

2006 LSBC 30

Report issued: August 02, 2006

Oral Reasons: July 26, 2006

Citation issued: October 5, 2005

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

Zahra Jenab

Respondent

Decision of the Hearing Panel

Hearing date: July 26, 2006

Panel: Leon Getz, Q.C., Chair, Kathryn A. Berge, Q.C., Michael Falkins

Counsel for the Law Society: Herman Van Ommen

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On October 5, 2005, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 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:

That you, while engaged in an intimate personal relationship with Mr. K., acted for Mr. K.'s spouse in various matters which affected her financial interests vis a vis Mr. K. This was dishonourable or questionable conduct which casts doubt on your professional integrity or competence, or reflects adversely on the integrity of the legal profession, contrary to Chapter 2, Ruling 1 of the *Professional Conduct Handbook*.

[2] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that she had professionally misconducted herself and consented to the following disciplinary action:

- (a) a one month suspension; and
- (b) costs in the amount of \$3,000.

Statement of Facts

[3] A Statement of Facts was filed as Exhibit 2 in these proceedings. The Statement of Facts

provided as follows:

1. Zahra Jenab was called on September 1, 1995 and has been a member in good standing since.
2. In 2002 she commenced practising on her own as Zahra Jenab & Company Law Corporation. She now has an associate. She is a general practitioner.
3. Ms. Jenab was initially retained to do routine legal work on behalf of Mr. and Mrs. K.'s companies. She was later retained by Mr. K. to work with G.G. on a breach of contract case in British Columbia and later a case involving a factory in New Hampshire owned by a company controlled by Mr. K. The relationship evolved at some point to Mrs. K. looking after the business interests of Mr. and Mrs. K.'s companies in a more general way.
4. Ms. Jenab acted for both Mr. and Mrs. K., as well as a number of companies controlled by one or both of them; [company] (" CCC"), [company] (" U."), which are companies controlled by Mr. K., and [company] (" S."), a company wholly owned by Mrs. K. and of which she was the sole officer and director.
5. While acting for Mr. K., CCC, U. and S. as well as Mrs. K., Ms. Jenab engaged in an intimate relationship with Mr. K., of which Mrs. K. was unaware.
6. Mrs. K. found out about the relationship between Mr. K. and Ms. Jenab in June 2003.
7. During her relationship with Mr. K., Ms. Jenab did not consider whether her relationship with Mr. K. would conflict with her duties to Mrs. K. and/or her company, S.

The mortgage on the Coquitlam Property, owned by S.

8. In July, 1998, Mr. and Mrs. K. decided to purchase a property at [address] Street in Coquitlam, British Columbia (the " Coquitlam Property") in the name of S. Mrs. K. says the reason the Coquitlam Property was purchased was because Mr. K. wanted to purchase the company, U., and Mrs. K. thought this was a bad business decision. Mrs. K. says that she wanted to invest in property. She further says that in order to provide her with some security, the decision was made to purchase the Coquitlam Property in the name of her company S.
9. U. and other companies owned by Mr. K. were the principal tenants of the Coquitlam Property. There were also two arm's length tenants. U. collected the rents from the other two tenants and paid the mortgage on the Coquitlam Property in part from these rental monies, rather than paying rent to S.
10. In July, 2002, Mr. K. arranged for a \$3 million mortgage from [credit union], to be secured against the Coquitlam Property.
11. In connection with the mortgage, Ms. Jenab corresponded with counsel for [credit union] on behalf of S. on May 29, 2002.
12. The mortgage documents for the Coquitlam Property were drafted by counsel for [credit

union]. Ms. Jenab attended to the execution of the mortgage documents by Mrs. K, on behalf of S.

13. Ms. Jenab did not explain to Mrs. K. the significance of the mortgage on the Coquitlam Property or advise her to get independent legal advice or counsel.

14. Ms. Jenab was aware that Mrs. K. was the sole shareholder, director and officer of S. She was not aware that there was an agreement between Mr. K. and Mrs. K. that the Coquitlam Property was intended to be security for Mrs. K.'s financial future.

15. [Credit union] advanced \$1.7 million under the mortgage on the Coquitlam Property, which funds were deposited into Ms. Jenab's trust account (the " Coquitlam Property Trust Funds"). With these funds, Ms. Jenab discharged the existing mortgage and assignment of rents and paid significant arrears of property taxes.

