

2009 : No. 2

Richard Craig Nielsen

Vancouver, BC

Called to the bar: September 5, 2001

Discipline hearing : December 9, 2008

Panel : Robert Punnett, QC, Chair, David Mossop, QC and Thelma O'Grady

Report issued : March 4, 2009 (2009 LSBC 08)

Counsel : Maureen Boyd for the Law Society and Gerald Cuttler for Richard Nielsen

Facts

A citation was issued April 26, 2007 outlining eight allegations against Richard Craig Nielsen: two allegations of incompetence, two of professional misconduct and four of breach of the accounting rules.

Seven of these allegations pertained to Nielsen's role in a real estate scheme known as an "Oklahoma flip," in which mortgage funds were obtained and disbursed under false pretenses. The eighth allegation pertained to Nielsen's failure to maintain books, records and accounts in accordance with the Law Society Rules.

Between November 2004 and March 2005, Nielsen's clients, I Ltd. and Q Ltd., bought 13 properties and assigned the contract of purchase and sale to a nominee purchaser at a significantly higher price. The parties received and disbursed mortgage funds in respect of this second contract. Nielsen helped his clients and others obtain and disburse these funds.

Nielsen improperly acted for multiple parties in these transactions. He failed to disclose potential conflict issues and by his conduct preferred the interests of some of his clients (corporate assignors) over others (lender banks and nominee purchasers).

In addition, Nielsen failed to disclose material facts to his lender clients, including the fact that the mortgage funds exceeded the first purchase price and that these excess funds were disbursed to persons unrelated to the transaction.

Nielsen explained that he was duped by his clients, who told him the properties were bought at favourable prices in order to assist new immigrants. He further explained that, in the course of his duties, he raised concerns and sought advice about the transactions and the proper way to document them.

The panel found that, while Nielsen's actions were not consistent with knowing participation in a fraud, they were consistent with a lack of judgment, skill and diligence.

If Nielsen had complied with the "formalities" of real estate practice and the principles of conflict of interest, it is doubtful that he would have participated in this scheme, or at least that his participation would have been cut short. However, his conduct clearly shows he was oblivious to these requirements, which are fundamental to the practice of law.

Admission and Penalty

Nielsen admitted all the underlying facts and each of the allegations, and admitted to an adverse determination in respect of each of them.

The allegations to which Nielsen has admitted are significant and serious. Pursuant to Rule 4-22, the hearing panel accepted Nielsen's admissions and proposed penalty. The panel ordered that he:

1. be suspended for six months, commencing February 1, 2009;
2. pay costs of \$4,500 by February 1, 2010; and
3. remain bound by a previous undertaking to the Discipline Committee not to practise real estate law.