

Vancouver, B.C.

Called to the Bar September 14, 1976

Discipline hearing panel: May 2, 1994

S.A. Moore, Chair, P.D. Warner and K.F. Warner

A.P. Seckel, for the Law Society

I. Aikenhead, for the member

Summary

The member acted for more than one party in a series of related real estate transactions and in one instance when he had a personal interest in the transaction. He failed to obtain the consent of the parties to act for more than one of them, failed to advise one or more parties that he was acting for other parties and failed to advise one or more parties to obtain independent legal advice. In the course of the transactions, the member signed mortgages to certify the signatures of the mortgagors when in fact they signed the mortgages outside his presence and did not appear before him.

Facts

In 1990 the member acted in a real estate transaction for multiple parties: Mr. and Ms. P, Mr. N, a trust company, a contracting company and a development company. The member was a subscribing shareholder in the development company and had erroneously kept the subscribing share, though he had no beneficial interest and had forgotten that he held the share.

The member carried out all legal work on the mortgage financing and transfer of a residential property purchased by Mr. and Ms. P from the development company. In this transaction the member failed to:

- properly inform the parties that he was acting for more than one of them; and
- advise one or more of the parties to seek independent legal representation.

In September, 1990, the member placed a mortgage on his own property to be held in the RRSP of Mr. N's mother. With this mortgage securing her RRSP, Mr. N's mother used her RRSP funds to redeem a mortgage on her house, which was then under threat of foreclosure. Ms. P later made a \$16,000 loan from her RRSP to Mr. N's mother, secured by a second mortgage against the mother's house. The member prepared and placed the mortgage on instruction of the trustee for Ms. P's RRSP. Once Ms. P had made the loan, the member was able to discharge the mortgage against his own property, which had provided security to Mr. N's mother. He failed to inform the parties to this transaction that he was acting for more than one of them and obtain their consent to act, failed to advise them of his personal interest in the transaction and failed to ensure that they obtain independent legal advice and representation.

In November, 1990 the member prepared and placed an \$18,000 second mortgage against Mr. and Ms. P's property in favour of the RRSP of Mr. N's mother. He did so on instruction of the trustee of the mother's RRSP. The proceeds of the mortgage were paid to the development company toward building costs relating to Mr. and Ms. P's residential property. The member failed to inform the parties that he was acting for more than one of them and obtain their consent or to ensure that they had independent representation.

In carrying out these transactions, the member signed mortgage documents as the officer certifying the signatures of the mortgagors, Mr. and Ms. P, when in fact they did not appear before him to acknowledge they were the people named in the documents and did not execute the documents before him. Mr. and Ms. P signed the documents outside the member's presence. They received the benefit of the financing.

The member never met with or advised Mr. and Ms. P in carrying out these transactions. He relied on instructions from Mr. N whom he believed was their authorized agent, though Mr. N also represented Mr. N's own interests and those of his mother.

The member acted improperly, not by off-setting loans and mortgages in favour of self-administered RRSP plans, but in his handling of those transactions.

Decision

The member's conduct constitutes professional misconduct.

Penalty

In assessing penalty, the hearing panel took into account that no loss resulted from the member's conduct and that the member had not sought or obtained any personal benefit from the transactions, other than modest legal fees. Furthermore, the member had no previous complaints, expressed remorse for his conduct and cooperated with the Law Society throughout its investigation. The member also underwent and paid the costs of a practice review, completed a remedial studies program and a course in office procedures, hired an office administrator for his firm and continued to report to the Competency Committee. The panel ordered that the member:

1. be suspended for two weeks beginning July 1, 1994;
2. pay \$2,500 toward the costs of the discipline proceedings; and
3. comply with the remaining directions of the Competency Committee.

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