

2004 LSBC 25

Report issued: August 16, 2004

Oral Reasons: July 13, 2004

Citation issued: February 3, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

KEYVAN SHOJANIA

Respondent

Decision of the Hearing Panel

Hearing date: July 13, 2004

Panel: Glen Ridgway, Q.C., Single Bencher Panel

Counsel for the Law Society: James Doyle

Appearing on his own behalf: Keyvan Shojania

[1] On February 3, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. You breached your undertaking dated September 20, 2002 to T.R. in that, contrary to the terms of the undertaking, you:
 - (a) paid out funds without the prior approval of the Lender; and paid your legal fees from the trust funds.
 - (b) paid your legal fees from the trust funds.

[2] Pursuant to Rule 5-2(2), the Respondent agreed to a Panel consisting of a single Bencher.

[3] The citation comes before this Panel as a conditional admission of a disciplinary violation and consent to specific disciplinary action pursuant to Rule 4-22. The Respondent admitted that the professionally misconducted himself and consented to the following disciplinary action:

1. to pay a fine in the amount of \$2,000; and
2. to pay costs of the proceedings in the amount of \$2,000.

[4] An Agreed Statement of Facts was filed as Exhibit 2 in these proceedings. It provides as follows:

1. Keyvan Shojania was called to the Bar in Victoria, British Columbia in 1992 and has been a member of the Law Society since then.
2. At all material times the Respondent practiced with five other lawyers, under the name [law firm], in

Victoria, British Columbia. The Respondent's practice consisted mainly of commercial and real estate law.

3. The complainant, T.R., was, at all material times, a member of the Law Society.

Breach of Undertaking

4. In 2002, the complainant acted for a lender in a mortgage transaction. The Respondent acted for the borrower. There was also a mortgage broker involved.

5. By letter dated August 22, 2002, the complainant sent documents to the Respondent for execution by the borrower, at which time she advised the Respondent of the undertakings which would be imposed on him upon the funding of the mortgage.

6. Subsequent to the registration of the mortgage security in favour of the lender, the complainant forwarded a first draw of \$25,106.02 to the Respondent by letter dated September 20, 2002, at which time she reconfirmed that the funds were provided to him on his undertaking:

a) to pay the sum of \$998.30 to [Trust Company] to bring the first mortgage into good standing;

b) to hold the balance of the funds in trust until the lender approved the funds being disbursed to pay the following:

(i) the development cost charges and permits fees to the District of Langford;

(ii) the septic contractor charges; and

(iii) J.E. Anderson, for engineering and surveying.

7. On the same day the funds were provided to the Respondent, the complainant's client, the lender, agreed that \$5,000 of the mortgage proceeds could be released to the borrower. The complainant confirmed this by facsimile to the Respondent, also on September 20, 2002, confirming her client's instructions regarding the release of the \$5,000.

8. During a discussion with the lender on October 18, 2002, the complainant was advised the lender had learned that a first draw had apparently been disbursed to the Respondent to obtain a development permit. The lender advised the complainant that she had not authorized the advance of funds to pay for the development permit.

9. The complainant then spoke to the Respondent's employee and requested an accounting of the first draw. The accounting confirmed that a total of \$24,509.68 of the first draw had been released.

10. The Respondent released the funds on the basis of a conversation he had with his legal assistant. The legal assistant told him that the mortgage broker had had direct dealings with both the borrower and the lender. The legal assistant understood from the mortgage broker that the further advances had been approved by the lender, with the exception that no funds would be paid directly to the borrower.

11. The legal assistant's understanding of what had been approved by the lender was wrong.

12. In due course, the mortgage held by the lender, and pursuant to which the advance of funds to the borrower were made, have been paid out and discharged. As such, no loss has been suffered by the lender.

Admissions

13. The Respondent admits that it was an error on his part to rely on information his legal assistant received from the mortgage broker as a basis for paying out funds held in trust.

14. The Respondent further admits that he breached his undertaking dated September 20, 2002 to the complainant in that, contrary to the terms of the undertaking, he:

- a) paid out the funds without prior approval of the lender; and
- b) paid his legal fees from the trust funds.

[5] After considering the circumstances as set out in the Agreed Statement of Facts, and having heard the submissions of counsel, the Panel accepts the admission and finds that the Respondent professionally misconducted himself.

[6] The Panel further finds that the penalty proposed by the Respondent and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[7] It is accordingly ordered that the Respondent pay a fine of \$2,000, and costs of the proceedings of \$2,000.

[8] The Executive Director is instructed to record the finding of professional misconduct on the Respondent's Professional Conduct Record, to impose the disciplinary action and to inform the complainant of the disposition.

[9] As is understood by the Respondent, publication of a summary of the circumstances, reasons and action will follow in accordance with Rule 4-38.