

2007 LSBC 37

Report issued: July 18, 2007

Oral Reasons: February 9, 2007

Citation issued: December 20, 2006

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

Brian Kaminski

Respondent

Decision of the Hearing Panel

Hearing date: February 9, 2007

Panel: John J.L. Hunter, Q.C., Chair, Gordon Turriff, Q.C., Thelma O'Grady

Counsel for the Law Society: Maureen Boyd

Appearing on his own behalf: Brian Kaminski

Background

[1] On December 20, 2006 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 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. In acting for the vendor in a real estate transaction you gave the following undertakings in your letter dated March 15, 2005 to the notary acting for the purchaser:

Upon receipt of the net sale proceeds in accordance with the Vendor's Statement of Adjustments, we undertake as follows:

1. to pay [the Bank] (the " Existing Mortgagee") the amount required by its written statement to payout and legally obligate the Existing Mortgagee to provide ... a registrable discharge of [the] Mortgage ...

2. within five business days of closing we will provide to your office copies of:

(a) our transmittal letter to the Existing Mortgagee;

(b) the Existing Mortgagee's written statement of amount owing or letter from the Existing Mortgagee acknowledging receipt of sufficient funds;

(c) payout cheque; and

(d) evidence of receipt of the Existing Mortgagee's place of business [sic]; if available; ...

3. we will apply such legal means as may be necessary in order to obtain the Discharge.

You were bound by those undertakings when you accepted the sale proceeds from the notary for the purchaser. You breached those undertakings when you:

(a) failed to provide the required documents relating to payout of the mortgage to the notary for the purchaser within 5 business days of the March 15, 2005 completion date; and

(b) failed to obtain a discharge from the Existing Mortgagee in a reasonably prompt period of time.

[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:

(a) a fine in the amount of \$7,500; and

(b) costs in the amount of \$2,000.

Statement of Agreed Facts

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

1. On May 14, 1993, Brian Kaminski was called to the Bar of British Columbia.

2. In or about March 2005, the Respondent was retained to represent the vendors, I.O. and G.A. (the " Vendors"), in the sale of a residential property (the " Property") to purchasers (the " Purchasers"). Mr. S., a notary public, represented the Purchasers.

3. By letter dated March 15, 2005, the Respondent wrote to Mr. S. and undertook upon receipt of the net sale proceeds, *inter alia*:

1. to pay [the Bank] (the " Existing Mortgagee") the amount required by its written statement to payout and legally obligate the Existing Mortgagee to provide us with a registrable discharge of Mortgage No. BV91538 (the " Mortgage") on the trust condition that the Existing Mortgagee provide us with a discharge of the [Mortgage] in registrable form (the " Discharge") within a reasonable period of time...

2. within five business days of closing we will provide to your office copies of:

- a) our transmittal letter to the Existing Mortgagee;
- b) the Existing Mortgagee's written statement of amount owing or letter from the Existing Mortgagee acknowledging receipt of sufficient funds;
- c) payout cheque; and
- d) evidence of receipt of the Existing Mortgagee's place of business [sic], if available...

3. we will apply such legal means as may be necessary in order to obtain the Discharge;

4. upon our receipt of the Discharge, we will forthwith attend to the registration of same in the Land Title Office and provide you with registration particulars in due course

(the " Undertakings").

4. On March 15, 2005 the transaction completed.

5. On or about March 21, 2005, the Respondent provided to the Existing Mortgagee a cheque of sufficient funds to discharge the Mortgage, along with a form of discharge of the Mortgage for execution.

6. The Property was strata lot 2 of a duplex unit, of which both strata lots were owned by the Vendors and were sold at approximately the same time. The Mortgage was registered against both the Property and the other strata lot.

7. The Discharge of Mortgage provided by the Respondent to the Existing Mortgagee " inadvertently" omitted the legal description for the Property.

8. On or about June 21, 2005, Mr. S. requested by fax that the Discharge be sent as soon as possible. This request was re-faxed to the Respondent's office on August 4, 2005, August 10, 2005 and August 24, 2005, along with additional comments. An assistant in Mr. S.'s office also telephoned the Respondent's office on December 22, 2005 to follow-up on the Discharge.

9. On February 6, 2006, Mr. S. advised the Law Society by letter that he had not received from the Respondent any documentation relating to the Discharge of the Mortgage nor a copy of the Discharge itself (the " Complaint").

10. On February 16, 2006, the Law Society advised the Respondent of the Complaint.

11. On or about February 28, 2006, the Respondent realized the error in the legal description for

the Property and provided to the Existing Mortgagee a Discharge for the Property.

12. On March 15, 2006, the Respondent provided a copy of the registered Discharge in respect of the Mortgage to Mr. S. by fax. The period of time from the closing of the transaction to the date the discharge was filed was 12 months.

13. The Respondent admits that he was bound by the Undertakings he gave to Mr. S., which are set out in the Respondent's letter dated March 15, 2005.

14. The Respondent admits that he breached these Undertakings when he:

(a) failed to provide the required documents relating to payout of the mortgage to the notary for the purchaser within five business days of the March 15, 2005 completion date; and

(b) failed to obtain a discharge of the mortgage in a reasonably prompt period of time.

15. The Respondent admits that his conduct in breaching the Undertakings is contrary to Sections 5 and 7 of Chapter 11 of the *Professional Conduct Handbook* and is professional misconduct.

[4] After considering the circumstances set out in the Statement of Agreed 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) pay a fine in the amount of \$7,500; and

(b) pay costs in the amount of \$2,000.

[7] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.

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