

Resignation and admission of misconduct and breach of fiduciary duty

LLOYD ANTHONY JOHNSON

Sidney, B.C.

Called to the bar: May 12, 1981

In early December, 1995 Mr. Johnson learned that Ms. T had just died. Ms. T was intestate and had, as part of her estate, a waterfront property.

Mr. Johnson retained an appraisal company to appraise the property as at December 1. The company stated that the market value of the property was \$425,000. The appraisal document noted “this is NOT a recommended listing price.” Mr. Johnson then had a real estate agent visit the property and do a comparative market analysis. The analysis stated that the value of the property, for estate evaluation purposes, was between \$250,000 and \$280,000. The appraisal then stated that, for resale purposes, the property had a value estimated at between \$500,000 and \$650,000 and should be offered as a hobby farm to professional or retired people who want a home in the country.

Mr. Johnson wrote to 11 cousins and two second cousins of Ms. T, who were the beneficiaries of her estate. Most of the beneficiaries lived in England and one in Ontario. Mr. Johnson told them that he was handling the estate of Ms. T and enclosed forms for them to sign consenting to his appointment as administrator. In his letter, Mr. Johnson stated that “In my preliminary investigation, the value of the estate appears to be more than \$800,000, including the land that is valued at \$425,000.”

The beneficiaries consented to Mr. Johnson’s appointment as administrator.

Mr. Johnson acknowledged that, in becoming administrator of the estate, he was placing himself in a position of trust and owed fiduciary duties towards each of the beneficiaries, including a duty to act in their best interests, to make reasonable efforts to maximize the value of the estate and to fully and candidly disclose any fact known to him that might affect a decision of the beneficiaries regarding the estate.

On March 4, 1996 Mr. Johnson wrote to all the beneficiaries. In his letter he stated “... the real property ... is appraised at \$425,000; the actual sale price of the property may be less than the appraised value because of market conditions and the real estate costs of sale. I will not know what the market will be until I have consulted some real estate agents. I enclose a copy of the appraisal for your information.” Mr. Johnson failed to make full disclosure of the facts concerning the value of the property, including the market analysis he had commissioned in December which estimated the selling price of the property at between \$500,000 and \$650,000.

At the beginning of April and in mid-April, Mr. Johnson wrote two more letters to the beneficiaries. In doing so, he admitted to professional misconduct and breach of his fiduciary obligations by:

- offering to purchase the real property for his own benefit and at a price of \$425,000, which he knew was significantly below the amount that the market analysis advised might be obtained if sold as a hobby farm;
- failing to disclose the market analysis to the beneficiaries;
- overstating the amount of real estate commissions that would be charged in selling the property (although Mr. Johnston says this was done through carelessness on his part);
- failing to advise the beneficiaries that they should obtain independent legal advice in respect of his attempt to purchase the property.

Mr. Johnston also admitted professional misconduct in making an inaccurate and misleading statement to the beneficiaries respecting solicitor and trustee fees permitted by the *Trustee Act* and in failing to consult with real estate agents about marketing the property as a hobby farm or taking steps to offer the property for sale.

Although some of the beneficiaries initially signed consent forms for Mr. Johnson to buy the property, one (Ms. G) refused to do so, and she retained her own lawyer. Two other beneficiaries later withdrew their consent. Ms. G's lawyer contacted Mr. Johnson to raise a number of concerns regarding Mr. Johnson's estate administration and to ask Mr. Johnson to resign as administrator, pass accounts and waive his fees. Mr. Johnson wrote to all beneficiaries (including Ms. G) to put forward his own position. He later admitted that, by writing directly to Ms. G, whom he knew was already represented by a lawyer, he was guilty of professional misconduct.

A petition was filed to remove Mr. Johnson as administrator, and after negotiations with the beneficiaries, Mr. Johnson was removed by consent.

On January 7, 1999 the Discipline Committee accepted from Mr. Johnson his admissions of professional misconduct and his undertakings to:

- resign forthwith from the Law Society;
- not reapply for membership in the Law Society prior to January 31, 2001;
- not apply for membership as a barrister or solicitor in any jurisdiction without first providing the Law Society with written notice of his intention to do so;
- not work for or provide services to any member of the Law Society in any capacity without first receiving written consent from the Society;

- pay \$6,000 as costs of the discipline proceedings prior to January 31, 2001.

Discipline Digest — 1999: No. 1 April (Johnson)