

Federal Court



Cour fédérale

Date: 20150316

Docket: T-2143-12

Citation: 2015 FC 323

Toronto, Ontario, March 16, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

MARK RICHARD BLUM

Applicant

and

**MORTGAGE ARCHITECTS INC. AND
JAMES NEUMANN**

Respondents

JUDGMENT AND REASONS

[1] This application is brought under the provisions of section 16 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5 (“PIPEDA”) wherein the Applicant is seeking damages of nearly \$2.6 million dollars together with other damages, costs and further relief against the two Respondents.

[2] The Applicant, Mark Richard Blum (“Blum”), has been in the business of buying, renting, improving and reselling properties in Ontario. For this purpose, he has secured mortgages on some of these properties. The Respondent, Mortgage Architects Inc. (“Mortgage Architects”), is a company in the mortgage brokering business in Canada.

[3] The Respondent, James Neumann (“Neumann”), has been an independent agent with the Respondent Mortgage Architects.

[4] The Applicant Blum was involved in a series of transactions with the Respondents, Mortgage Architects and Neumann, and with a lawyer, Douglas Sutherland. Arising out of these transactions were two actions initiated by Blum in the Ontario Small Claims Court. One action, against Sutherland, was undefended at trial and resulted in an award to Blum of just under \$20,000.00. The other, against Mortgage Architects and Neumann, was dismissed by the Court as being barred by a limitation period. Blum also instituted proceedings under PIPEDA with the Office of the Privacy Commissioner of Canada wherein it was determined, in a report dated November 14, 2012, that the matter was well-founded and resolved.

[5] The present proceedings were commenced as an action but, by Order of Prothonotary Tabib dated April 3, 2014, the action was converted to an application. The Applicant Blum has provided, by way of evidence, his own affidavit sworn the 12th day of May, 2104. The Respondent Mortgage Architects have provided the Affidavit of Dong Lee, its Vice President of Operations sworn on the 20th day of June, 2014. The Respondent Neumann has provided his own

Affidavit sworn the 23rd day of June, 2014. There were no cross-examinations upon any of the affidavits.

[6] Each party filed a Memorandum of Argument. The Applicant Blum is self-represented and appeared in person before me at the hearing. Each of the Respondents was represented by the same Counsel appearing before me at the hearing.

[7] The fundamental issue before me is whether the Applicant Blum is entitled to an award under the provisions of section 16 of PIPEDA and, if so, what is the nature and quantum of that award.

[8] Section 3 of PIPEDA states the principal purpose of that *Act* :

3. The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

3. La présente partie a pour objet de fixer, dans une ère où la technologie facilite de plus en plus la circulation et l'échange de renseignements, des règles régissant la collecte, l'utilisation et la communication de renseignements personnels d'une manière qui tient compte du droit des individus à la vie privée à l'égard des renseignements personnels qui les concernent et du besoin des organisations de recueillir, d'utiliser ou de communiquer des renseignements personnels à des fins qu'une personne raisonnable estimerait acceptables dans les circonstances.

[9] I also set out sections 14 and 16 of PIPEDA wherein section 14 provides for proceedings to be taken in this Court, and section 16 provides for remedies that may be granted by this Court (section 2 defines “Court” as the Federal Court):

14. (1) A complainant may, after receiving the Commissioner’s report or being notified under subsection 12.2(3) that the investigation of the complaint has been discontinued, apply to the Court for a hearing in respect of any matter in respect of which the complaint was made, or that is referred to in the Commissioner’s report, and that is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of that Schedule as modified or clarified by Division 1, in subsection 5(3) or 8(6) or (7) or in section 10.

(2) A complainant must make an application within 45 days after the report or notification is sent or within any further time that the Court may, either before or after the expiry of those 45 days, allow.

(3) For greater certainty, subsections (1) and (2) apply in the same manner to complaints referred to in subsection 11(2) as to complaints referred to in subsection 11(1).

...

