

2008 : No. 4 - October

Richard Neil Toews

Squamish, BC

Called to the bar: June 4, 1985

Discipline hearing : August 28, 2008

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

Report issued : September 19, 2008 (2008 LSBC 29)

Counsel : Gerald Cuttler for the Law Society and Robin McFee, QC for Richard Toews

Facts

In March 2004, Richard Toews was retained by SC to prepare a separation agreement between her and her husband, JR. SC provided Toews with full details about their incomes and assets, including the value of their Squamish property, estimated at \$240,000.

After the separation agreement was concluded, SC and JR decided to sell the property. In June 2004 they retained realtor DS who listed the property for sale for \$285,000. The listing expired in September and the property was taken off the market.

In March 2005 SC re-listed the property, this time retaining GB as her realtor. It was initially listed at \$265,000 but was reduced to \$260,000 in April. In May 2005, Toews asked DS, SC's first realtor, to write up an offer to purchase the Squamish property for \$225,000 in the name of L. Ltd, a company which Toews controlled. Toews told DS he had previous dealings with SC and did not want her to know about his involvement in the purchase.

When presented with the offer, SC asked her current realtor, GB, to find out who was behind the offer. She was told that the client did not want to be identified. The property was eventually sold to Company L. Ltd. for \$247,000.

Admission and Penalty

Toews admitted that he professionally misconducted himself, first by failing to disclose that he was, in essence, the offeror and, second, by failing to seek and obtain SC's informed consent that she wanted to sell the said real property to a company that he controlled.

The panel accepted Toews' conditional admission and the penalty proposed under Rule 4-22. Accordingly, the panel ordered that Toews pay the following on or before October 31, 2008:

1. A fine in the amount of \$2,500; and
2. Costs of the proceedings in the amount of \$3,333.

The panel noted 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 the lawyer must both "seek and obtain informed consent" before proceeding with the matter. That will depend on all of the circumstances in each case.