

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
D.L. CORBETT, MCKELVEY, O'BRIEN JJ

BETWEEN:	)	
	)	
HAROLD GERSTEL and HAROLD THE	)	<i>Solomon Ross Fischhoff</i> , Counsel for the
MORTGAGE CLOSER INC.	)	Applicants
	)	
Applicants	)	
- and -	)	
	)	
CHIEF EXECUTIVE OFFICER of the	)	<i>Troy Harrison and Michael Scott</i> , Counsel
FINANCIAL SERVICES REGULATORY	)	for the Respondents
AUTHORITY OF ONTARIO	)	
	)	
Respondent	)	HEARD in April 21, 2026 in Toronto

O'BRIEN J.

REASONS FOR DECISION

Overview

[1] The applicants seek judicial review of the Financial Service Tribunal's March 31, 2025 decision, which ordered the respondent, Financial Services Regulatory Authority (FSRA) to carry out the terms of a notice of proposal against them. The FSRA regulates non-securities, financial services sectors in Ontario, including mortgage brokering. The applicant, Mr. Gerstel held a mortgage broker licence. The applicant, Harold the Mortgage Closer Inc. (HMC) was a licensed mortgage brokerage owned by Mr. Gerstel. The notice of proposal proposed to refuse to renew the applicants' licenses and to impose administrative penalties.

[2] The first issue on the application is whether the court should exercise its discretion to judicially review the Tribunal's decision with respect to the applicants' licences when the applicants had a full right of appeal from the Tribunal's decision on that issue. The applicants initially filed a notice of appeal but failed to perfect their appeal.

[3] There is no dispute that the court should exercise its discretion to judicially review the second aspect of the Tribunal's decision, which imposed administrative penalties on the applicants. On that issue, the court must decide whether the Tribunal's decision was reasonable.

[4] For the following reasons, I would decline to judicially review the Tribunal's decision with respect to the applicants' licences. I also would find the Tribunal's decision to impose administrative penalties reasonable.

Background

[5] Mortgage brokering in Ontario is governed by the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29 (the Act). Where the FSRA seeks to refuse to renew a mortgage broker or brokerage's licence or (with some exceptions) to impose an administrative penalty, under the Act, it shall give written notice of the proposal to the licensee. The notice of proposal triggers the right to a hearing before the Tribunal.

[6] In May 2022, the FSRA became aware of allegations of misconduct by the applicants in relation to a retired nurse. It began an investigation and issued two notices of proposal. The first notice of proposal, issued on June 22, 2023, related in part to allegations of Mr. Gerstel being dishonest and failing to co-operate with the FSRA investigation. It also proposed to impose administrative penalties on the applicants totaling \$70,000. The second notice of proposal, issued over a year and a half later on April 30, 2024, related to the interactions between Gerstel and a number of borrowers, including the retired nurse. Although the respondent brought a motion seeking to have the allegations in the two notices of proposal heard at a single hearing, the Tribunal denied the request.

[7] The allegations in the first notice of proposal proceeded to a hearing. In its reasons arising from that hearing, the Tribunal found there was "overwhelming evidence" that Mr. Gerstel had refused to co-operate with the FSRA investigation, including by delaying or refraining from providing information, refusing to answer questions about prior litigation, and failing to comply with two summonses issued by the FSRA. The Tribunal found he "generally employed obfuscation" in his dealings with the FSRA investigator. The Tribunal also dismissed the applicants' allegations of impropriety against the FSRA.

[8] The Tribunal relied on its observations of Mr. Gerstel in the proceedings as well as findings by judges of the Ontario Superior Court of Justice in various decisions involving Mr. Gerstel to find an absence of honesty, integrity and law-abiding nature, which in its view meant Mr. Gerstel was not suitable to be licensed as a mortgage broker. Since Mr. Gertel was the owner, sole officer and director of HMC, the Tribunal concluded HMC's brokerage licence should be revoked.