16. The Court may, in addition to any other remedies it may

14. (1) Après avoir reçu le rapport du commissaire ou l’avis l’informant de la fin de l’examen de la plainte au titre du paragraphe 12.2(3), le plaignant peut demander que la Cour entende toute question qui a fait l’objet de la plainte — ou qui est mentionnée dans le rapport — et qui est visée aux articles 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 ou 4.8 de l’annexe 1, aux articles 4.3, 4.5 ou 4.9 de cette annexe tels qu’ils sont modifiés ou clarifiés par la section 1, aux paragraphes 5(3) ou 8(6) ou (7) ou à l’article 10.

(2) La demande est faite dans les quarante-cinq jours suivant la transmission du rapport ou de l’avis ou dans le délai supérieur que la Cour autorise avant ou après l’expiration des quarante-cinq jours.

(3) Il est entendu que les paragraphes (1) et (2) s’appliquent de la même façon aux plaintes visées au paragraphe 11(2) qu’à celles visées au paragraphe 11(1).

...

16. La Cour peut, en sus de

<i>give,</i>	<i>toute autre réparation qu'elle accorde :</i>
<i>(a) order an organization to correct its practices in order to comply with sections 5 to 10;</i>	<i>a) ordonner à l'organisation de revoir ses pratiques de façon à se conformer aux articles 5 à 10;</i>
<i>(b) order an organization to publish a notice of any action taken or proposed to be taken to correct its practices, whether or not ordered to correct them under paragraph (a); and</i>	<i>b) lui ordonner de publier un avis énonçant les mesures prises ou envisagées pour corriger ses pratiques, que ces dernières aient ou non fait l'objet d'une ordonnance visée à l'alinéa a);</i>
<i>(c) award damages to the complainant, including damages for any humiliation that the complainant has suffered.</i>	<i>c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.</i>

[10] Section 17 of PIPEDA provides that the proceeding shall be heard without delay and in a summary way:

<i>17. (1) An application made under section 14 or 15 shall be heard and determined without delay and in a summary way unless the Court considers it inappropriate to do so.</i>	<i>17. (1) Le recours prévu aux articles 14 ou 15 est entendu et jugé sans délai et selon une procédure sommaire, à moins que la Cour ne l'estime contre-indiqué.</i>
<i>(2) In any proceedings arising from an application made under section 14 or 15, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the disclosure by the Court or any person of any information or other material that the organization would be</i>	<i>(2) À l'occasion des procédures relatives au recours prévu aux articles 14 ou 15, la Cour prend toutes les précautions possibles, notamment, si c'est indiqué, par la tenue d'audiences à huis clos et l'audition d'arguments en l'absence d'une partie, pour éviter que ne soient divulgués, de par son propre fait ou celui de quiconque, des renseignements qui justifient</i>

authorized to refuse to disclose if it were requested under clause 4.9 of Schedule 1. *un refus de communication de renseignements personnels demandés en vertu de l'article 4.9 de l'annexe 1.*

[11] Thus PIPEDA provides that, once the Commissioner delivers a report, a complainant may make an application to the Federal Court for a hearing in respect of any matter in respect of which the complaint was made. Such an application is to be determined without delay and in a summary way. The Court hearing the application may, in addition to any other remedies, award damages to the complainant, including damages for any humiliation that the complainant has suffered.

[12] The nature of the application taken under PIPEDA has been considered in several decisions of this Court and the Federal Court of Appeal. As explained by Décary JA in *Englander v TELUS Communications Inc.*, [2005] 2 F.C.R. 572 at paragraphs 47 and 48, what is at issue is not the Commissioner's report but the conduct of the party against whom the complaint was filed; the remedial power of the Court is remarkably broad. The proceeding is akin to a *de novo* action; the report of the Commissioner, if put in evidence, may be challenged or contradicted like any other document adduced in evidence.

[13] As observed by Noël J of this Court in *Kniss v Canada (Privacy Commissioner)*, 2013 FC 31 at paragraphs 25 to 28, the Commissioner does not have the power to grant remedies; it is the Federal Court that has jurisdiction to grant various remedies including an award of damages or the issuance of compliance orders. The application to the Court is a new matter, to be heard *de novo*; the burden is on the Applicant to present evidence of a breach of the *Act*. To this, I would

add that it is trite law that an Applicant seeking damages must prove entitlement to damages and their quantum.

