

Vancouver, B.C.

Called to the Bar: January 6, 1958

Discipline hearing panel: March 19 and September 9, 1993

W.T. Wilson, Chair, R.E.C. Apps and N. MacDonald

Counsel for the Law Society: G. McKinnon

Counsel for the member: B. Williams, Q.C.

Summary

The member represented a client when his interests conflicted with her interests. He personally guaranteed payment of the client's legal fees to another lawyer who acted on her behalf, without disclosing that guarantee to the client. He acted for the mortgagee on a mortgage granted by his client, without the proper level of disclosure to the client. In particular, he failed to disclose that he had a financial interest in the company that advanced the mortgage funds, once this came to his attention. The member subsequently paid the mortgage proceeds to the client's other lawyer, thereby reducing his own exposure under his guarantee, without informed authorization from the client. The member failed to inform his client when he ceased representing her, and he later acted for the mortgagee on a foreclosure of the client's mortgage by another mortgagee.

Facts

In the Fall of 1990 the member acted without fee for a friend L, an experienced real estate agent, to help her obtain a written agreement for payment of a \$1 million commission.

The member also recommended that L retain the services of D, a lawyer, to represent L on a separate litigation matter. The member gave a personal guarantee to pay for legal services provided by D if L failed to pay, although L was unaware of this guarantee. D sent interim accounts to L in November, with copies to the member, and a final cumulative account in December. The member decided to cease legal representation of L on November 27, but he did not advise her that he was no longer acting as her lawyer. He withdrew his guarantee to D on December 27, 1990.

On December 12, 1990 L asked the member to arrange a \$30,000 second mortgage on the residence owned by L and her husband. The member arranged for his son's company to provide the mortgage loan. The member's son wrote to L, enclosing the mortgage documentation and requesting that she and her husband seek independent legal advice.

On L's instructions, D successfully applied in Supreme Court for variation of a Mareva order over L's assets that would allow her to obtain a second mortgage loan to secure her legal fees and disbursements. L and her husband executed the second mortgage before a notary and delivered two copies to the member. The member never told L or her husband that he was acting for his son's company, and not for them, in this transaction. The member's paralegal, also property manager for the son's company, registered the second mortgage on December 14.

That same day, the member's law firm deposited into the firm trust account a cheque for \$30,000, not from the son's company, but from a company jointly owned by the member and his son. The member was not at that time aware the mortgage advance had come from his company, but once he learned, he failed to advise L or her husband of his interest.

The member transferred the \$30,000 proceeds to D for payment of L's legal fees. Neither L nor her husband gave informed authorization for this transfer. Neither the member nor his son's company ever sent a reporting letter to L or her husband to advise them of the \$30,000 transfer to D or the particulars of the mortgage registration.

The member did not render any accounts for his services to L or her husband, to L's company or to any other party.

In the spring of 1991 the member again acted as solicitor for his son's company when the first mortgagee began foreclosure proceedings against L's residence. In writing to L's new lawyer on April 9, 1991, the member suggested that he would have to apply for the sale of L's house very soon unless L had "a concrete plan to redeem." In the end, the first mortgagee foreclosed the interest of the second mortgagee.

Decision

The member professionally misconducted himself by:

1. acting for a client when his interests conflicted with the client's interests, in particular:
 - (a) personally guaranteeing the legal fees of the client's other lawyer without disclosing that guarantee to the client;
 - (b) acting for the second mortgagee on a mortgage granted to his client without the proper level of disclosure, including disclosure that the member had a financial interest in the company that advanced the mortgage funds once that fact came to his attention;
 - (c) paying the mortgage proceeds to the client's other lawyer, thereby reducing his own undisclosed exposure under the guarantee;
 - (d) initially acting for the mortgagee on a foreclosure of the mortgage.
2. failing to make it clear to his client that he was no longer acting as her lawyer after November 27, 1990.

Penalty

The hearing panel considered it a mitigating factor that the member had realized no benefit from these circumstances. The panel noted, however, that the member had previously been before the Law Society for conflict of interest and that he still seemed to lack an understanding of his professional responsibilities.

The panel ordered that the member:

1. be reprimanded;
2. pay a \$8,500 fine within 60 days;
3. complete a remedial studies program to the satisfaction of the Competency Committee; and
4. pay costs of the discipline proceedings.