

Vancouver, B.C.

Called to the bar: July 13, 1982

Discipline hearing panel: April 16, 1997 and January 22, 1998

D.W. Gibbons, Q.C., Chair, R.S. Tretiak and P.D. Warner, Q.C.

T.C.F. Holmes, for the Law Society

S.H.P. Visram on his own behalf (as to findings of fact); A. Swezey for Mr. Visram (as to verdict and penalty)

Summary

While representing the vendors in a real estate conveyance, Mr. Visram failed to pay out property taxes and thereby breached an undertaking placed on him by the solicitor for the purchasers.

Facts

In November, 1993 Mr. Visram represented the vendors in a real estate conveyance. The purchasers' solicitor, Mr. C, sent the conveyancing documents to Mr. Visram for execution and return.

Mr. C gave his undertaking not to use the documents until he held sufficient funds in trust and, after satisfactory registration, to pay net sale proceeds to Mr. Visram. He stipulated that the funds would be paid on Mr. Visram's undertaking to discharge a mortgage, two judgments, four builders' liens and two lis pendens from title, as well as to pay all of the 1993 property taxes, together with penalties and interest.

After placing Mr. Visram on this undertaking, Mr. C adjusted the purchasers' portion of the 1993 property taxes as a credit to the vendors and a debit to the purchasers on the vendors' statement of adjustments. The statement described the 1993 taxes as "paid."

Mr. Visram unfortunately read the word "paid" as meaning that the taxes had in fact already been paid by his clients. His clients in fact falsely assured him that they had paid the taxes.

Two days before the closing date, with no reasonable time left to arrange for registrable discharges of all the encumbrances in advance of closing, Mr. Visram returned the executed documents to Mr. C. He enclosed a covering letter containing undertakings to replace those imposed on him by Mr. C. In his replacement undertakings, Mr. Visram made no mention of one of the liens or the 1993 property taxes.

Mr. Visram attempted in this respect to shift his own obligation to clear title to Mr. C, which was unreasonable and contrary to solicitor conveyancing practice.

Mr. C did not accept these inadequate undertakings as they did not deal with all of the encumbrances or the property taxes. No solicitor properly protecting a purchaser client would have accepted the replacement undertakings. He instead contacted Mr. Visram to reject the replacement undertakings, and he faxed another letter re-imposing the original undertakings. Although he received this fax, Mr. Visram did not communicate with Mr. C about the undertakings; he did not reject them or seek to vary them.

When Mr. Visram received the proceeds of sale, he paid out all the charges and encumbrances, with the exception of the property taxes, which he unwittingly left unpaid. It took Mr. Visram a year to succeed in registering the last discharge. He then learned to his regret that his clients had never paid the 1993 taxes. He obtained a statement of tax arrears in December, 1994 at which time the property was under threat of tax sale.

Mr. Visram did not pay the tax arrears until May, 1995 and then did so out of his own funds.

The hearing panel disagreed with Mr. Visram's view that the undertaking Mr. C imposed on him was incomplete, unclear or impossible to fulfil. The panel found Mr. Visram unable or unwilling to acknowledge the undertaking placed on him or his professional obligations in relation to it. He instead analysed the matter to shift the blame to Mr. C in the same way as he had attempted to shift the risks of clearing title from himself to Mr. C.

The panel found that Mr. Visram's comprehension of, and response to, his ordinary obligations as a solicitor with respect to undertakings was unacceptable and of significantly greater concern than his original failure to pay the taxes.

Decision

Mr. Visram's conduct constituted professional misconduct.

Penalty

The panel ordered that Mr. Visram:

1. be suspended for one week on or before March 16, 1998;
2. complete a remedial course in real estate under the direction of the Competency Committee;
3. pay costs of the discipline hearing, not to exceed \$4,000;
4. pursue his goal to practise in association with another member of the Law Society;
and

5. continue to be prohibited from serving as principal to an articulated student.

Discipline Case Digest — 1998: No. 17 October (Visram)