[9] The Tribunal also concluded it was appropriate to order administrative penalties under the Act. It stated the purpose of administrative penalties is to promote compliance with the Act and to prevent the applicants from deriving economic benefit from failing to comply. The Tribunal emphasized that Mr. Gerstel's non-compliance with the investigation also represented a failure to comply with the Act. In addition, it found Mr. Gerstel derived economic benefit from unduly

protracting the proceeding, which allowed him to stay in business a year longer than if the litigation had followed a reasonable schedule.

[10] The Tribunal concluded administrative penalties totalling \$70,000 were appropriate: \$50,000 for failure to co-operate with the investigation and \$20,000 for providing false and misleading information to the respondent. In reaching its conclusion on the administrative penalties, the Tribunal described Mr. Gerstel’s conduct as intentional and reckless, and showing no effort to remediate his behaviour. It also found, at para. 153 of its reasons, that Mr. Gerstel “derived an economic benefit by unduly protracting this proceeding.”

Should the court exercise its discretion to judicially review the Tribunal’s decision with respect to the applicants’ licences?

[11] Judicial review is a discretionary remedy. In deciding whether to exercise its discretion, the court is required to determine the appropriateness of judicial review in the circumstances, including by considering whether an adequate alternative remedy exists: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, at paras. 51-56, *Strickland v. Canada (AG)*, 2015 SCC 37, at para. 40.

[12] In this case, the legislature has provided for a full right of appeal from decisions of the Tribunal on licensing issues. Subsection 21(1) of the Act authorizes the respondent to make proposals related to licensing under the Act, such as a proposal to refuse to issue or renew a licence. Subsection 21(3) of the Act provides a right to a hearing before the Tribunal with respect to such a notice and s. 21(4) authorizes the Tribunal to make orders resulting from the hearing. Subsection 21(5) provides a full right of appeal to this court from a Tribunal order under s. 21(4).

[13] There can be no doubt that a full right of appeal to the same court from which the applicants seek judicial review is an adequate alternative remedy. Indeed, an appeal would be a preferable avenue of review for the unsuccessful party at the Tribunal. The correctness standard of review for an appeal is stricter than the reasonableness standard that applies on judicial review. This is also not a situation like in *Yatar* where the right of appeal is limited to questions of law, leaving questions of fact or mixed fact and law to be addressed by judicial review. By providing a full right of appeal from the Tribunal’s orders related to licensing (as distinct from, for example, orders related to administrative penalties), the legislature intended for review of those orders to occur by appeal. To permit judicial review on the same issues for which the legislature has provided a full right of appeal would fail to respect legislative intent: *Caledon Residences Inc. v. Ontario Land Tribunal*, 2025 ONSC 6546, at para. 21.

[14] In this case, the applicants initially filed a notice of appeal from the Tribunal’s decision but failed to perfect their appeal. The court granted the applicants three extensions of time, with the third date being peremptory to the applicants. Shore J. denied the applicants’ request for a fourth extension. The appeal therefore was not permitted to proceed. The applicants did not challenge Shore J.’s decision. The applicants were required to challenge the Tribunal’s licensing decision by appeal. Their failure to do so does not allow them to instead challenge it by judicial review. I therefore would dismiss this aspect of the application.

Was the decision of the Tribunal relating to the administrative penalties ordered unreasonable?

[15] As stated above, there is no dispute that the Act does not grant a right of appeal in relation to decisions concerning administrative penalties. Pursuant to s. 39(5) of the Act, the Tribunal is authorized to make orders at a hearing in response to a notice of proposal to impose an administrative penalty. However, there is no right of appeal from that decision. The standard of review on the judicial review of the administrative penalties decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 25.

[16] The applicants submit the Tribunal made several unreasonable findings of fact. They say the Tribunal failed to “engage with the record” when making the following findings: (a) the finding that Mr. Gerstel failed to co-operate with the investigation; (b) the finding that that Mr. Gerstel’s actions harmed the reputation of the industry; and (c) the finding that Mr. Gerstel continued to earn remuneration during the protracted litigation.

