

David Jacob Siebenga

Surrey, BC

Called to the bar: June 12, 1987

Discipline hearing: October 8, 2004

Panel: William M. Everett, QC, as a single Bencher panel by consent

Report issued: October 8, 2004

Counsel: Todd R. Follett, for the Law Society and William G. MacLeod, for Mr. Siebenga

Summary

In a property transaction, Mr. Siebenga acted for the vendor, the purchaser and the mortgagee bank without disclosing each party's interest to every other party and without obtaining informed consent, contrary to Chapter 6, Rules 3, 4 and 10 and Appendix 3 of the *Professional Conduct Handbook*. He further breached his financial duty to the purchaser by failing to disclose that the vendor was buying and immediately reselling the property, and making a profit from that resale. Mr. Siebenga admitted that his conduct constituted professional misconduct. The Discipline Committee and discipline hearing panel accepted Mr. Siebenga's admission and his proposed disciplinary action, and the panel ordered that he be reprimanded, pay a \$3,000 fine and pay \$2,500 as costs.

Facts

On February 21, 1997 J and R, as vendors, entered into a contract of purchase and sale to sell a property in Surrey for \$178,000 to S as purchaser. This was the "first transaction."

In a "second transaction," S purportedly entered into a contract on February 20, 2001 to sell the property to AK for \$205,000.

Mr. Siebenga represented S as purchaser in the first transaction. The vendors were represented separately.

In the second transaction, Mr. Siebenga acted for S as vendor, AK as purchaser and a bank as mortgagee. On March 20, 1997 Mr. Siebenga met with S and AK to finalize both transactions and have them sign documents.

Mr. Siebenga admitted that his role as solicitor in the first transaction and in the second transaction gave rise to professional obligations to S, AK and the bank as mortgagee. In these circumstances, he ought to have referred AK to another solicitor for independent legal advice.

Mr. Siebenga failed in his obligations to AK in these respects:

- he failed to disclose to AK the terms of the first transaction, in which S was purchasing the property for \$178,000;
- he failed to disclose to AK the documents relating to the first transaction; and
- he failed to confirm in writing his oral advice that, in the event of a conflict of interest arising in his representation, he would cease to act for both S and AK.

Mr. Siebenga explained that he failed to discharge these obligations because it appeared that S and AK were business associates and, as such, AK was aware of the interests of S in the first transaction. He said he did not intentionally mislead AK on the apparent profit that S or others made from the difference between the purchase price in the first transaction and the sale price in the second transaction.

Admission and penalty

Mr. Siebenga admitted that he breached his professional obligations to clients under Chapter 6, Rules 3, 4 and 10 and Appendix 3 of the *Professional Conduct Handbook* and that this breach amounted to professional misconduct.

Pursuant to Law Society Rule 4-22, the Discipline Committee and the discipline hearing panel accepted Mr. Siebenga's admission and his proposed disciplinary action and ordered that he:

1. be reprimanded;
2. pay a \$3,000 fine; and
3. pay \$2,500 as costs of the discipline proceedings.

Discipline Case Digest — 2005: No. 02 March (Siebenga)