

2004 LSBC 40

Report issued: October 8, 2004

Oral reasons: October 8, 2004

Citation issued: January 27, 2004

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

DAVID JACOB SIEBENGA

Respondent

Decision of the Hearing Panel

Hearing date: October 8, 2004

Panel: William M. Everett, Q.C., Single Bencher Panel

Counsel for the Law Society: Todd Follett

Counsel for the Respondent: William G. MacLeod

[1] On January 27, 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 pursuant to the direction of the Chair of the Discipline Committee. The citation directed this Panel to inquire into the Respondent's conduct as follows:

1. In approximately March 1997, you acted for vendor S, purchaser A-K and mortgagee bank RB in the sale of a property,

(a) without disclosing each party's interest in the transaction to every other party, and without obtaining each party's informed consent, contrary to Chapter 6, paragraphs 3, 4 and 10 and Appendix 3 of the *Professional Conduct Handbook*, and

(b) you breached your fiduciary duty to your client the purchaser A-K, by failing to disclose a profit being made by vendor S, contrary to Chapter 6, paragraphs 1 and 4 of the *Professional Conduct Handbook*.

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

[3] This 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 he professionally misconducted himself and consented to the following disciplinary action:

a) a reprimand;

b) a fine of \$3,000, payable by November 30, 2004; and

c) costs of \$2,500, payable by November 30, 2004.

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

1. David J. Siebenga (the "Respondent") was called to the Bar in British Columbia on June 12th, 1987. He is 44 years old.
2. On or about February 21st, 1997, J. and R. R., as vendors, entered into a Contract of Purchase and Sale with S.S./Nominee, as buyer, in relation to property located at [Surrey Property] (the "Property"), for a sale price of \$178,000 (the "First Transaction") to complete on March 6th, 1997. The completion date for the First Transaction was extended to March 24th, 1997 by an addendum dated March 10th, 1997.
3. On or about February 20th, 1997, S.S., as vendor, purportedly entered into a contract with S.A-K and Nominees, as purchaser, in relation to the Property for the purchase price of \$205,000 (the "Second Transaction") to complete on March 14th, 1997. The completion date for the Second Transaction was extended to a new completion date of March 21st, 1997 by addendum dated March 11th, 1997.
4. On or about March 6th, 1997, [Realty Group] wrote to the Respondent respecting the First Transaction, confirming that the Respondent acts for the purchaser S. and a notary public, L.B., acts for the vendors R. The letter confirmed that [Realty Group] was holding a deposit in trust in relation to the First Transaction. The information relating to the First Transaction was also recorded in a transaction record sheet from [Realty Group].
5. The Respondent's conveyance file respecting the First Transaction and the Second Transaction contained a worksheet identifying the details relating to the transfer of the Property. The Respondent's conveyance file also contained an undated handwritten note bearing information about Mr. A-K's particulars, as provided to him by Mr. S.
6. On or about March 20th, 1997, the Respondent met with both Mr. S. and Mr. A-K for the purpose of completing the First Transaction and the Second Transaction. The meeting took place at the Respondent's home office at approximately 8:00 p.m. (the "Meeting").
7. During the Meeting, the Respondent witnessed Mr. A-K's signature on a Form B mortgage in favour of the [Bank] in the amount of \$199,618.75 in relation to the Second Transaction. Also in the Respondent's presence during the Meeting, Mr. A-K signed the [Bank] approval of mortgage and statement of disclosure, acknowledgement of receipt of standard mortgage terms, and an acknowledgement and authority to pay addressed to the [Bank]. The Respondent's conveyance file contained a purchaser's statement of adjustments relating to the Second Transaction.
8. The Respondent acknowledges and admits that in preparing, or having his staff prepare, the documentation, in holding the Meeting with both Mr. S. and Mr. A-K, and in reporting to Mr. A-K by letter dated March 21st, 1997 with a statement of account of same date, the Respondent was acting for Mr. A-K in the Second Transaction.
9. The Respondent acknowledges and admits that his role as solicitor in the First Transaction and in the Second Transaction gave rise to professional obligations set out in Chapter 6, paragraphs 3, 4 and 10 and appendix 3 of the *Professional Conduct Handbook*, which professional obligations applied to all of the following: Mr. S., Mr. A-K and the [Bank]. The Respondent acknowledges that he ought to have referred Mr. A-K to another solicitor for independent legal advice in the circumstances.

10. The Respondent acknowledges and admits that he failed to disclose to Mr. A-K:

(a) both orally and in writing, the terms of the First Transaction, in which Mr. S. was purchasing the Property from the R.'s for a price of \$178,000;

(b) the documents relating to the First Transaction;

(c) and to confirm in writing, although he did confirm orally that in the event a conflict of interest were to arise between the Respondent's representation of Mr. A-K in the Second Transaction, and the Respondent's representation of Mr. S. in the First Transaction and the Second Transaction, the Respondent would cease to act for both Mr. A-K and Mr. S.;

in breach of the *Professional Conduct Handbook* provisions set out in paragraph 9 above.

11. The Respondent has advised the Law Society that he failed to discharge his professional obligations as set out above because to the Respondent, Mr. S. and Mr. A-K appeared to be business associates, and that as such, he assumed Mr. A-K was aware of Mr. S.'s interest in the First Transaction. The Respondent has assured the Law Society that he did not knowingly or intentionally mislead Mr. A-K as to the apparent profit Mr. S. (or others) made from the difference between the Property's purchase price in the First Transaction and the Property's sale price in the Second Transaction.

12. The Respondent acknowledges and admits that his conduct in relation to Mr. A-K, as set out above, constitutes professional misconduct.

[5] After considering the circumstances 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 be reprimanded, pay a fine of \$3,000 and costs of \$2,500, both costs and fine payable by November 30, 2004.

[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] There will be publication of this matter in the normal course.