[17] Absent exceptional circumstances, a reviewing court will not interfere with the factual findings of an administrative decision-maker: *Vavilov*, at para. 125. None of the examples provided by the applicants amount to exceptional circumstances warranting this court’s intervention. On the first point, there was ample evidence before the Tribunal to support the conclusion that Mr. Gerstel was uncooperative. This evidence included that, in response to an inquiry letter from the FSRA requesting detailed information, Mr. Gerstel provided a one-page response with brief, vague and generally unresponsive answers. Mr. Gerstel never, for example, provided details of deals that were referred outside his brokerage to other lenders, as requested, nor a list of all legal proceedings to which he and HMC had been a party.

[18] The applicants point to notes from a phone call between Mr. Gerstel and the investigator as evidence that the Tribunal allegedly failed to consider. They rely on Mr. Gerstel’s statements in those notes that he would provide various documents and attend an interview. However, despite being summonsed twice, he never attended to be interviewed. In other words, even the evidence Mr. Gerstel points to does little to support his position. The applicants have not provided any basis for the court to interfere in the Tribunal’s findings with respect Mr. Gerstel’s lack of cooperation with the investigation.

[19] On the second issue, the Tribunal stated at para. 153 of its reasons that Mr. Gerstel “caused harm to licensees by damaging the reputation of the mortgage sector”. It is clear from the rest of the paragraph that the Tribunal was relying on Mr. Gerstel’s contraventions of the Act, which it found to be “intentional and reckless” and on his conduct in doing “everything possible to conceal his non-compliance”. The Tribunal’s hearing was open to the public and its findings were available in a public decision. Given what the Tribunal found to be Mr. Gerstel’s egregious behaviour, it was entitled to find he had damaged the reputation of the mortgage sector.

[20] Third, the applicants submit there was no evidence to support the Tribunal’s findings that Mr. Gerstel derived an economic benefit from unduly protracting the proceedings. I disagree. The Tribunal explained at para. 157(d) of its Reasons that, although Mr. Gerstel claimed he had not conducted a mortgage business since March 2023, the evidence disclosed that he was facilitating

loan transactions on behalf of his wife's company. This finding was available. There was evidence before the Tribunal that Mr. Gerstel did not rely only on his own licence for remuneration. Instead, he structured his activities, at least in part, to refer borrowers to his wife's company, Esther Gerstel Inc., as a private lender. The claim that Mr. Gerstel and HMC were not carrying on business, therefore, was not the end of the story. It was open to the Tribunal on the evidence to conclude Mr. Gerstel was continuing to carry on business directly or indirectly through his wife's company.

[21] Contrary to the applicants' submission, the Tribunal's conclusion on this point did not contravene r. 15.06 of its *Rules of Practice and Procedure*. That rule provides that the Tribunal may treat evidence that is admitted in a proceeding as if it were admitted in another proceeding that is heard at the same time, without the consent of the parties. The applicants submit that on this issue, the Tribunal was relying on allegations or evidence related to the second notice of proposal. They say this was not permitted since the allegations from the two notices of proposal were not being heard together. I disagree. The respondent was not prevented from introducing evidence at the hearing related to the first notice of proposal that was also relevant to the second notice of proposal, which is what happened here. There was no error in the Tribunal's reliance on this evidence.

Are the applicants entitled to allege the Tribunal denied them an adjournment in a procedurally unfair manner?

[22] The applicants allege Mr. Gerstel was unfairly denied an adjournment of the Tribunal hearing when his lawyer stopped representing him. On January 8, 2025, Mr. Gerstel's former counsel advised the Tribunal he would not be representing the applicants and that Mr. Gerstel would be representing himself. A pre-hearing conference was then held in which the chair of the panel advised Mr. Gerstel he had a brief time to find a new lawyer. According to the Tribunal's reasons at para. 55, Mr. Gerstel confirmed he wished to represent himself.