[14] With respect to damages, Phelan J of this Court in *Stevens v SNF Maritime Metal Inc.*, 2010 FC 1137 at paragraphs 27 to 29, wrote that PIPEDA's right of action is not an end run on existing rights to damages; it is a right to a different kind of damage claim arising from a breach of a right to privacy.

[15] Justice Mosley of this Court in *Girao v Zarek Taylor Grossman, Hanrahan LLP*, 2011 FC 1070 made a survey of the jurisprudence respecting damages at paragraphs 42 to 48. Damages should be awarded only in the most egregious situations. The seriousness of the breach must be evaluated both as to the impact of the breach on the complainant and the seriousness of the breach. To that is to be added a consideration as to whether an award of damages would further the general objectives of PIPEDA.

[16] In order to determine damages, Justice Mosley wrote in *Randall v Nubodys Fitness Centres*, 2010 FC 681 at paragraphs 34 to 58, that the Court must embark on a fact finding process. There must be a connection between the breach of PIPEDA and the damages suffered. An award of damages should only be made where there has been a serious breach and not just an unfortunate misunderstanding.

[17] Justice Zinn of this Court in *Nammo v TransUnion of Canada Inc.*, [2012] 3 F.C.R. 600 observed that while the Court has broad power to award damages, such an award must be made

on a principled basis, and can be awarded even where no actual financial loss has been proven. At paragraphs 64 and 65, Justice Zinn noted that an inquiry should be made as to whether the Applicant attempted to mitigate the losses.

[18] In *Stevens*, supra, at paragraphs 30 to 32, Justice Phelan held that damages not attributable to a PIPEDA breach cannot be awarded. The Applicant must put forward some evidence of the impact of the breach on his standing or community perception or similar features of a privacy claim.

[19] Taking this jurisprudence into account, I conclude that this Court, in considering a claim under PIPEDA:

- a) cannot consider such a claim until the Commissioner has given a report;
- b) the application is not a review of the report;
- c) the Applicant must prove *de novo* any breach found by the report;
- d) the Applicant's claim for damages must be based on a breach of PIPEDA and cannot be used as a surrogate for another claim for damages not arising out of the alleged breach of the provisions of PIPEDA;
- e) the Applicant bears the burden of proving the nexus of damages claimed as arising out of a breach of PIPEDA;
- f) damages will only be given where there has been a serious or outrageous breach of PIPEDA;
- g) where it is appropriate to award damage, an award can be made even where the Applicant has not proved specific damage; and

h) there is a duty to mitigate damages.

[20] Justice de Montigny of this Court in *Townsend v Sun Life Financial*, 2012 FC 550 provided a useful summary of non-exhaustive factors to be considered by a Court in making an award in a PIPEDA claim. He wrote at paragraphs 31 and 32:

[31] There is very little jurisprudence with respect to the determination of damages for breach of privacy, particularly in the context of PIPEDA. One of the most comprehensive reviews of this matter is to be found in Nammo v TransUnion of Canada Inc, 2010 FC 1284, 379 FTR 130 [Nammo] where my colleague Justice Zinn provided some helpful guidelines. Referring to the decision of the Supreme Court in Vancouver (City) v Ward, 2010 SCC 27, [2010] 2 SCR 28, Justice Zinn mentioned three rationales for awarding damages: compensation, deterrence and vindication. He then listed a number of non-exhaustive factors for determining whether damages should be awarded and the quantum of such damages:

- (i) Whether awarding damages would further the general objects of PIPEDA and uphold the values it embodies;*
- (ii) Whether damages should be awarded for deterring future breaches; and*
- (iii) The seriousness or egregiousness of the breach.*

(Nammo, above at para 76)

[32] In turn, the seriousness or egregiousness of the breach can be assessed by way of the following considerations:

- (i) The impact of the breach on the health, welfare, social, business or financial position of the applicant;*
- (ii) The conduct of the respondent before and after the breach; and*
- (iii) Whether the respondent benefited from the breach.*

(Randall, above at para 47).

[21] In the present case, the Applicant is claiming about \$2.6 million dollars in damages. I attached a Schedule A, the Applicant's itemization of those damages.

