

2007 LSBC 02

Report issued: January 10, 2007

Oral Reasons: December 19, 2006

Citation issued: December 1, 2005

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

Leonard Thomas Denovan Hill

Respondent

Decision of the Hearing Panel

Hearing date: December 19, 2006

Panel: Gordon Turriff, Q.C., Chair, Carol Hickman, Leon Getz, Q.C.

Counsel for the Law Society: James Doyle

Counsel for the Respondent: Christopher E. Hinkson, Q.C.

Background

[1] On December 1, 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, as amended, directed that this Panel inquire into the Respondent's conduct as follows:

1. In acting for your clients A.J.B. and N.J.B. on a mortgage refinancing transaction, you gave undertakings in writing to Mr. Simon, counsel for the lender. Those undertakings were set out in a letter to Mr. Simon dated August 18, 2004 and included the following:

" Upon receipt of the mortgage proceeds, we undertake:

1.(a) to pay out in full the outstanding taxes from the mortgage proceeds and to provide you with a copy of our
payout letter together with a copy of trust cheque; ..."

You breached this undertaking by failing to pay out the outstanding taxes in full from the mortgage proceeds.

[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 he had professionally misconducted himself and consented to the following disciplinary action:

1. a fine of \$2,500; and

- costs in the amount of \$1,000.

Agreed Statement of Facts

[3] An Agreed Statement of Facts was filed as Exhibit 2 in these proceedings. The Agreed Statement of Facts provided as follows:

- Mr. Denovan T. Hill (" the Respondent") was called to the British Columbia Bar on July 13, 1982 and has remained a member of the Law Society since then. At all material times, he was a sole practitioner, practising mainly in the areas of civil litigation, matrimonial litigation and criminal litigation.

- The Respondent, and Stephen Simon, a member of the Law Society, were engaged in a mortgage refinancing transaction where Mr. Simon acted for the lender, TMIC, and the Respondent acted for the borrowers A.B. and N.B.

- By letter dated August 18, 2004, the Respondent wrote to Mr. Simon enclosing certain mortgage related documents. He wrote, in part:

Upon receipt of the mortgage proceeds, we undertake:

- a) to pay out in full the outstanding taxes from the mortgage proceeds and to provide you with a copy of our payout letter together with a copy of the Trust Cheque;

...

- The Respondent received the mortgage proceeds and the transaction completed on August 23, 2004.

- By facsimile transmittal dated December 14, 2004, Mr. Simon wrote to the Respondent saying:

We note that the 2004 property taxes are still outstanding and we enclose a copy of the Tax Certificate for your reference. In accordance with your undertaking letter dated August 18, 2004, will you please provide us with evidence of payment of the outstanding property taxes immediately.

- The Respondent requested that Mr. Simon grant a one-month extension to allow him to contact the borrowers to make payments directly.

- By letter dated January 18, 2005, Mr. Simon wrote to the Respondent as follows:

Further to your request, our clients have agreed to grant you a final extension to Friday February 18, 2005 to honour your undertaking.

- By letter dated March 3, 2005, Mr. Simon wrote to the Law Society, writing in part:

As of the date of this letter, we have still not received evidence of payment of the outstanding property taxes.

9. By letter dated March 9, 2005, Howie Caldwell, Staff Lawyer - Professional Conduct, of the Law Society wrote to the Respondent concerning Mr. Simon's letter of March 3, 2005.

10. By letter dated April 5, 2005, the Respondent responded to Mr. Caldwell, writing:

To answer the points raised in your letter of March 9, 2005:

1) I was under the impression at the time of the transaction that all outstanding taxes had been paid. So I paid out the balance from the mortgage advance to the client. I am enclosing a copy of the receipt I had.

2) I did not realize the current (2004) year's taxes were not paid until Mr. Simon brought it to my attention. I spoke with the client and explained he should either pay the taxes himself and get me a receipt or give me the money to pay them. He told me he was in the midst of refinancing again, this time with a bank and instructed me not to tell this to Mr. Simon as he did not want his clients to know. Since then he has told those clients himself but that was quite recently. My client has advised me several times that the refinancing was still in progress. The effect of it would be to eliminate any risk to Mr. Simon's clients.

I have known my client for several years and believe him to be a businessman of integrity and therefore there is no real risk to Mr. Simon's client.

11. By letter dated April 14, 2005, Mr. Caldwell sought clarification with respect to the Respondent's April 5, 2005 letter. By way of response, dated April 21, 2005, the Respondent wrote:

Further to your letter of April 14, 2005 you wanted further explanations. Here is a copy of the Statement of Taxes as of July 29, 2005 from the City of Surrey. This was overlooked at the time, and it was assumed that the receipts provided earlier had satisfied the outstanding tax balance. As to satisfying the undertaking, I am just now awaiting confirmation that the Royal Bank is paying or has paid the 2004 taxes as part of the new refinancing. I expect to get that tomorrow or Monday and to forward it to you as soon as I get it.

12. By further letter dated May 6, 2005, the Respondent wrote to Mr. Caldwell as follows:

Further to your letter of April 25, 2005 I did get some legal advice. I want to make it clear, it is not that I ever thought I was not obligated personally to satisfy the undertaking. It was just that in the particular circumstances of this case I thought the refinancing would discharge any obligation on the part of [A.B.] to Mr. Simon's client and pay off the taxes at the same time and the problem would take care of itself at the same time. Anyway I never intended to breach my undertaking or ignore the situation. Refinancing has admittedly taken too long and I apologize for the delay.

A.B. has paid the taxes and a copy of the receipt is enclosed. I will follow up with the Tax

Certificate from the City of Surrey next week showing the outstanding 2004 taxes and utilities have been paid to date.

ADMISSIONS

13. The Respondent admits that his conduct, as outlined in paragraphs 3 through 11, amount to professional misconduct. In particular, the Respondent admits:

In acting for his clients, A.B. and N.B., on a mortgage financing transaction, he gave written undertakings to Stephen Simon, counsel for the lender. Those undertakings were set out in a letter to Mr. Simon, dated August 18, 2004, and included the following:

" Upon receipt of the mortgage proceeds, we undertake:

1. (a) to pay out in full the outstanding taxes from the mortgage proceeds and to provide you with a copy of our payout letter together with a copy of trust cheque" ;

...

He breached this undertaking by failing to pay out the outstanding taxes in full from the mortgage proceeds, when the mortgage proceeds were received on August 23, 2004.

[4] 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 the Respondent guilty of professional misconduct.

[5] It is accordingly ordered that the Respondent, within six months of December 19, 2006:

- (a) pay a fine in the amount of \$2,500; and
- (b) pay costs in the amount of \$1,000.

[6] The time given to pay was given at the Respondent's request and without objection by the Law Society.

[7] These circumstances call for a reminder that lawyers who give undertakings must ensure that they:

- (a) know exactly the circumstances in which they will be required to discharge the undertakings, including when they must do so; and
- (b) will be able personally to discharge the undertakings when they must do so.

[8] Lawyers can neither decide themselves when they will discharge undertakings calling for performance on the happening of a particular event or a stated time nor put themselves in the position of having to hope that someone else will do what they have professionally undertaken to do themselves.

[9] 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.

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