

Keyvan Shojania

Victoria, BC

Called to the Bar: May 15, 1992

Discipline hearing: July 13, 2004

Panel: G. Glen Ridgway, QC, as a one-Bencher panel by consent

Report issued: August 16, 2004, indexed as 2004 LSBC 25

Counsel: James A. Doyle, for the Law Society and Mr. Shojania, on his own behalf

Summary

While acting for the borrower in a mortgage transaction, Mr. Shojania breached his undertaking by paying out funds held in trust, and paying his legal fees from those funds, without the prior approval of the lender. In the circumstances, he had relied on his assistant's understanding that the lender had approved the release of funds, but that understanding was incorrect. The Discipline Committee and the hearing panel accepted Mr. Shojania's admission of professional misconduct and his proposed penalty. The panel accordingly ordered that he pay a \$2,000 fine and \$2,000 as costs.

Facts

In 2002 Mr. Shojania represented the borrower in a mortgage transaction and Ms. T represented the lender. A mortgage broker was also involved in the transaction.

On August 22, 2002 Ms. T sent to Mr. Shojania documents for execution by the borrower. At that time, Ms. T advised him of the undertaking that would be imposed on him.

After the mortgage was registered, Ms. T forwarded to Mr. Shojania the first mortgage draw of \$25,106.02 at which time she reconfirmed that the funds were provided on his undertaking:

to pay \$998.30 to a trust company to bring the first mortgage into good standing; and
to hold the balance of the funds in trust until the lender approved their disbursement to pay for:
development cost charges and permit fees;
septic contractor charges; and
engineering and surveying fees.

That same day the lender agreed that \$5,000 of the funds could be released to the borrower, and this was confirmed by Ms. T via a fax to Mr. Shojania.

On October 18, 2002 the lender told Ms. T that it had information that funds from the first draw had been disbursed to the borrower to obtain a development permit. The lender advised Ms. T that this disbursement had not been authorized. Ms. T contacted an assistant employed by Mr. Shojania to request an accounting of the first draw. The accounting revealed that \$24,509.68 of the first draw had been released.

Mr. Shojania had in fact earlier released the funds on the basis of a conversation with his assistant. The

assistant had told him that the mortgage broker had direct dealings with both the borrower and the lender and, according to the broker, the lender had approved further advances. The assistant's understanding of what the lender had approved was wrong.

The mortgage held by the lender was paid out and discharged in due course, and the lender suffered no loss.

Admission and penalty

Mr. Shojania admitted that he was in error to have relied on information that his assistant had received from the mortgage broker as a basis for paying out funds in trust.

Pursuant to Law Society Rule 4-22, Mr. Shojania admitted that his conduct in paying out trust funds and paying his fees from those funds, in breach of his undertaking, constituted professional misconduct. The Discipline Committee and the hearing panel accepted Mr. Shojania's admission and his proposed penalty and accordingly ordered that he pay a \$2,000 fine and \$2,000 as costs of the discipline proceedings.