I. FACTS

[22] I will start in the year 2009. At that time, the Applicant owned at least three properties in Arnprior, Ontario. There were two adjacent properties at 50 and 52 Victoria Street and a property around the corner at 16 Daniel Street. Each of the three properties were mortgaged. The property at 50 Victoria Street was mortgaged to Bridgewater Bank, the property at 52 Victoria Street was mortgaged to Magenta, and the property at 16 Daniel Street was mortgaged to My Next. It happens that there is a "familial" relationship between My Next and Mortgage Architects. It appears that there were dwellings on at least some of those properties which the Applicant rented to others and occupied one unit himself. The Applicant dealt with the CIBC bank; he deposited cheques from the persons renting units with the bank and directed that those funds, together with whatever else was in bank account and line of credit, be used to satisfy his monthly mortgage payment obligations which were paid by post-dated cheques.

[23] In about December, 2009, the Applicant needed additional funds to complete renovations he was doing on his properties. He contacted the Respondent Neumann to see if a mortgage lender could be found. Both Neumann and his wife were agents for Mortgage Architects at the time. Neumann's wife's father, Dunphy, came forward as a mortgage lender. It is not clear whether Neumann brokered this deal; he denies it. What appears to have happened is that both the Applicant and Dunphy were directed by Neumann to a local lawyer, Sutherland, who, acting

for both parties, apparently with their consent, did the paperwork and handled the funding to place a second mortgage, Dunphy's, on probably both Victoria Street properties.

[24] A dispute arose between the Applicant and Sutherland as to this and other transactions. The Applicant sued Sutherland and while the action was defended, Sutherland never appeared in court. The Applicant was awarded just under \$20,000.00. Sutherland was eventually disbarred for a number of irregular transactions, but none of them involved the Applicant.

[25] In late 2009, the Applicant married and planned to take a honeymoon lasting a few months in the Philippines. Before he left, he gave instructions to one Al Shephard ("Big Al"), a local person in the real estate business, to look after his real estate affairs, and to his long-time personal lawyer, Douglas Gadiant, to look after his legal affairs. There is no evidence that the Applicant advised anyone else as to these arrangements.

[26] The Applicant left Canada on December 25, 2009 for the Philippines and did not plan to return until April 15, 2010. He took his computer with him and corresponded by e-mail using the address Preview Inspections.

[27] In late January or early February, 2010, the CIBC decided to put a one-week hold on the rent cheques that were being deposited into the Applicant's account. This, in turn, caused some of the post-dated cheques, used to satisfy the Applicant's mortgage payment obligations, to bounce.

[28] By this time, the Applicant was in the Philippines. Apparently, his computer had crashed. He had the computer repaired but lost some of the data and had forgotten how to enter into his e-mail at the Preview Inspections address. He had, however, another address which he knew how to access, a “single guy” address, however that address was not known to some of his business associates; in particular, it was not known to Neumann.

[29] In February 2010, the Applicant’s mortgage payment cheques were bouncing.

[30] On March 10, 2010, Elizabeth Neumann, Dunphy’s daughter and Neumann’s wife, sent an e-mail to the Applicant’s Preview Inspections address stating:

I have tried to reach you by phone but have been unsuccessful. Please be advised that your February mortgage payment in the amount of \$278.91 has been returned by your bank non-sufficient funds and as of March 10, 2010, there has been no attempt on your behalf to correct this matter.

I trust that upon your receipt of this letter you will act accordingly to correct this matter.

Please contact me immediately to make arrangements.

[31] On March 16, 2010, Neumann sent an e-mail to the Applicant at the Preview Inspections address copying his wife, Elizabeth Neumann. That e-mail said:

Hello Mark, Hope all is going well in the Very Sunny South, With that being said Elizabeth has sent you an e-mail about your chk coming back nsf on your second mtg for Feb/2010 and now March has come back as well. I have spoken to Magenta and their chk came back as well. Magenta is going to give you until March 19th 2010 to address this matter and get mtg up to date or they are going POWER OF SALE, DUNPHY HAS ASKED US TO GET DOUG SUTHERLAND TO START POWER OF SALE ASAP UNLESS YOUR MTG IS BROUGHT UP TO DATE. THE TOTAL

*AMOUNT TO BRING UTD TO AVOID POWER OF SALE IS
\$1,447.82.*

Being Sent without Prejudice.

