

2008 LSBC 29

Report issued: September 19, 2008

Oral Reasons: August 28, 2008

Citation issued: January 11, 2008

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

Richard Neil Toews

Respondent

Decision of the Hearing Panel

Hearing date: August 28, 2008

Panel: Carol Hickman, Chair, William Sullivan, QC, Robert Brun, QC

Counsel for the Law Society: Gerald Cuttler

Counsel for the Respondent: Robin McFee, QC

Background

[1] On January 11, 2008 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 on the direction of the Chair of the Discipline Committee. Counsel for the Law Society advised the panel that the Law Society was not pursuing the last two paragraphs of the citation. The Panel therefore inquired into the Respondent's conduct as follows:

1. Your conduct in around May 2005 when purchasing real property through a company you controlled from your client or former client, SC, including:
 - (a) withholding your identity as the purchaser, or controlling mind of the purchaser, from SC;
 - (b) failing to seek and obtain SC's informed consent that she wanted to sell the said real property to you or a company you controlled.

[2] The Respondent admitted that the citation was properly issued and served pursuant to the requirements of Law Society Rule 4-15.

[3] 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 of \$2,500; and

(b) costs in the amount of \$3,333, both fine and costs to be paid on or before October 31, 2008.

Agreed Statement of Facts

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

1. The Respondent has been a member of the Law Society since June 14, 1985.
2. The complainant, SC, retained the Respondent in or about March of 2004 to prepare a separation agreement between her and her husband, JR.
3. SC and JR were separated, but the separation was amicable, and they were cooperating in the preparation of the separation agreement.
4. During the course of the Respondent's retainer, SC provided the Respondent with full details about her income, JR's income and their assets.
5. Among other things, SC told the Respondent that she believed that the value of the Squamish property she and JR owned to be about \$240,000.
6. The separation agreement was executed in April 2004. It was a term of the separation agreement that SC and JR would continue to co-own the Squamish property and that SC would continue to operate her massage therapy business from that property.
7. On June 7, 2004, the Respondent sent an account to SC for his professional services rendered in the preparation of the separation agreement and other ancillary matters, including the transfer of the former matrimonial home. SC considered certain aspects of the Respondent's account to be excessive.
8. In 2004, after the separation agreement concluded, SC and JR decided to sell the Squamish property. On June 4, 2004, SC and JR retained DS of Remax Real Estate as the listing realtor to market the Squamish property. The property was listed for sale at an asking price of \$285,000.
9. On September 4, 2004, the listing expired and the property was taken off the market.
10. On or about March 1, 2005, SC went to the Respondent's office to discuss his account. The main focus of the discussion related to the photocopying charges on the account, which totaled \$120. The Respondent offered a \$50 discount on the account, which SC accepted.
11. Subsequent to March 1, 2005, SC proceeded to list the Squamish property retaining GB as the listing realtor. The property was listed for sale on March 24, 2005 at an asking price of \$275,000. On April 19, 2005, the listing price was reduced to \$260,000.
12. On or about May 5, 2005, DS, a real estate agent in Squamish, was asked by the Respondent to write up an Offer to Purchase the Squamish property for \$225,000 in the name of LNA Properties Ltd. The Respondent told DS that he wanted the offer to be in the name of LNA Properties Ltd. because he had previous dealings with the seller and did not want the seller

to know about his involvement. He also said that Squamish was a small community and he preferred that his private business was not generally known.

13. At the time the initial offer in the name of LNA Properties Ltd. was presented, the Respondent was aware of an appraisal that had been obtained on an adjacent lot, which was raw land only, appraising the probable fair market value of the adjacent lot at \$225,000 as at March 18, 2005.

14. On May 6, 2005 DS presented the Offer to Purchase on behalf of LNA Properties Ltd. for \$225,000 to GB.

15. When GB presented this offer to SC, SC asked her to find out who was behind the offer. GB then contacted DS and asked her who the buyer was. In response, DS told GB that her client did not want the vendor to know who the purchaser was. GB subsequently reported to SC that she spoke with the buyer's agent, DS, who advised that her client did not want SC to know his identity.

16. SC subsequently agreed to sell the Squamish property to LNA Properties Ltd. for \$247,500, without knowing that the Respondent was the principal of the purchaser, LNA Properties Ltd.

17. The Respondent admits that he professionally misconducted himself in an around May 2005, when he purchased the Squamish property from his former client, SC, through LNA Properties Ltd., a company that he controlled:

- (a) without disclosing to SC that he was the principal, and controlling mind, of LNA Properties Ltd.; and
- (b) failing to seek and obtain SC's informed consent that she wanted to sell the said real property to a company that the Respondent controlled.

[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 the Respondent has committed professional misconduct.

[6] The Agreed Statement of Facts dated May 30, 2008 provides in paragraph 17 an admission by the Respondent that he professionally misconducted himself, first in failing to disclose that he was, in essence, the offeror and, second, "failing to seek and obtain SC's informed consent that she wanted to sell the said real property to a company that Mr. Toews controlled." This quote is identical wording to that used in allegation 1(b) of the Schedule to citation addressed to the Respondent and dated January 11, 2008.

[7] The Panel believes it is appropriate to mention that their decision is not to be taken as a precedent that, in all cases where a lawyer is offering to purchase an asset from a former client, in addition to disclosure of the lawyer's interest, that lawyer must both "seek and obtain informed consent" before proceeding with the matter. That will depend on all of the circumstances in each case.

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

[9] It is accordingly ordered that the Respondent pay:

- (a) a fine in the amount of \$2,500; and
- (b) costs of the proceedings in the amount of \$3,333,

both costs and fine to be paid on or before October 31, 2008.

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