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**IN THE MATTER OF** the *Mortgage Brokerages, Lenders, and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “Act”), in particular sections 38 and 39;

**AND IN THE MATTER OF** Elvira Montoya.

## **NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTIES**

**TO:** Elvira Montoya

**TAKE NOTICE THAT pursuant to section 39 of the Act**, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Director, Litigation and Enforcement (the “Director”) proposes to impose an administrative penalty of \$12,000 on Elvira Montoya for producing or furnishing documents with false licensing numbers and describing her corporation’s services, as that of a mortgage brokerage without being licensed under the Act, contrary to section 11 of the Act.

Details of these contraventions and reasons for this proposal are described below. This Notice of Proposal includes allegations that may be considered at a hearing.

**SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS**, veuillez nous envoyer votre demande par courriel immédiatement à: [contactcentre@fsrao.ca](mailto:contactcentre@fsrao.ca).

**YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SECTIONS 39(2) AND 39(5) OF THE ACT.** A hearing by the Tribunal about this Notice of Proposal may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal  
25 Sheppard Avenue West, Suite 100  
Toronto Ontario  
M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: [contact@fstontario.ca](mailto:contact@fstontario.ca)

**TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within fifteen (15) days after this Notice of Proposal is served on you, an order will be issued as described in this Notice of Proposal. TAKE FURTHER NOTICE of the payment requirements** in section 4 of Ontario Regulation 192/08, which states that the penalized person or entity shall pay the penalty no later than thirty (30) days after the person or entity is given notice of the order imposing the penalty, after the matter is finally determined if a hearing is requested or such longer time as may be specified in the order.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules"), made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22. The Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and or other particulars, including further or other grounds, to support this proposal.

## **REASONS FOR PROPOSAL**

### **I. INTRODUCTION**

1. These are the reasons for the proposal by the Director to impose an administrative monetary penalty of \$12,000 on Elvira Montoya (“Montoya”).

### **II. BACKGROUND**

2. Montoya has never been licensed as a mortgage broker under the Act.
3. Secured Funds Inc. (“Secured Funds”) is a company in Ontario that has been incorporated (#1665519) since July 5, 2005. Montoya is its sole administrator and its only director.
4. Secured Funds is not licensed as a mortgage brokerage under the Act.
5. On April 15, 2011, DW submitted a complaint to the Financial Services Commission of Ontario (“FSCO”) alleging that Secured Funds and Montoya had engaged in unlicensed activities as a mortgage brokerage and mortgage broker, respectively.
6. On August 23, 2011, FSCO issued a warning letter to Montoya (the “Warning Letter”) that cautioned Montoya, amongst other things, to cease actions requiring licensing under the Act including arranging mortgage financing and holding herself out as a mortgage broker.
7. Effective June 8, 2019, the Chief Executive Officer assumed the responsibilities of the Superintendent of Financial Services and the Financial Services Regulatory Authority of Ontario (“FSRA”) assumed the responsibilities of FSCO, including in respect of the Act and its Regulations.

### **III. MISREPRESENTATIONS OF LICENSING STATUS**

8. On April 29, 2020, FSRA received a complaint from MC, a lawyer practicing at Diamond & Diamond LLP (“Diamond & Diamond”). MC informed FSRA that he had received letters of direction from Montoya, on behalf of Secured Funds, (the “Letters”) that falsely suggested that Secured Funds was licensed under the Act.
9. These Letters directed Diamond & Diamond to remit payment to Secured Funds for its services on five (5) different mortgage transactions with Diamond and

Diamond's clients: YG, SK, AI, DB, RW/JW (the "Clients"). Montoya arranged for the Clients to sign these Letters and submitted them to Diamond & Diamond.

10. The Letters authorized Diamond & Diamond to release over \$38,000 in fees to Secured Funds and it did so. Diamond & Diamond relied on these documents to classify the funds as "broker fees" when compensating Montoya.
11. In four of the Clients' transactions, only Secured Funds was paid a broker fee. No other person received any broker fee(s) or payment for broker services.

#### Producing or Furnishing a False Licensing Number

12. In each Letter, Montoya included a false licensing number situated just under the name Secured Funds, above the client's signature line, and below the desired fees. Two false numbers were used, depending on the Clients: #M16002993 and #13136. These numbers follow the format for licenses under the Act, but are not licences that have been issued to either Montoya or Secured Funds.
13. There is no record of any licence of #M16002993 being issued under the Act.
14. The licence number #13136 refers to a defunct brokerage licence that had been issued to Secured Capital Funding Inc. ("Secured Capital"). Neither Montoya nor Secured Funds have any relation to Secured Capital. On December 19, 2012, the licence of Secured Capital was surrendered to FSCO. The licence is presently inactive.
15. On or about July 5, 2005, Montoya incorporated Secured Funds. One of the company's business areas was to offer financing to homeowners who were seeking to fix up their homes. Montoya would sometimes suggest to clients that they manage their repayments by taking out, or refinancing, the mortgage on their properties.