[32] Apparently, Neumann had spoken a day or two earlier to Al Shephard about concerns as to non-payment of the Dunphy mortgages. Shephard contacted the Applicant at his “single guy” e-mail address about these concerns. The Applicant responded that he must attend to the problems in person but, due to ticketing problems with Air Canada, he could not return until mid-April. Shephard e-mailed the Respondent on March 17, 2010 saying that one of the mortgage lenders, Magenta, wanted their money by Friday or they would start power of sale proceedings.

[33] On April 6, 2010, Neumann sent an e-mail to the Applicant at Preview Inspections saying simply “ARE YOU BACK YET”.

[34] The Applicant returned to Canada in mid-April and spoke by telephone with Neumann at which time he made a proposal to settle the outstanding Dunphy mortgage claim. Neumann responded by e-mail on April 21, 2010, copying his wife, Dunphy, Sutherland and Gadiant, proposing prompt payment of a certain amount by a certain date or other date if a firm Offer for Sale has been received. The Applicant did not respond.

[35] On April 27, 2010, Neumann sent an e-mail to Sutherland, copying Dunphy and his wife Elizabeth Neumann, saying:

*Hi Doug, Please be advised Mr. Dunphy will forward you a
\$10,000.00 {?} to start power of sale on both homes.*

[36] This is referred to as the second e-mail of the complaint.

[37] On April 29, 2010, Neumann wrote an e-mail to Sutherland, with a copy to "Preview Inspections" (the Applicant by this time was able to access e-mails at this address), Neumann's wife Elizabeth, Dunphy, Bridgewater Bank, and Bridgewater's lawyers saying:

Good Morning Doug, Re our conversation this morning, I have had a lengthy conversation with Bridgewater Bank. They have started Power of Sale as of March 19th, 2010 for non-payment of mortgage. To date they have not heard anything from Mark Blum which should not surprise anyone. Not only has he not talked to anyone at Bridgewater directly, he has not paid either. The last time Bridgewater was paid was December 2009.

There was no plan with Bridgewater based on whether Mr. Dunphy made any arrangements or not. NOTE MARK'S COMMENT BELOW, Since Bridgewater has already started Power of Sale let's just go after the other side being 50 Victoria for non-payment of Mortgage to Mr. Dunphy.

I would hope this could cut down the total costs of taking over control of his home.

Further I forwarded Mark's e-mail to Helene today with his comments, again no deal was made so clearly this was further delay of payment that was to be paid April 26th 2010 PER MARK'S E-MAIL, Elizabeth contacted Doug, Mark's lawyer yesterday and was told he is not handling anything for Mark on this second Mortgage and hung up on her. Note Mark's e-mail clearly states that the funds will be sent through the lawyers office on the 26th of April 2010.

Further this morning, I have spoken to Lucia at Bridgewater's lawyers office and Lucia does confirm Mark has been given an extension to bring the Mortgage up to date, however no date was given.

During my conversation last week with Mark he commented that it would not be worth Mr. Dunphy's time or expense to go Power of Sale as the home would more likely be sold before he got control. Since we cannot get paid Mr. Dunphy feels it is in his best interest to take control of property to ensure he recovers what is owed to him one being on pension his funds are limited.

Thanks

[38] This is referred to as the third e-mail of the complaint.

[39] Ultimately, Power of Sale proceedings were taken against the two Victoria Street properties and the Daniel Street property. The Applicant had received appraisals on these properties and claims a shortfall on loss of equity amounting to \$67,905.19.

II. THE COMPLAINT UNDER PIPEDA

[40] The Applicant filed a complaint with the Privacy Commissioner under PIPEDA, as against Mortgage Architects. It was accepted on September 26, 2011. The complaint did not include Neumann. Indeed no complaint could have been filed as against Neumann personally as he is not an “organization”, as described in section 3 of the *Act*.