[23] The allegation that Mr. Gerstel was unfairly denied an adjournment was raised for the first time in oral submissions before this court. In support of their argument, the applicants relied on a Tribunal pre-hearing conference memorandum that had not been included in the court record. The court allowed the applicants to subsequently file the pre-hearing conference memorandum.

[24] Having now reviewed the pre-hearing conference memorandum, and considering all the circumstances, I would not exercise the court's discretion to entertain the allegation. First, this issue was not expressly raised with the Tribunal. There was no ruling by the Tribunal on it because the applicants did not request an adjournment. According to the pre-hearing conference memorandum, Mr. Gerstel stated he "*might* interview one or two more new lawyers and, if so, that he *might* request an adjournment of the Hearing." (emphasis added) At the pre-hearing conference, the Tribunal responded that there was more than enough time to brief another lawyer prior to the start of the hearing and that the panel would not agree to an adjournment. The applicants never raised the issue further at the Tribunal hearing nor did they allege procedural fairness as a result of the Tribunal's comments.

[25] Second, the respondent had no notice of the allegation. It does not appear in the applicants' notice of application, nor in their factum in this court. The pre-hearing conference memorandum

the applicants now rely upon was not in the court materials. The court gave the parties a brief opportunity to comment on the pre-hearing conference memorandum in supplementary submissions but the respondent did not have the opportunity to prepare its record, factum and oral submissions in a manner that would provide a full history of time lines and other factors that might have been relevant to this issue. I therefore would dismiss this allegation.

Other Issues

[26] The applicants raised several arguments in their factum that were not pursued in oral argument. They submit the Tribunal's decision relied on irrelevant factors, such as Mr. Gerstel's history of civil litigation. They also say that, in assessing the quantum of administrative penalties, the Tribunal failed to consider relevant factors such as Mr. Gerstel's mitigation efforts in surrendering his licence.

[27] There is no merit to these submissions. The Tribunal referred to Mr. Gerstel's litigation history because it relied on court findings calling into question Mr. Gerstel's honest, integrity, and law-abiding nature. It also relied on Mr. Gerstel's failure to cooperate with FSRA and his conduct at the hearing to assess his suitability to be licensed. There was no error in relying on court findings together with other evidence for this purpose. In any event, I have concluded above that Mr. Gerstel's suitability to be licensed is not before the court on this judicial review.

[28] The Tribunal also was not required to accept Mr. Gerstel's offer to surrender his licence as a mitigating factor with respect to the administrative penalties. The evidence before the Tribunal included Mr. Gerstel's ongoing position that he did not engage in any misconduct. As set out above, the Tribunal was of the view that surrendering his licence did not stop Mr. Gerstel from facilitating loan transactions on behalf of his wife's company. In these circumstances, the Tribunal was not required to treat the offer to surrender his licence as a mitigating factor.

[29] The applicants further submit the Tribunal exhibited a reasonable apprehension of bias towards Mr. Gerstel. There is no basis for such a finding. The presumption of a decision-maker's impartiality imposes a high onus on the party alleging bias. The presumption is not easily displaced: *Yukon Francophone School Board, Education Area No. 23 v. Yukon Territory (Attorney General)*, 2015 SCC 25, at paras. 25-26. The Tribunal's comments about the applicants obstructing and delaying the proceedings were fair in the context of the evidence and do not provide a basis for a finding of bias. As set out above, the other Tribunal findings disputed by the applicants were amply supported by the evidence. This allegation is dismissed.

Disposition

[30] I would dismiss the application and award costs to the respondent, as the successful party, in the agreed-upon amount of \$7,500.

“O’Brien J.”

I agree: “D.L. Corbett J.”

I agree: “McKelvey J.”

Released: May 29, 2026

CITATION: Gerstel v. FSRA, 2026 ONSC 2942
DIVISIONAL COURT FILE NO.: DC-25-00000338-00JR
DATE: 20260529

ONTARIO

SUPERIOR COURT OF JUSTICE

D.L. CORBETT, MCKELVEY, O'BRIEN JJ

B E T W E E N :

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CHIEF EXECUTIVE OFFICER of the
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