Alexander Jeletzky

Vancouver, BC
Called to the bar: June 26, 1974
Voluntarily ceased practice: January 1, 2004

Discipline hearing: April 8 and 27, 2004 and November 18, 2004
Panel: James Vilvang, QC, as a single Bencher panel by consent
Reports issued: May 19, 2004 (facts and verdict), indexed as 2004 LSBC 17, and January 14, 2005 (penalty), indexed as 2005 LSBC 02
Counsel: Luisa Hlus, for the Law Society, and Christopher Hinkson, QC, for Mr. Jeletzky

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Summary

In 2001 Mr. Jeletzky represented a company that was purchasing a business and had obtained a loan from a credit union to help finance the purchase. Mr. Jeletzky received the loan proceeds in trust from the lawyer representing the credit union. The credit union's lawyer placed Mr. Jeletzky on various undertakings. One of these undertakings required Mr. Jeletzky not to release the funds from trust until a prior creditor of the business had explained the nature and outstanding balance of its security over the business assets and until the credit union had provided written acceptance of that explanation. In breach of that undertaking, Mr. Jeletzky disbursed to the vendor's solicitor the funds required for the purchase of the business. In disbursing the funds, Mr. Jeletzky had relied on his client's confirmation that the credit union manager had removed the undertaking and that the transaction could proceed. The hearing panel found that Mr. Jeletzky was not justified in believing that he had been relieved of the undertaking. His breach of undertaking constituted professional misconduct. The panel ordered that Mr. Jeletzky be reprimanded, pay a $2,000 fine and pay costs of the hearing.

Facts

In July 2001 Mr. Jeletzky represented a company that was interested in purchasing a motorcycle dealership for $525,000. The purchaser arranged for a loan of $262,501 from a credit union to help finance the purchase.

The credit union required a general security agreement for its loan to provide a specific first charge over the business accounts receivable and inventory and a first floating charge over the remaining assets of the business.

Another financial institution (H Financial) had previously registered a charge in the Personal Property Registry, charging the following collateral of the vendor's business:

“all goods supplied before or hereafter by secured party, all parts and accessories therefore and accessions thereto and all proceeds thereof.”

On November 20, 2001 a lawyer (F), who represented the credit union, forwarded the security documents to Mr. Jeletzky for the purchaser to execute. F advised that the funds would be forwarded on various undertakings, including an undertaking that Mr. Jeletzky discharge the H Financial charge. Mr. Jeletzky called F on November 21 to say he had a problem with the undertakings. He followed up with two letters that day and noted that his client would not have enough money to discharge the enumerated liens, including the H Financial charge.

On November 22 Mr. Jeletzky faxed F a letter to advise that, according to the purchaser, the credit union would permit the purchaser to assume the H Financial charge. After receiving this fax, F contacted the credit union manager who said he assumed that the H Financial charge related to a computer lease and, in that case, it would not be a problem. The credit union manager instructed F that the loan transaction could proceed if H Financial confirmed the nature of its charge and the outstanding balance.

On November 22 F faxed Mr. Jeletzky to advise him that the loan proceeds from the credit union were ready for pick-up in accordance with various undertakings. One of the undertakings required Mr. Jeletzky “not to release the said funds until such time as our office has received a letter from H Financial confirming the collateral and outstanding balance under their security and advised you in writing of our client’s acceptance of such letter.”

On November 23, 2001 the purchaser told Mr. Jeletzky that the manager of the credit union had removed the undertaking and that the transaction could proceed. Later that afternoon, Mr. Jeletzky disbursed to the vendor’s solicitor the funds required for the purchase of the business, including funds subject to the undertaking. In doing so, he breached his undertaking.

Verdict

The panel noted that Mr. Jeletzky was not justified in believing that he had been relieved of the obligations of the undertaking based on information from the credit union manager as conveyed by Mr. Jeletzky’s client. Rather, he was bound by his undertaking until released from it by lawyer F who had imposed it.

Mr. Jeletzky’s breach of undertaking constitutes professional misconduct.

Penalty

The hearing panel ordered that Mr. Jeletzky:

1. be reprimanded;

2. pay a $2,000 fine; and

3. pay $5,107.40 as costs of the discipline proceedings.

The panel noted that, in assessing costs, it had regard to ensuring that costs are reasonable and not considered in isolation from the issue of penalty. In this instance, the costs did not include Law Society counsel fees. Such fees may be an appropriate part of an award for costs, but in this case they would make the total costs disproportionately high in relation to the seriousness of the offence and the penalty imposed.

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