[41] The substance of the complaint was summarized in the Commissioner’s Report provided November 14, 2012 at paragraphs 2 to 7. I repeat paragraphs 4 to 7:

4. The complainant then left the country for several months. While he was away, transactions occurred with his banking accounts that resulted in a financial shortfall situation. In the context of this situation, which appears to have affected the timeliness of the complainant’s mortgage payments, the mortgage agent, who had facilitated the independent financing to “mortgage lender B”, sent three separate e-mails in March/April 2010 from his work e-mail account to various parties. The e-mails displayed the agent’s work signature as well as Mortgage Architects’ contact details. The e-mails identified the complainant and informed the parties about his non-payment situation. The e-mails also mentioned the legal actions anticipated by the lenders of the two mortgages of the property.

5. The e-mails, copies of which our Office reviewed, consisted of the following information:

- i. *March 17, 2010: An e-mail to the complainant's property manager, informing him that mortgage lender B "...wants their money this Friday or they will start power of sale proceedings".*
- ii. *April 27, 2010: An e-mail to the mortgage agent's wife, his lawyer, and the mortgage lender B, advising the agent's lawyer that mortgage lender B was sending \$10,000 to start legal proceedings against the complainant.*
- iii. *April 29, 2010: An e-mail to the mortgage agent's wife, his lawyer, mortgage lender B, mortgage lender A and his legal representative. The e-mail contained information concerning: (i) mortgage lender A's anticipated power of sale for non-payment of the complainant's mortgage and (ii) a possible power of sale by mortgage lender B for non-payment.*

6. *For the alleged personal information disclosure occurring in these e-mails, the complainant filed a complaint, which this Office accepted on September 26, 2011.*

7. *In his complaint, the complainant stated that the mortgage agent had no consent or authority to be involved in the complainant's private or business affairs. He alleged that the mortgage agent was using confidential knowledge acquired through the complainant's business relationship with Mortgage Architects to launch an attack against the complainant and his business relationships.*

[42] The foregoing three e-mails together with the personal disclosures referred constitute the "matter in respect of which the complaint was made" which, as provided for in section 14 of PIPEDA, is the scope of that which the Court may consider in the present proceeding.

[43] In the Findings portion of the Commissioner's Report, it was held that no contravention of Principle 4.3 of Schedule 1 of PIPEDA had occurred but there was a contravention of Principle 4.5. In that latter regard, the Report stated at paragraphs 21 to 26:

21. *Also at issue is whether the complainant's personal information was used or disclosed for a purpose consistent with that for which it had been collected. Principle 4.5 stipulates that personal information shall not be used or disclosed for purposes*

other than those for which it was collected, except with the consent of the individual or as required by law.

22. *In our view, Principle 4.5 was not upheld. The mortgage agent used the complainant's personal information, collected from his previous business relationship with the complainant, to intervene in a separate private matter. This information was subsequently disclosed to third parties without consent.*

23. *During the course of our investigation however, Mortgage Architects demonstrated to this Office that it has in place an appropriate privacy policy and procedures, which it communicates to its agents and brokers. It has regular updates and training for its staff on overall policy and accountability issues and conducts periodic office visits to ensure brokers are compliant.*

24. *As a result of our investigation, Mortgage Architects alerted its brokers throughout the organization about this specific incident and explained why it was a breach of PIPEDA. It took steps to streamline its forms for the brokers so that the PIPEDA consent form was easier to find. Further, to prevent a recurrence of the events similar to this complaint, Mortgage Architects ensured that its agents and brokers were re-familiarized with their obligations under the Act as well as the organization's own compliance guidelines. This measure conforms to our Office's suggested privacy practices contained in our document Getting Accountability Right with a Privacy Management Program, available on our website.*

25. *This Office determined that the incident was isolated and stemmed from the personal relationship the mortgage broker had with the private lender. The mortgage broker is no longer working for Mortgage Architects and further, we are satisfied that the actions taken by the respondent will reduce the likelihood of any recurrence.*

Conclusion

26. *Accordingly, I conclude that the matter is well-founded and resolved.*

[44] As previously discussed, the Commissioner's findings are not the subject of these proceedings. The onus rests on the Applicant to demonstrate on the record in these proceedings,

and by applying the appropriate legal principles, that there has been a breach of PIPEDA within the scope of the issues before the Commissioner.

III. APPLICANT'S POSITION

[45] The Applicant submits that at all material times Neumann was the agent of Mortgage Architects, that he directly as such agent brokered one mortgage deal with My Next and, by implication at least, brokered the deals with Dunphy.

