

Vancouver, B.C.

Called to the Bar: May 12, 1980

Discipline hearing:

Dates: June 9 and October 27, 2000

Panel: Peter J. Keighley, Q.C., Chair, Anna K. Fung, Q.C. and Robert T.C. Johnston, Q.C.

Reports: June 28 (*Facts and verdict*) and November 30, 2000 (*Penalty*)

Discipline hearing report indexed as [2000] LSBC 15

Counsel:

Todd R. Follett, for the Law Society

E. David Crossin, Q.C., for Mr. Morrison

Summary

While representing the mortgagor on a second mortgage, Mr. Morrison breached his undertakings to the lawyer who represented the lending institution. He did so by failing to pay outstanding property taxes from the mortgage proceeds, by failing to forward a \$62,000 interest reserve to the first mortgagee and by applying a portion of the trust funds to the benefit of his client. This conduct constituted professional misconduct. Mr. Morrison further failed to eliminate a shortage in his trust account for one year, in breach of the Law Society Rules. The panel ordered that Mr. Morrison be reprimanded, pay a \$5,000 fine and pay costs.

Facts

In 1996 Mr. Morrison represented D in granting a second mortgage to C Corporation, a lending institution. C Corporation was represented by lawyer C.

Lawyer C sent a letter to Mr. Morrison on December 19 setting out undertakings required of him before mortgage funds would be released to his client. The letter provided that financing was dependent on Mr. Morrison's undertakings to 1) provide proof of payment of 1996 property taxes (or alternatively his undertaking to ensure payment), 2) put the first mortgage in good standing and 3) forward to the first mortgagee the sum of \$62,000, being the interest reserve required on extension of the first mortgage.

On December 20 lawyer C forwarded \$173,409.87 as proceeds of the second mortgage under cover of a letter that confirmed the undertakings required of Mr. Morrison.

Mr. Morrison deposited the funds to trust. He then disbursed a portion of the funds to

bring the first mortgage into good standing and a portion for the benefit of his client. He did not forward \$62,000 to the first mortgagee as an interest reserve. Nor did he pay the 1996 property taxes of \$5,378.58.

On February 11, 1997 Mr. Morrison wrote to lawyer C to inform her that the first mortgagee did not require the interest reserve. He also requested that he and lawyer C discuss C Corporation's requirement that the 1996 property taxes be paid.

Lawyer C wrote to Mr. Morrison on February 17 demanding that he confirm the next day that he continued to hold in trust the money required to pay property taxes and the \$62,000 required for the interest reserve.

As of January, 1998 Mr. Morrison was overdrawn on his trust account by \$2,174.96, and he failed to eliminate this shortage for one year.

Verdict

Mr. Morrison breached his undertakings to lawyer C, contrary to Chapter 7, Rule 11 of the *Professional Conduct Handbook*, by failing to pay the property taxes, by failing to forward the \$62,000 interest reserve and by applying a portion of the trust funds to the benefit of his client and retaining the balance in his trust account. Mr. Morrison admitted, and the discipline hearing panel found, that this conduct constituted professional misconduct.

Mr. Morrison further admitted, and the panel found, that his failure to eliminate a shortage in his trust account breached Law Society Rule 861 [*now Rule 3-66(1)*].

Penalty

The hearing panel heard submissions from both counsel, including submissions from Mr. Morrison's counsel, to the effect that Mr. Morrison had misconstrued his obligations pursuant to his undertakings. He appeared not to have appreciated that the interest reserve was a security issue for lawyer C's client, whether or not the first mortgagee was prepared to dispense with the requirement. He also appeared to believe he could negotiate the payment of outstanding property taxes, given that his client had made application to defer payment of the taxes. Mr. Morrison displayed a deplorable failure to appreciate the nature of an undertaking.

In determining penalty, the panel took into account Mr. Morrison's assistance in expediting the prosecution of the case, his financial circumstances and the stressful atmosphere resulting from the acrimonious break-up of his partnership around the time of these events.

The panel could not condone the careless attitude Mr. Morrison displayed toward his professional obligations and normally would have imposed a suspension for conduct of this nature. The panel, however, took into account the precarious nature of Mr.

Morrison's practice and that even a short suspension could lead to ruin. The panel believed that general and specific deterrence may be satisfied by the imposition of an appropriate fine.

The panel ordered that Mr. Morrison:

1. be reprimanded;
2. pay a fine of \$5,000 by June 30, 2002; and
3. pay costs of the hearing, to be agreed on by counsel or, if they cannot agree, by the panel on submissions by counsel.

Discipline Case Digest — 2001: No. 02 January (Morrison)