar and, at all materials times, was registered as a mortgage authorized official under the MBA with Sigmar as his employing mortgage broker.
3. Sigmar's business included facilitating mortgage loans between borrowers and investors, which included the movement of funds and registering security interests against title(s). Sigmar would also administer the ongoing collection and distribution of the mortgage payments. Sigmar sometimes registered the mortgage security in the names of the investors and at other times registered the mortgage security in Sigmar's name, pursuant to trust agreements with the investors.
4. On March 4, 2021 the Commission issued Order No. 2803 which directed that all monies held in bank accounts in the name of Sigmar were to be frozen until otherwise directed by the Commission.
5. It was identified that Sigmar had two bank accounts which fell under the provisions of Order No. 2803:
 - a. Account No. 83-01417, which was identified as "Sigmar Mortgage Services Ltd. Trust Account" (the "Trust Account"); and

- b. Account No. 83-10212, which was identified in the name of Sigmar (the “Sigmar Account”).
6. At the time that Order No. 2803 took effect;
 - a. The Trust Account had a positive balance of \$430,985.39; and
 - b. The Sigmar Account had a negative balance of \$57,274.10.
7. On March 5, 2021, the Commission issued Order No. 2804 which suspended, on an immediate basis, the registrations of the Respondents under the MBA.
8. On April 29, 2021, the Commission issued Order No. 2808 which lifted the suspension of Sigmar on a number of detailed conditions, including that Sigmar would retain Sun Mortgage Corporation (Sun) a broker registered under the MBA, to act as Custodian and administer the affairs of Sigmar. It was a condition of Order No. 2808 that upon written notice to the Commission that Sun was no longer prepared to act as Custodian, the suspension of Sigmar would be reinstated immediately without further action(s) required.
9. The conditions attached to Order No. 2808 included that Sun would do a complete review of the security interests being administered by Sigmar and would prepare a written report to the Registrar of the MBA.
10. On June 29, 2021, Sun ceased acting as Custodian and the suspension of Sigmar was reinstated.
11. Prior to ceasing its work as Custodian, Sun filed a report (the “Report”) with the Registrar dated July 18, 2021 (which Report was later updated on August 4, 2021), as required by Order No. 2808. The Report, included, among other information, that:
 - a. There were many dozens of mortgages and mortgage investments facilitated by Sigmar;

- b. The investors included individuals and companies;
- c. In some cases the security interests filed included the names of investors and in other cases the security interests were filed in the name of Sigmar as trustee for investors;
- d. The Sigmar files were in a state of considerable disarray with relevant and important information and documentation missing, including title searches, copies of mortgage applications, copies of signed mortgages, insurance certificates and tax payment receipts. In the cases where Sigmar took a security interest in the name of investors, many of these files were missing the signed trust documentation.
- e. The files evidenced that mortgages had been “oversold”, meaning that the value of the investment monies taken by Sigmar exceeded the principal amount of the mortgage(s) registered against title.
- f. There were instances where Sigmar had discharged mortgages, but the investors had not been paid out.
- g. There were instances where Sigmar took monies from investors but did not register mortgages against the title.
- h. There were instances where Sigmar took monies from investors to register a first charge security interest against a tile but registered a second or third mortgage security interest against title.

12. On July 29, 2021 Sigmar and Standing each filed an assignment under section 49 of the BIA. Caplan and Company Ltd was appointed trustee (the “Trustee”) of the estates of Sigmar and Standing.

