

Pitt Meadows, BC
Called to the Bar: June 30, 1976

Discipline hearing: August 1, 2002

Panel: Peter J. Keighley, QC, as a one-Bencher panel by consent

Report issued: August 21, 2002; indexed as [2002] LSBC 26

Counsel: Todd R. Follett, for the Law Society; Craig P. Dennis, for TS

Summary

TS acted for a non-profit housing society in a situation that gave rise to significant conflicts of interest. He served for a period as a director of B Ltd., a company that had loaned money to the housing society for the acquisition of property the society wished to develop as seniors housing. TS also loaned money to the client housing society, secured by mortgages to himself and to B Ltd., and he loaned the client more money through his management company. TS executed discharges of his mortgage security in transactions in which he represented the interests of the client and further acted for the client with respect to sales when he had an interest as a mortgagee in the transactions, although he was not repaid from the sale proceeds and not until after the first mortgage was discharged. TS admitted, and the hearing panel found, that his conduct in acting while in a position of conflict amounted to professional misconduct. In determining penalty, the panel noted that TS was not motivated by a promise of financial reward but by his wish to assist a client with a worthy project. The panel also took account of submissions by Law Society counsel that, while there were numerous overlapping conflicts, these had resulted in no harm and no complaint, and that there was tacit approval of all involved with knowledge of the conflicts. The panel approved joint submissions on penalty put forward by both counsel and accordingly ordered that TS pay a \$2,000 fine and \$1,500 as costs.

Facts

In 1988 TS began acting for a non-profit housing society. The society had been bequeathed a property and wished to acquire and subdivide adjacent properties in order to develop the land for non-profit seniors housing.

In April, 1989 TS's management company loaned \$5,000 to the society. The society used the money as a down payment on the purchase of one of the properties.

In December, 1989 the society entered into an agreement with a company (B Ltd.) and with an individual (J) whereby J would act as project manager of the housing

development project and B Ltd. would have exclusive right to build new homes in the subdivision.

TS and B Ltd. each loaned \$80,000 to the society to pay out the vendor mortgage on one of the properties. These loans were secured by a second mortgage in favour of TS and B Ltd. over the properties involved in the housing project.

From early January until mid-March, 1990, TS served as a director for B Ltd. He told the panel that he did so as a favour to J who was leaving on an extended family holiday out of the country, and that he did not take any action as a director while holding office.

TS represented the housing society in the sale of five properties. In each case, he executed a partial release of his second mortgage security. J executed the releases on behalf of B Ltd. None of the sale proceeds from these transactions were applied to TS's portion of the mortgage loan. He and B Ltd. were paid in full after the first mortgage was retired.

TS's involvement in these transactions came to the attention of the Law Society, not by complaint, but as a result of press coverage of a public dispute between rival factions of his client housing society in 1997.

Verdict

TS admitted, and the hearing panel found, that he had acted in circumstances giving rise to significant conflicts of interest, contrary to Ruling 9(b) of the *Professional Conduct Handbook* in force in 1990, which provided that "No member shall act for a client where there is a possibility, no matter how remote, that his duty to his client conflicts with his personal interests." He did so by:

- acting as a director of B Ltd., which then had money on loan to TS's client;
- lending money to his client, secured by a mortgage to himself and B Ltd.;
- lending money to his client through his management company;
- executing discharges of his mortgage security in transactions in which he was representing the interests of his client;
- acting for his client on sales transactions in which he had an interest as mortgagee.

TS admitted, and the panel found, that his conduct constituted professional misconduct.

Penalty

The panel took into account submissions by Law Society counsel that this was an unusual case in that, while there were numerous, overlapping incidents of conflict, there was no

evidence of harm and no complaint to the Society. Moreover, there was tacit approval of all involved with knowledge of the conflicts.

After reviewing previous discipline cases, the panel also noted that TS was not motivated by a promise of financial reward but rather by his wish to assist his client with a worthy project. He acknowledged there was potential for harm in these circumstances had the project “gone sideways.”

TS’s professional conduct record included a discipline admission in 1992 and a conduct review in 1998. The panel noted that the conduct review had related to another conflict of interest situation that occurred in the same time period as this matter. The panel was accordingly not prepared to treat that conduct review as an aggravating factor on penalty, noting that the remedial effect of that review would only apply to subsequent conduct.

The panel approved joint submissions put forward by both counsel and accordingly ordered that TS pay a \$2,000 fine and \$1,500 as costs.

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