

# Vancouver Sun

## Court quashes class action lawsuit against Eron Mortgage

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B.C. Court of Appeal dealt victims of the Eron Mortgage Corp. a serious setback Tuesday in their attempt to recover millions of dollars of losses from the B.C. government.

In a unanimous decision, a judicial tribunal threw out a class-action lawsuit initiated by North Vancouver realtor Mary Francis Cooper, who lost \$94,500 in the Eron fiasco, on grounds that the B.C. registrar of mortgage brokers does not have a duty of care to investors.

"We are very disappointed. I thought the class-action suit was very solidly based," said James Tindle, head of the Eron Lenders' Committee, who lost \$300,000 investing in Eron projects.

David Church, lawyer for investors, said he is "deeply disappointed" by the decision.

"It should have gone to trial to determine whether in fact the registrar of mortgage brokers did owe a duty, and if he did owe that duty, was it breached." He said the investor group will ask the Supreme Court of Canada for permission to appeal.

Between 1993 and 1997, Eron raised \$220 million from more than 3,000 investors for about 47 projects, most of them real estate-related.

On Oct. 3, 1997, B.C. registrar of mortgage brokers Robert Hobart suspended the firm's registration after uncovering numerous financial irregularities.

Last week, the B.C. Securities Commission suspended Slobogian from the B.C. stock market for life, and Biller for 10 years. They and four Eron-related companies were also fined a total of \$1.8 million. RCMP are also conducting a criminal investigation.

Meanwhile, Eron's projects are now being wound up. After liquidation costs, investors are expected to recover only about \$25 million.

In her lawsuit, Cooper alleges Hobart knew as early as Aug. 28, 1996 -- 13 months before he suspended Eron's registration -- that:

1 Eron and its principals, Slobogian and Biller, and their employees were offering investments to the public that were not mortgage investments as defined by the act. (In one case, for example, Eron sold investments in a money-losing golf tournament).

1 Eron was employing people not properly registered under the act.

1 A sister company, Eron Investment Corp., offered investments in a revolving mortgage fund, but was not registered under the act.

1 Companies that held mortgages in trust for investors were also not registered. (Most of the money raised by Eron flowed through these trustee companies with little or no accounting to investors).

1 Unsuitable people were registered to act as mortgage brokers. (One broker had been previously disciplined by the VSE and both Slobogian and Biller had been previously bankrupt.)

Cooper asserts that had Hobart properly exercised his duty to investigate the affairs of Eron and its principals, he would have discovered their wrongful actions earlier and could have taken steps to mitigate losses.

In her 19-page decision, Judge Mary Newbury said there seems to be little doubt about Eron's misconduct, but she said she is not satisfied the registrar has a private duty of care to investors under the B.C. Mortgage Brokers Act, as asserted by Cooper.

She emphasized Hobart's alleged sins are ones of inaction, a failure to do the things Cooper listed in her statement of claim.

"Further, the plaintiff does not allege any misrepresentation or misstatement by the registrar, nor does she plead any specific reliance on the registrar. Indeed, it is not even alleged the plaintiff was aware of the existence of the Act or the registrar at the time of making her investment."

She said the central function of the registrar is to register persons who are suitable, and to renew, suspend or cancel registration in the public interest.

"Although the plaintiff pleaded that the registrar has control and supervision over the operations of mortgage brokers in B.C., that is not strictly correct."

She said other than ensuring compliance with rules regarding disclosure to borrowers (Eron victims were lenders), "the registrar has no authority to regulate terms on which mortgage brokers lend or raise money."

Judge Newbury conceded the case "raises an important question of tort law that has not yet been considered by the Supreme Court of Canada."

"If this decision is appealed, it is hoped the question

of duty of care will engage the interest of the Supreme Court of Canada and that lower courts will be given clear and practical guidance regarding cases of this kind -- that is, allegations of negligent inaction brought against financial regulators -- which seem to be arising with increasing frequency."