13. On November 19, 2021, a hearing panel of the Commission, comprised of different Commissioners than those on the Panel, accepted a joint Settlement Agreement and issued Order No. 2823. Order No 2823, among other things, barred Sigmar and Standing from being registered again in any capacity under the MBA. The Joint Settlement Agreement, which formed an appendix to Order

No. 2823, was signed by Sigmar and Standing and admitted that they had done and failed to do numerous acts that constituted fraudulent behaviors under the provisions of the MBA, including, but not limited to,

- a. Making false statements to investors;
- b. Failing to discharge filed security interests on properties but representing to investors that such discharges had been filed;
- c. Allowing mortgages to fall into arrears such that security interests could not be discharged but advising investors that such security interests had been discharged;
- d. Failing to pay over to investors monies that were the property of those investors and that properly should have been paid over to them;
- e. Failing to properly account for monies on security interests under its administration;
- f. Falsely representing to investors that a first charge security interest had been filed and registered against a property when, in fact, no such security interest had been filed and registered; and
- g. Taking funds from investors and representing that such monies would be used to support a first charge security interest on a specific property but instead diverting the funds to other uses without the knowledge or consent of the investors.

14. A copy of the Trustee's Report on Preliminary Administration dated August 17, 2021, included the following statement respecting Sigmar's obligations:

"30. Provable claims received to date total, secured \$4,707,423.41 and unsecured \$22,186,000.31, as of the date of the First Report."

Decision

A. Motion re: Surety Bond No. EM1048070 (the "Bond"), This motion requests an order that the Bond be forfeited on the basis that Sigmar is a

bankrupt, as defined in the BIA, and that the proceeds of the Bond be paid to the Trustee.

The relevant provisions of *The Mortgage Brokers Act* are:

Forfeiture upon bankruptcy, winding-up, etc.

38(2)

A bond filed with the registrar under section 12 is forfeited, and the sum named therein is due and owing by every person bound thereby as a debt to Her Majesty in right of Manitoba if there has been filed with the registrar an order of the commission that a person in respect of whose conduct the bond is conditioned is a bankrupt as defined in the *Bankruptcy Act* (Canada) or has made a proposal under that Act or, in the case of a corporation, that a winding-up order has been made against it

Assignment of bond or payment of moneys to creditors

38(3)

The commission may, by order, assign the proceeds of any bond forfeited under subsection (1) or (2) or may pay over the moneys recovered thereunder to any person, or into the Court of Queen's Bench in trust for such persons as may become judgment creditors of the person bonded, or to any trustee, custodian, interim receiver, receiver, or liquidator, of the person bonded; and the assignment or payment over shall be in accordance with, and upon conditions set forth in, the regulations, or in any order of the Lieutenant Governor in Council.

In addition, Section 6(5) of Regulation 41/2011 to the MBA reads:

6(5) When proceeds of a forfeiture are paid to a person (a) pursuant to an order referred to in clause (4)(b); or (b) pursuant to an order of the commission assigning the proceeds to the person; the person must apply the proceeds toward settlement of his or her claim against the person whose conduct resulted in the forfeiture of the bond.

Sigmar made an assignment in bankruptcy with the Office of the Superintendent of Bankruptcy Canada effective July 29, 2021. Caplan and Company Ltd. was appointed as the trustee of the estate of Sigmar. The Panel was provided with a certified copy of the said assignment. The evidence before the Panel, including the Report, supports that the necessary work to deal with the estate of Sigmar is significant and complicated and will require persons expert in analyzing the various security interests and their priorities under the BIA and other relevant legislation. Staff Counsel has argued that the Trustee is in the best position to conduct this work and notes that the Trustee has already completed a significant amount of work on the matter. He further argues that this is not within the

standard remit of Staff of the Commission and would require the retention of additional and varied experts. He argues that such work would be duplicative to the efforts to date, including work completed by Sun and by the Trustee.

Although Staff Counsel was unable to cite any precedents where the Commission has directed that a surety bond be forfeited and the monies paid out to a trustee in bankruptcy, he argued that section 38(3) provides the Panel with the statutory jurisdiction to make such an order and that such an order would be in the public interest. The Panel agrees.

The Panel has reviewed the provisions of section 6(5) of Regulation 41/2011 to the MBA, but does not think it is necessary or in the public interest for it to place any conditions or reporting requirements on the Trustee with respect to the use of the bond funds.

Accordingly, the Panel orders, pursuant to sections 38(2) and 38(3) of the MBA, that surety Bond No, EM1048070 be forfeited and that the funds from the Bond be paid to the Trustee forthwith.