#### Montoya's Written Reply

16. On May 7, 2020, a FSRA staff member sent Montoya a letter requesting a reply to the allegations that Montoya and Secured Funds were engaging in unlicensed activities, pursuant to sections 2, 3 and 4 of the Act.
17. On that same day, Montoya sent an e-mail reply to FSRA stating that she only put friends and family in contact with mortgage agents and their brokerages.

### Montoya's Interview

18. On March 1, 2022, Montoya attended an interview, conducted via Microsoft Teams, with two FSRA investigators (the "Interview"). In this Interview, Montoya alleged that she delegated the drafting of the Letters to her sister (MI).
19. Montoya acknowledged that MI had a known history of preparing erroneous submissions, such as the Letters. Montoya stated that she lacked adequate time to have reviewed MI's materials.
20. Montoya also admitted that she had arranged for the Clients to come and sign the Letters, such as for YG. These Letters included the false licensing numbers.

### **IV. CONTRAVENTIONS OR FAILURES TO COMPLY WITH THE ACT**

21. Sections 7(2) and 8(2) of the Act describe how licences issued under the Act demonstrate to the public that a mortgage brokerage or mortgage broker is authorized to deal, trade, and carry on the business of mortgages in Ontario.
22. Section 11(1) the Act prohibits the use of the title of "mortgage brokerage", a variation, an abbreviation, or an equivalent in another language unless that individual or entity is so licensed under the Act.
23. Section 11(2) of the Act prohibits using descriptions that might reasonably be expected to lead to the belief that the individual or entity has been licensed as a mortgage brokerage, where that individual or entity is not licensed under the Act.
24. Montoya misrepresented that Secured Funds was a mortgage brokerage by falsely attributing license numbers to it under the Act. In doing so, Montoya used a variation or abbreviation within the industry to present it as a mortgage brokerage.
25. Additionally, the false licensing numbers are descriptions that reasonably lead to a belief that Montoya or Secured Funds were licensed under the Act, as demonstrated by Diamond & Diamond's classification of the funds as "broker fees".
26. Montoya was the sole director and directing mind of Secured Funds. She furnished the Letters to the Clients, including collecting the Clients' signatures, and she was the contact person corresponding with Diamond and Diamond about the Letters.

## V. GROUNDS FOR IMPOSING ADMINISTRATIVE PENALTIES

27. The Director is satisfied that imposing administrative penalties on Montoya under section 39 the Act will satisfy one or both of the following purposes under section 38 of the Act:
1. To promote compliance with the requirements established under the Act.
  2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under this Act.
28. The Director is satisfied that an administrative penalty of \$12,000 should be imposed on Montoya for contravening section 11 of the Act.
29. In determining the amount of the administrative penalty, the Director has considered the following criteria as required by section 3 of Ontario Regulation 192/08:
1. The degree to which the contravention or failure was intentional, reckless or negligent.
  2. The extent of the harm or potential harm to others resulting from the contravention or failure.
  3. The extent to which the person or entity tried to mitigate any loss or to take other remedial action.
  4. The extent to which the person or entity derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure.
  5. Any other contraventions or failures to comply with a requirement established under the Act or with any other financial services legislation of Ontario or of any jurisdiction during the preceding five years by the person or entity.
30. In respect of the **first criterion**, the Director is satisfied that Montoya, at minimum, has acted recklessly by outsourcing the drafting of the Letters to her sister MI, who she acknowledged had a known history of making errors on such documentation. Further, Montoya was ultimately responsible for the Letters and ought to have reviewed them. The use of a false licensing number, when neither Montoya nor Secured Funds are licensed under the Act, is an overt misrepresentation that could easily have been identified with reasonable diligence.
31. In respect of the **second criterion**, the Director is satisfied that the Clients were put at risk of potential harm if any were misled by the Letters as to Montoya's or

Secured Fund's licensing status under the Act. Licensees under the Act have specific duties and obligations that consumers rely on, such as disclosing conflicts of interests or assessing the suitability of the mortgage. False representations that a person or entity is licensed under the Act undermines the public's confidence and the industry's ability to rely on the integrity of the Act's licensing system.

32. In respect of the **third criterion**, the Director is satisfied that Montoya has failed to make any effort to mitigate or remediate her conduct.
33. In respect of the **fourth criterion**, the Director is satisfied that Montoya's solely owned and operated company received over \$38,000 in fees as a result of her furnishing these Letters – which were in contravention of the Act.
34. In respect of the **fifth criterion**, the Director acknowledges that Montoya has not had any disciplinary actions taken against her under the Act over the past five years.
35. The Director is satisfied, having regarded all the circumstances, that the proposed amount of the penalty is not punitive in nature, and the amount is consistent with one or both purposes of section 38 of the Act.
36. Such further and other particulars as may come to the Director's attention.

**DATED** at Toronto, Ontario, April 13, 2022

Elissa Sinha  
Director, Litigation and Enforcement

By delegated authority from the Chief Executive Officer