

Vancouver, BC

Called to the Bar: May 15, 1968

Discipline hearing: April 10, 2003

Panel: Patricia L. Schmit, QC, as a one-Bencher panel, by consent

Report issued: April 17, 2003; indexed as [2003] LSBC 21

Counsel: Jessica S. Gossen, for the Law Society; Jerome D. Ziskrout, for JW

Summary

JW represented investors who loaned money to an individual on the security of mortgages. JW prepared the mortgages, met with the mortgagor, who was unrepresented in the transactions, and had the mortgagor sign the documents. Contrary to Appendix 3, paragraphs 8 and 10 of the *Professional Conduct Handbook*, JW failed to advise the mortgagor in writing that he should obtain independent legal advice, that JW was not acting for him with respect to the preparation of the two mortgages or advising him on the mortgage transactions, but was only attending to the execution and attestation of the mortgages, and that any representation was limited to JW clearing title on property as permitted by the *Handbook*. JW admitted, and the hearing panel found, that his conduct in witnessing the mortgagor's signature in these circumstances and his failure to comply with Appendix 3 constituted professional misconduct. The panel approved the joint submission on penalty and ordered that JW be reprimanded, pay a \$3,000 fine and pay \$1,500 as costs.

Facts

Mr. H had for some years borrowed money to subsequently loan to D and one of D's business associates (B). JW had a longstanding business relationship with D and, as a lawyer, had represented both D and B.

In 1991 Mr. H opened a line of credit for \$25,000 at a bank on the agreement that D would assume responsibility for this debt. In 1995 Mr. H obtained a \$100,000 loan from M Ltd., secured by a mortgage against Mr. H's residence. He subsequently obtained a \$12,000 loan, secured by a second mortgage against the same property. In each case, Mr. H provided the mortgage proceeds to D and B on the understanding that they would be responsible for the payment of the loans to M Ltd.

In the summer of 1998 the mortgages and the line of credit had fallen into arrears. B paid off the first mortgage, but the second mortgage remained outstanding. M Ltd. began foreclosure proceedings against the property under the second mortgage, and the bank demanded payment of \$29,450 owing on the line of credit.

Mr. H asked D to repay the remaining debts to the bank and to M Ltd.

In September, 1998 D asked JW to arrange for a loan of \$55,000 to Mr. H. JW arranged for certain investors, including JW's wife, to make this loan to Mr. H. The loan was to be secured against Mr. H's residence by a second mortgage (one of the M Ltd. mortgages still remained on title). JW acted for the investors in this transaction and Mr. H was unrepresented.

JW prepared the mortgage and met with D and Mr. H. Mr. H signed the mortgage as mortgagor and D signed as guarantor. Pursuant to a direction to pay signed by Mr. H, JW disbursed the mortgage proceeds to pay out the debts owed to M Estate, to pay off the bank line of credit, to pay a bonus to the mortgagees, to pay JW's legal fees and to pay the balance to another person who had loaned money to D.

In October, 1998, at the request of D, JW arranged a \$15,000 loan from the same investors to Mr. H. The loan was to be secured by a further mortgage against Mr. H's residence. JW prepared the mortgage documents and again met with D and Mr. H. Mr. H signed the document as mortgagor and D signed as guarantor. Pursuant to the direction to pay, JW paid his legal account from the mortgage proceeds and paid the balance to D.

The interest charged on both mortgages that JW had arranged was 15%.

JW knew it was intended that D would pay these mortgage loans, and D did so until he died in September, 1999. At that time, JW contacted Mr. H to arrange for a continuation of the mortgage payments.

Contrary to Appendix 3, paragraphs 8 and 10 of the *Professional Conduct Handbook*, JW did not advise Mr. H in writing that:

- Mr. H should obtain independent legal advice;
- JW was not acting for Mr. H with respect to the preparation of the two mortgages;
- JW was not advising Mr. H with respect to the mortgage transactions but was only attending to the execution and attestation of the mortgages; and
- to the extent JW was acting for Mr. H, his representation was limited to clearing title on Mr. H's property as permitted by Appendix 3, paragraph 10 of the *Handbook* and, if a conflict arose in this limited representation, JW would cease to act for Mr. H.

Decision

JW acknowledged, and the hearing panel found, that his conduct constituted professional misconduct in:

- witnessing the mortgagor's signature in these circumstances and

- providing legal services in a real estate transaction in which two of the parties had different interests and failing to comply with Appendix 3, paragraphs 8 and 10 of the *Professional Conduct Handbook*.

Penalty

The hearing panel approved the joint submissions on penalty from counsel for the Law Society and for JW. The panel accordingly ordered that JW:

1. be reprimanded;
2. pay a \$3,000 fine, half of which must be paid within three months and the balance within six months; and
3. pay \$1,500 as costs of the discipline proceedings.

Discipline Case Digest — 2003: No. 11 April (JW)