

2007 : No. 1 March

Stuart Clendening

Surrey, BC

Called to the bar: May 17, 1971

Discipline hearing : January 16, 2007

Panel : John J.L. Hunter, QC, Chair, David A. Zacks, QC and Ross D. Tunnicliffe

Report issued : February 9, 2007 (indexed as 2007 LSBC 10)

Counsel : Maureen Boyd for the Law Society and Christopher E. Hinkson, QC for Mr. Clendening

Facts

In July 2004, Mr. Clendening was retained to represent JM in the sale of a residential property to JD. A notary public represented the purchaser. Two mortgages were registered against the property. On July 27, 2004 Mr. Clendening confirmed an undertaking to pay out and discharge the first mortgage and to advise the notary of the discharge. On July 27, 2004, the transaction completed and the notary forwarded the sale proceeds to the respondent.

In October 2004 the notary wrote to Mr. Clendening to remind him of his obligation to fulfil the undertaking. On November 22, 2004 Mr. Clendening provided confirmation that the first mortgage had been discharged. The second mortgage was not discharged, and Mr. Clendening did not respond to several communications from the notary on this matter.

On January 10, 2006 the notary complained to the Law Society about Mr. Clendening's breach of the undertaking to pay out and discharge the second mortgage. On February 22, 2006 Mr. Clendening completed the discharge of the second mortgage.

Verdict

The hearing panel accepted Mr. Clendening's admission that he breached an undertaking to provide a discharge of mortgage in a timely manner and failed to respond to communications from a notary public. The hearing panel found that Mr. Clendening's conduct constituted professional misconduct.

Penalty

The hearing panel accepted the joint submission on penalty by Mr. Clendening and the Law Society. The panel ordered Mr. Clendening, by December 31, 2007, to pay:

1. a fine of \$7,500; and
2. costs in the amount of \$2,500.

In assessing the submission, the hearing panel emphasized, once again, the importance of compliance with undertakings.