

Lawyer K

02/09

Surrey, B.C.

Called to the Bar: September 14, 1972

Voluntarily ceased membership: January 1, 2001

Discipline hearing: September 11 and December 7, 2001

Panel: G. Ronald Toews, QC, Chair, Ian Donaldson, QC and Peter J. Keighley, QC

Reports issued: 2001 LSBC 32, October 9, 2001 (facts and verdict); 2002 LSBC 15, May 23 and June 28, 2002 (penalty)

Counsel: Todd Follett, for the Law Society; no one appearing for Mr K.

Summary

While representing the vendor in a real estate transaction, Mr K. gave his undertaking to the purchaser's solicitor that he would "pay or cause to be paid all property tax arrears and penalties and all utility charges outstanding" from the sale proceeds. Following the conveyance, Mr K. advised the purchaser's lawyer that he had completed his undertakings. It was the vendor, however, not Mr K., who had paid outstanding taxes and rates to the municipality. The vendor's cheque was returned for insufficient funds and, unknown to the purchaser or the purchaser's lawyer, the taxes remained outstanding. The following year, the purchaser received a notice for the tax arrears and interest, which she had to borrow money to pay. The purchaser's lawyer contacted Mr K. about this problem. After the purchaser's lawyer made a complaint, the Law Society sought an explanation from Mr K., but he refused to reply substantively to those communications. The discipline hearing panel found that Mr K.'s breach of undertaking to pay outstanding property taxes and arrears and his failure to reply to the Law Society constituted professional misconduct. The panel noted that Mr K. had chosen almost completely to ignore the accusations against him, which was unworthy of a professional in whom the public should be able to place trust. Noting this was a particularly egregious instance of misconduct, the panel ordered Mr K. to pay a \$12,000 fine (with respect to his breach of undertaking), a \$3,000 fine (with respect to his failure to respond) and \$6,640.90 in costs.

Facts

In 1999 Mr K. represented the vendor in the sale of a residential property. A tax search of the property conducted by the purchaser's solicitor disclosed outstanding taxes of \$2,512.07, plus penalties, for a total liability of \$2,763.27.

The purchaser's solicitor prepared the conveyancing documents and forwarded them to Mr K.. Under the vendor's statement of adjustments, Mr K.'s client was required to pay the 1999 municipal property taxes of \$2,517.07 and was to be credited with \$640.06 above the purchase price for the purchaser's portion of the 1999 taxes. In his cover letter,

the purchaser's solicitor sought Mr K.'s undertaking "to pay out all outstanding property taxes, including interest and penalty ... as at the date of adjustments ..."

Mr K. provided this undertaking:

We will pay or cause to be paid all property tax arrears and penalties and all utility charges outstanding from [the utility company]; and if we are unwilling or unable to comply with any of these undertakings, we will retain the funds received from you in our possession and will contact you immediately to discuss the matter.

Following the conveyance, Mr K. advised the purchaser's solicitor that he had completed payment of property taxes and water rates and that his undertakings in the matter were completed. The vendor, not Mr K., had in fact paid the outstanding taxes and rates to the municipality. The vendor's cheque was then returned for insufficient funds and, unknown to the purchaser or the purchaser's lawyer, the taxes remained outstanding.

The following year, the purchaser received a notice for tax arrears and interest. Under threat of tax sale, she ultimately had to borrow money to pay taxes and penalties of \$2,935.84.

At the time the purchaser learned of the outstanding taxes, the purchaser's lawyer had moved to Alberta. His former secretary, however, immediately sent a letter to Mr K. pointing out the tax arrears, the fact the vendor's cheque was dishonoured and that Mr K. had given his undertaking to pay all property tax arrears. By way of reply, Mr K. sent a fax stating that the taxes had been paid and he attached a copy of the vendor's receipt from the municipality. Despite repeated follow-up calls from the purchaser's lawyer, Mr K. provided no response.

After the purchaser's lawyer complained of a possible breach of undertaking in August, 2000, the Law Society wrote to Mr K. five times seeking an explanation of his conduct, but he refused to reply substantively to those communications. In December, 2000 Mr K. advised a Law Society staff lawyer that the vendor had accepted responsibility to pay the taxes and that the purchaser should pursue the matter directly with the vendor should she not be satisfied with the delay. In a subsequent telephone conversation, Mr K. said that he did not intend to provide a written response to the Society.

Decision

The discipline hearing panel found that Mr K. had breached his undertaking in failing to pay outstanding property taxes, contrary to Rule 7(a), Chapter 11 of the *Professional Conduct Handbook*. He had also failed, and in fact refused, to reply substantively to communications from the Law Society requiring his response, contrary to Rule 3, Chapter 13 of the *Handbook*. Mr K.'s conduct constituted professional misconduct.

Penalty

The panel noted that, in June, 2001, Mr K. wrote to the Law Society offering to make a personal *ex gratia* payment of \$2,512.07 to the purchaser, provided the outstanding citation be withdrawn without penalty, costs or expense. In making this offer, Mr K. referred only to the original amount owing for 1999 taxes, not the penalties the purchaser had paid nor the money she had paid under the statement of adjustments for her share of the 1999 taxes.

As of the date of the hearing, the purchaser had received no reimbursement of any kind.

The hearing panel noted that undertakings are a vital part of the interaction among lawyers in serving clients. Breach of undertaking is so serious, in fact, that the *Professional Conduct Handbook* provides that lawyers *must* report this misconduct.

The panel also emphasized the seriousness of failing to respond to the Law Society, approving these words of a previous panel: “Failing to respond promptly is a grave matter, and as has been pointed out, our Rules are there to protect the public. We are a self-governing society, this is a rare privilege which must be constantly earned. To protect the public requires an investigative process which mandates prompt replies from members to enquiries made by the Law Society.” [1999] LSBC 20.

Mr K. had chosen almost completely to ignore the accusations against him, which was unworthy of a professional in whom the public should be able to place trust. His was a particularly egregious instance of misconduct.

The panel ordered that Mr K.:

1. pay a \$12,000 fine (with respect to his breach of undertaking) and a \$3,000 fine (with respect to his failure to respond to the Law Society); and
2. pay \$6,640.90 as costs of the discipline proceeding.

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