- B. Motions re: Bank Accounts. These motions request an order that all monies held in the bank accounts frozen pursuant to Commission Order No. 2803, be released to the Trustee, or, in the alternative, an order that Commission Order No. 2803 be revoked.

The relevant provisions of the MBA are:

Freezing of funds

35(1)

Where

- (a) criminal proceedings in connection with, or arising out of, any transaction in mortgages, or proceedings in respect of an offence against this Act or the regulations, are about to be, or have been instituted against any person; or
- (b) it appears to the commission at the time
 - (i) it is about to order an investigation in respect of a person under section 32 or during or after the investigation, or
 - (ii) it is about to hold a hearing permitted or required by this Act or during or after the hearing, that a person has committed, is committing or is about to commit fraud or an offence against this Act or the regulations; or

(c) the registration of a registered mortgage broker expires, is cancelled or is suspended;

the commission may, in writing, direct any bank, trust or loan company, credit union or other person, having in Manitoba on deposit, or under control, or in safekeeping any funds or securities of, or moneys owing to, that person to hold those funds, securities or moneys until the commission in writing revokes the direction or consents to the release of any particular fund, security or sum from the direction; and failure without reasonable excuse, to comply with the direction constitutes an offence.

Revocation of freeze

35(5)

The commission may revoke a direction under subsection (1) at any time and shall do so when it is satisfied that the balance remaining in the account is no longer subject to any trust and that there are no remaining uncompleted trades or transactions which will require trust money to be deposited in it.

The Panel notes that there are no provisions in the MBA that permit it to direct that trust funds in a bank account be paid out to a third party. This is in contrast to the provision in section 38(3) that permits the Commission to order that the proceeds of a surety bond be paid out to a third party.

The MBA provides that a receiver appointed by the Commission under section 34(4) can deal with funds of a mortgage broker that are being held “...*on behalf of or in trust for any other person*” but in this case, the Commission did not appoint a receiver under section 34 and the Trustee does not meet the definition of receiver in section 34.

In addition, the Panel notes that under section 35(5) of the MBA, it can only revoke a freeze order if two conditions are met: first, that the balance remaining in the account is “*no longer subject to any trust*” and, secondly, that “*there are no remaining uncompleted trades or transactions which will require trust money to be deposited in it*”. Although the second condition is arguably satisfied by Sigmar’s assignment in bankruptcy, the Panel must find that *both* conditions are met before the freeze order can be revoked.

However, the Panel notes that there is a provision in the MBA that allows a party affected by a freeze order to apply to the Court of Queen’s Bench. The section

reads:

Application to court by person affected

35(4)

Any person affected by a direction given under subsection (1), whether named therein or not, if in doubt as to the application of the direction in respect of any funds, securities or moneys, or in the case of a claim being made against the funds, securities or moneys, may apply to the Court of Queen's Bench, which may direct the disposition of the funds, securities or moneys and may make such order as to costs as may seem just.

The Commission has no inherent jurisdiction; it is an administrative tribunal and its authority is determined solely by statute. Accordingly, while the Panel may agree with Staff Counsel that in this instance it would be in the public interest and most expeditious and cost effective that that the monies in the Trust Account be distributed to the Trustee, it is unable to make such an order. Further, as noted above, a revocation of Order No. 2803 is expressly conditional upon a finding that the funds in it are no longer subject to any trust and that is not the case in this instance.

Accordingly, the Panel is unable to make the orders required by Staff Counsel with respect to the bank accounts. However, as it has identified above, the relief sought can be obtained by application filed by the Trustee to the Court of Queen's Bench under section 35(4) of the MBA. The Panel urges Staff Counsel to work with the Trustee to facilitate such an application.

"L.A. Vincent"
L.A. Vincent
Hearing Chair

"C.D. Burns"
C.D. Burns
Member

"D.A. Huberdeau-Reid"
D.A. Huberdeau-Reid
Member