[46] The Applicant submits that Neumann, acting in his capacity as agent for Mortgage Architects, used the Applicant's personal information as to defaulting upon mortgage payments to stir up Dunphy, Bridgewater and Magenta to move to foreclose and exercise power of sale upon the Applicant's properties. The Applicant submits that, not only has he lost expected equity upon such properties, but that his credit and business has been ruined.

[47] The Applicant reviewed his claim as itemized in Schedule A. I am satisfied that he has substantiated, in terms of quantification of deficiencies, the loss of equity as set out in items 1, 2, 3 and 4. I am not satisfied as to the loss of income, item 5. The Applicant has not set out his other sources of actual income in the years involved. The \$41,997.00 figure is not substantiated; a \$14,000.00 figure appears elsewhere. There is no evidence as to any attempt by the Applicant to mitigate the damages.

[48] I disregard the loss of living allowance; the Applicant simply allowed himself to live free in one of the rental properties; there is no evidence as to the cost of alternative accommodation.

[49] The remaining losses of Aggravated Damages, Stress and Duress, Punitive Damages, Socially Demonstrative Damages and To Be Made Whole are unsubstantiated and purely speculative.

[50] The legal costs and experts, the extent that they are substantiated, deal with claims made in the Ontario Courts, not here.

IV. RESPONDENTS' POSITION

[51] The Respondents' position is first that no claim can be made personally as against Neumann since he is not an "organization" within the meaning of section 3 of PIPEDA. I agree, no personal claim as against Neumann can be asserted under PIPEDA. The claim against Mortgage Architects is in respect of statements made by Neumann and e-mails sent by him while acting as agent for Mortgage Architects.

[52] Mortgage Architects is an "organization", as described in section 3 of PIPEDA. The evidence as to whether, in respect of the statements made by Neumann and his e-mails were made as agent for Mortgage Architects, is less clear. The first e-mail, that of March 17, 2010, is from "Big Al" Shepheard (the Applicant's representative) to the Applicant advising that Neumann told him that Magenta wants there (sic) money by Friday. It is unclear as to in what capacity, if any, Neumann was acting.

[53] The second e-mail, that of April 27, 2010, is from Neumann to Sutherland, a lawyer who had acted for both the Applicant and Dunphy, advising that funds were forthcoming to start the

power of sale process. The e-mail is “signed” James Neumann, Mortgage Architects. While not entirely clear, I accept that Neumann must be considered to be acting as agent for Mortgage Architects.

[54] The third e-mail, that of April 29, 2010, is also signed “James Neumann, Mortgage Architects” and again, I find that Neumann must be considered as agent for Mortgage Architects.

[55] Thus, while the status of Neumann, whether acting personally or on behalf of his father-in-law, Dunphy, or acting as agent for Mortgage Architects is far from clear, I find that it is reasonable to adduce that, in making the statements as reflected in the e-mails and in sending the e-mails, in particular the third, that of April 29, 2010, he was acting in his capacity as agent for Mortgage Architects.

[56] The Respondents further take the position that whatever Neumann said or whatever the e-mails stated, there was no direct or consequential damage to the Applicant. They argue that the mortgages would have been foreclosed and powers of sale exercised in any event. I accept this. Each of Magenta, Bridgewater and My Next are sophisticated lenders and would have been well aware that the Applicant’s mortgage cheques had bounced. Each would have been within their rights to foreclose. Dunphy, a second mortgagee, would have to give notice of his intention to foreclose to the first mortgagees in any event.

[57] The Applicant argues that Neumann, together with Sutherland, were engaged in a conspiracy to foment trouble and encourage Dunphy and the others to foreclose. I have been

invited to speculate and “look further” into the matter and discern what must have been a conspiracy to thwart the Applicant who, upon his return in mid-April, could have calmed the waters and persuaded all the mortgagees to refrain from taking action. I am not buying into the conspiracy theory. I appreciate that Neumann was probably under pressure to ensure that his father-in-law’s interests were protected but Magenta, Bridgewater and My Next are sophisticated lenders; they would not be persuaded by someone in Neumann’s position, into doing which they probably would have done anyway.

[58] I find that the foreclosures by Magenta, Bridgewater and My Next were not caused or motivated by Neumann’s actions.

