

2008 LSBC 35

Report issued: October 23, 2008

Oral Reasons: October 15, 2008

Citation issued: May 21, 2008

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

Glenn John Niemela

Respondent

Decision of the Hearing Panel

Hearing date: October 15, 2008

Panel: William Jackson, Chair, Haydn Acheson, Kathryn Berge, QC

Counsel for the Law Society: Eric Wredenhagen

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On May 21, 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. The citation directed that this panel inquire into the Respondent's conduct as follows:

1. Between approximately December 2004 and June 2007, you failed to provide a substantive response, promptly or at all, to the telephone and written inquiries of WW and/or his counsel Maneesh Saini with respect to the discharge of a *Lis Pendens* registered against title to property owned in part by him, which you caused to be registered in the course of representing your client [Bank].

[2] The requirements for service of this citation upon the Respondent were admitted.

[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 in the amount of \$1,500; and
- (b) costs in the amount of \$1,000.

Statement of Agreed Facts

[4] A Statement of Agreed Facts was filed in these proceedings. The Statement of Agreed

Facts provided as follows:

1. The Respondent was called to the Bar of British Columbia on August 26, 1988 and has practised law as a sole practitioner in Vancouver, British Columbia since January 16, 1991.
2. On November 30, 1992, the Respondent, acting for his client, [Bank], filed and caused to be registered a certificate of pending litigation (the "CPL") against a property in Mount Lehman, BC (the "Property") belonging to WW.
3. By the mid-1990s, WW had made the payments required by the judgment against him, and checked title to the Property to see whether it was clear. He discovered the CPL and contacted the Respondent's office occasionally in order to request that the CPL be discharged. He did not receive any response.
4. In or about 2000, WW began to consider selling the Property. He located and contacted the Respondent and spoke to him by telephone. The Respondent advised that he would "look into it" and "get back to" WW. He did not do so. WW subsequently left telephone messages for the Respondent, which messages were not returned.

Failure to Respond

5. On or about December 7, 2004, WW sent the Respondent a letter advising that the judgment had been satisfied "many years ago" and requesting removal of the CPL from title. WW followed up with telephone messages to the Respondent, but received no response to either the letter or to his phone calls.
6. On February 7, 2005, WW sent a registered letter to the Respondent in which he repeated his request to have the CPL removed from title to the Property. The letter noted that the previous letter and several telephone messages had gone unanswered.
7. After sending the registered letter of February 7, 2005, WW made further attempts to contact the Respondent. He spoke to the Respondent's assistant, and asked for a call back. His call was not returned.
8. In 2006, WW retained Maneesh Saini as counsel in respect of the CPL, which remained on title to the Property despite WW's attempts to contact the Respondent and have him remove it. Ms. Saini wrote to the Respondent on January 3, 2007 to request prompt discharge of the CPL, and enclosed a copy of a title search and the Petition.
9. On March 15, 2007, Ms. Saini again wrote to the Respondent, enclosing a draft discharge letter (in the Respondent's name) to the Land Title Office, and a title search.
10. Between January and June 2007, Ms. Saini had a number of telephone discussions with the Respondent or his office staff:
 - (a) on January 11, 2007, Ms. Saini called and spoke with the Respondent and reiterated her request (on behalf of WW) that the CPL be discharged;

- (b) on April 2, 2007, Ms. Saini called and spoke with the Respondent, who promised to review the file the next day and get back to her;
- (c) on April 4, 2007, Ms. Saini received a call from the Respondent's assistant, who confirmed her name and phone number and advised that she did not know if the Respondent would be calling Ms. Saini that day;
- (d) on April 25, 2007, Ms. Saini called and spoke with the Respondent's assistant, and asked the Respondent to call back on an urgent basis;
- (e) on June 1, 2007, in the morning, Ms. Saini called and spoke with the Respondent who advised that he would sign the CPL discharge letter (enclosed with the letter of March 15, 2007, and re-sent to the Respondent by email on June 1, 2007) and return it to her by email that day;
- (f) June 1, 2007, in the afternoon, Ms. Saini called and spoke with the Respondent's assistant to attempt to determine whether the letter would be sent. She was told only that a message would be left with the Respondent.

11. On June 7, 2007, Ms. Saini sent a final letter to the Respondent, enclosing all previous correspondence as well as her notes of telephone discussions with the Respondent or his staff. She received no response.

12. On June 21, 2007, the Law Society, following a complaint from Ms. Saini regarding the Respondent, sent a letter to the Respondent requesting a response to the complaint.

13. On August 24, 2007, the Respondent wrote to the Law Society acknowledging his failure to respond to Ms. Saini, and outlining some of the steps taken by him in response to the complaint.

14. The Respondent admits that his conduct in failing to provide a substantive response to WW and/or to his counsel between December 2004 and June 2007 with respect to the CPL constitutes professional misconduct.

[5] 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 determines that the Respondent has committed professional misconduct. The Panel further accepts the disciplinary action proposed.

[6] It is accordingly ordered that the Respondent:

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

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