16. Ms. Jenab took instructions from Mr. K. with respect to the mortgage and the application of the funds. Ms. Jenab believed that Mr. K. had signing authority for S. Ms. Jenab has been unable to find any written authorization to this effect.

17. On July 11, 2002, the sum of \$1,740,826.77 was received from [credit union] by Ms. Jenab in trust.

18. Between July and November, 2002, Ms. Jenab made payments from the funds in trust to:

- (a) The City of Coquitlam - \$194,085.55 (for property taxes)
- (b) Feller Drysdale in Trust - \$1,346,823.68 (to discharge existing mortgage on property)
- (c) CIBC Visa - \$37,000
- (d) MBNA Canada Mastercard- \$27,500
- (e) Scotiabank Visa - \$11,111.00
- (f) U. Technologies Inc. - \$40,000
- (g) CCC - \$33,000
- (h) Industrial Plant Equipment - \$34,606.40
- (i) Property Purchase Tax - \$2,000
- (j) G.G. - \$14,757.77

19. Except for the payments made in respect of the property taxes, the existing mortgages, and property purchase tax Ms. Jenab disbursed the trust funds without S. or Mrs. K.'s express permission or

knowledge.

20. Ms. Jenab believed at that time that Mrs. K. knew about the purposes for which the funds were being disbursed. Ms. Jenab acknowledges that perhaps Mr. K. did not tell Mrs. K. regarding all of the transactions and acknowledges that it is possible that Mrs. K. was not advised that the Coquitlam Property Trust Funds were used to purchase equipment for a company controlled by Mr. K. and to pay amounts owing on credit cards jointly held by Mr. and Mrs. K.

21. Ms. Jenab now recognizes that she was not entitled to take instructions from Mr. K. with respect to disbursing the trust funds.

Personal indemnity executed by Mrs. K.

22. In November, 2002, a numbered company controlled by Mr. K., arranged a loan with [credit union] for \$127,500, to be secured by a \$300,000 collateral mortgage against a property owned by the numbered company in Nanaimo (" the Nanaimo Property").

23. The Offer of Credit included a term assigning life insurance on the lives of both Mr. and Mrs. K. to [credit union].

24. Mr. and Mrs. K. signed joint and several Personal Indemnities, dated November 8, 2002, for all losses, costs, expenses and damages related to or arising out of [credit union's] past, present and future dealings with the numbered company.

25. The November 6, 2002 letter from [law firm] including the mortgage documents refers to the numbered company, Mr. K. and Mrs. K. as Ms. Jenab's clients.

26. Mrs. K. alleges that Ms. Jenab never explained to Mrs. K. the significance of the personal indemnity related to the Nanaimo Property.

27. Ms. Jenab says that when Mrs. K. attended at her office to sign the documents relating to the Nanaimo Property, she reviewed the documents with Mrs. K., explained their legal significance to her and explained regarding personal guarantees and indemnities. She believed that Mrs. K. knew what she was signing.

28. Ms. Jenab never advised Mrs. K. to get independent legal advice or counsel with respect to the personal indemnity.

29. Ms. Jenab agrees that she:

- (a) failed to advise Mrs. K. of the conflict of interest that arose as a result of Ms. Jenab acting for both Mrs. K., S. and Mr. K., while involved in an intimate relationship with Mr. K.;
- (b) disbursed funds belonging to S., without instruction from Mrs. K. and without notifying Mrs. K.;
- (c) acted for Mrs. K., Mr. K. and S. while an actual or potential conflict existed, without advising

the parties of the conflict or advising them to seek independent legal advice.

30. Ms. Jenab agrees that her failure to adequately advise Mrs. K. or S. of the conflict of interest, to advise either Mrs. K. or S. to seek independent legal advice and to ensure that she was properly instructed by Mrs. K. and S. constitutes professional misconduct.

[4] After considering the circumstances set out in the Statement of Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of professional misconduct.

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

[6] It is accordingly ordered that the Respondent:

(a) be suspended for one month; and

(b) pay costs in the amount of \$3,000.

[7] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record, to impose the disciplinary action proposed by the Respondent and accepted by the Panel and to inform the Respondent and the complainant of the disposition.

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