V. WHAT DAMAGES, IF ANY?

[59] I have found that the Respondents did not cause the damages itemized as numbers 1 through 4 in Schedule A. I find the balance of the Damages claimed in Schedule A to be remote and unsupported by the evidence. What is left?

[60] The jurisprudence is to the effect that damages should only be awarded in cases where they are substantially justified and would further the objectives of PIPEDA in ensuring that organizations are diligent in retaining as secure, personal information.

[61] In the present case, the Commissioner found that a breach occurred but that Mortgage Architects has in place proper measures to preclude such breaches, and to ensure that its agents were aware that such breaches should not occur.

[62] The facts are unique; Neumann was conflicted in that he, probably improvidently, had acted in some way for his father-in-law in securing a mortgage on the Applicant's properties. It is not a common or recurring practice.

[63] While the Applicant feels that there was a conspiracy to frustrate his business efforts, I cannot on the record before me, conclude that such was the case.

[64] As I result, I find that no real damages have been incurred by the Applicant as a breach of PIPEDA. Any damages to be assessed against Mortgage Architects would be nominal. I fix them at \$1,000.00. Neumann, in his personal capacity, is not subject to any award of damages under PIPEDA.

[65] This is not a situation for an award of costs to any party.

JUDGMENT

FOR THE REASONS PROVIDED:

WHEREUPON THE COURT ORDERS AND ADJUDGES that:

1. The application as against the Respondent Neumann personally is dismissed;
2. The application as against the Respondent Mortgage Architects is allowed to the extent that damages in the sum of \$1,000.00 are awarded;
3. Each party shall bear its own costs.

"Roger T. Hughes"

Judge

Schedule A

Federal Court File No.: T-2143-12

Claim of the Applicant: Mark Blum

FINANCIAL RELIEF SOUGHT:	AMOUNT
SPECIAL AND GENERAL COMPENSARY DAMAGES:	
1. For deficiency Judgement claimed by C.M.H.C National Recoveries for 52 Victoria Street Amprior, Ontario in the principal amount of \$53, 123.47 plus interested as indicated on their lettr of August 09, 2011.....	\$53,123.47
2 For deficiency Judgement claimed by C.M.H.C National Recoveries for 16 Daniel Street Amprior, Ontario in the principal amount of \$169,501.89 plus interested as indicated on their letter of June 07, 2012.....	\$169,501.89
3 Claims with regards to any deficiency claims arising from the loss of the property at 50 Victoria Street, Amprior, Ontario.	\$135,419.02
4. Loss of equity in the above mentioned properties in the amounts listed as per prior appraisals, evaluations less the pre existing mortgages: 16 Daniel Street: \$ 18,872.19 52 Victoria Street: \$ 8,823.19 50 Victoria Street: \$ 40,269.81 TOTAL = \$67,905.19.....	\$67,905.19
Loss of Income (\$41,977.00K based upon 2009) (\$41,977.00K X 15 years to age 65) and accomidations.....	\$629,655.00
Loss of Residential Housing Allowance (\$1,200.00 x 12 X 15)	\$216,000.00
Aggrevated Damages.....	\$100,000.00
Stress and duress caused by the circumstance & credit damages.....	\$500,000.00
Punative Damages.....	\$100,000.00
Socially Demonstrative Damages.....	\$605,000.00
To be made whole	\$16,000.00
Legal Costs and experts	\$5,058.90
TOTAL	\$ 2,597,663.47

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2143-12

STYLE OF CAUSE: MARK RICHARD BLUM v MORTGAGE
ARCHITECTS INC. AND JAMES NEUMANN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 11, 2015

JUDGMENT AND REASONS: HUGHES J.

DATED: MARCH 16, 2015

APPEARANCES:

Mark Richard Blum
ON HIS OWN BEHALF
Jennifer Varcoe

FOR THE APPLICANT

FOR THE RESPONDENTS
Mortgage Architects Inc. and James Neumann

SOLICITORS OF RECORD:

SELF REPRESENTED
Kelowna, British Columbia

FOR THE APPLICANT

FORBES CHOCHLA LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE RESPONDENTS
Mortgage Architects Inc. and James Neumann