

2004 LSBC 35

Report issued: September 27, 2004

Citation issued: May 26, 2003

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

RAGHBIR SINGH BASI

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: September 8, 2004

Panel: G. Glen Ridgway, Q.C., Chair, Ross D. Tunnicliffe, Gordon Turriff, Q.C.

Counsel for the Law Society: Jean Whittow, Q.C.

Appearing on his own behalf: Raghbir S. Basi

Background

[1] On the 26th day of May, 2003, a citation was issued against the Respondent, which citation, as amended, directed that this hearing panel inquire into the Respondent's conduct respecting the following:

1. You breached an undertaking dated July 20, 2001 which you provided to the law firm of another member D.B. in which you undertook to provide to C Mortgages Inc. and F Capital Corporation sufficient funds to pay out encumbrances on a certain property and, upon receipt and registration of the discharges, to provide particulars to D.B. An implied term of this undertaking was that you would take timely steps to ensure that you obtained and registered the discharges, which you did not do.
2. You failed to respond to letters from D.B. dated January 15th and March 4th, 2002 and telephone messages from D.B. dated April 11th, 12th, 16th, 18th, 2002, May 23rd, 24th, and 27th, 2002, and June 5th, 6th, and 11th, 2002.
3. You failed to punctually fulfil your professional commitments in the transaction described in paragraph 1 above.

[2] The Respondent acknowledged proper service of the citation.

[3] At the commencement of the hearing, and on application by counsel for the Law Society, the panel ordered that the Respondent produce, to the Law Society, his file respecting the transaction which was the subject of the hearing.

The Evidence

[4] The evidence tendered by the Law Society at the hearing included the oral evidence of D.B. a very

experienced Victoria real estate lawyer, and James Dent, a Law Society staff lawyer. In addition, a book of documents, including correspondence, was entered as an Exhibit.

[5] D.B. gave evidence that he acted on behalf of the purchaser of residential property and also acted for the financial institution providing the financing for the purchase. The Respondent acted for the Vendor.

[6] By letter dated July 18, 2001, D.B. forwarded documents to the Respondent for execution by the Vendors on undertakings on the part of D.B. as to the disposition of those documents upon their return. D.B.'s letter to the Respondent further provided:

The sale proceeds will be payable to your firm 'In Trust' on the following undertaking to pay the sum required to legally obligate the charge holder to provide your office with a registrable Form C-Release, to apply for registration of said Release forthwith upon receipt, and advise our office of its registration in due course for each of the following charges presently registered against title.

The letter listed the nine charges so registered and also placed the Respondent on the undertaking to pay the 2001 property taxes.

[7] By letter dated July 20, 2001, the Respondent returned the executed documents to D.B. and stated in his letter:

We therefore undertake that upon receipt of sale proceeds we will provide to C Mortgages Inc. and F Capital Corporation sufficient funds to obligate them to respectively discharge Mortgage A, Mortgage B, and Assignment of Rents C, registered against title. Upon receipt and registration of the discharge, we will provide particulars to you.

(The balance of the nine charges having already been discharged.)

[8] Some six months later, on January 15, 2002, D.B. wrote to the Respondent indicating he had not had a report from the Respondent with respect to the discharges.

[9] On March 4, 2002, D.B. again wrote to the Respondent for this report.

[10] A title search dated June 19, 2002, disclosed that the title had not been cleared of the three encumbrances referred to in the July 20, 2001, undertaking.

[11] D.B. testified that he could not report to his client, the financial institution, as the client's security had not been perfected by the clearing of the prior financial charges.

[12] D.B.'s testimony was that it was his experience in the conveyancing practice in Victoria that there was an implied term of the undertaking that the discharge of encumbrances was to be accomplished in a reasonably prompt fashion.

[13] Having had no response from the Respondent, and with the charges still on title, D.B. referred the matter to the Law Society of British Columbia, to the attention of the Professional Conduct Committee. This was done by letter dated June 20, 2002.

[14] By Order pursuant to Law Society Rule 4-43 made September 6, 2002, an audit of the Respondent's books, records and accounts was performed by Law Society staff in September of 2002.

[15] The audit disclosed that the Respondent was in possession of the required executed discharge relating to two of the three prior charges remaining on title, namely the Mortgage and Assignment of Rents in favour of F Capital Corporation.

[16] That Release was submitted to the Victoria Land Title Office on November 7, 2002, and those two charges were cleared from title. The audit also disclosed that sufficient funds to pay off the third charge, namely the mortgage in favour of C Mortgages Inc., had been submitted to C Mortgages Inc. some fourteen months previously, that is, by letter dated July 25, 2001.

[17] The evidence indicated that C Mortgages Inc. had not provided an executed discharge, and in fact, as at the date of the hearing, had not provided such discharge. As a result, the charge in favour of C Mortgages Inc. remains on title.

Submissions

[18] At the close of the case on behalf of the Law Society, Counsel for the Law Society submitted that the panel should amend the citation so that paragraph 2 of the Schedule thereto would now read:

He failed to respond to letters from D.B. dated January 15th and March 4th, 2002.

[19] The panel ordered that the citation be so amended.

[20] The Respondent declined to give evidence, but acknowledged that he was guilty of the conduct specified in paragraph 2 of the citation, as amended, and that such conduct amounted to professional misconduct.

[21] The Respondent further acknowledged that the conduct attributed to him in the evidence called by the Law Society was truthful and accurate, but that such established only that he had failed to punctually fulfill his professional commitments in the subject transaction. He submitted that the evidence was such that it did not establish that he had breached his undertaking as set out in the letter of July 20, 2001.

[22] Counsel for the Law Society submitted that the conduct of the Respondent was a breach of undertaking as specified in his letter of July 20, 2001, and further, that although there was not a specific time frame with respect to the completion of the tasks for which the undertaking was given, there was an implied term that these tasks would be undertaken and completed within a reasonably prompt period of time.

[23] Counsel for the Law Society provided a book of authorities with particular reference to *Kutlin v. Auerbach* (B.C.C.A., 34 B.C.L.R. 23) and the decision of the hearing panel on facts and verdicts in the matter of *Eric Bernard Heringa*, February 25, 2003, [2003] LSBC 10. The panel notes that the decision of the panel in *Heringa* was upheld by the Court of Appeal. *The Law Society of British Columbia v. Heringa*, B.C.C.A. (2004) BCJ 377.

[24] In upholding the decision of the hearing panel, the Chief Justice stated:

The heart of the panel's reasoning is, in my opinion, found in these words:

(37) Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.

(38) The trust and confidence vested in lawyers' undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and

diligent efforts to meet all undertakings will be an essential ingredient in gaining the public's credibility and trust in lawyers.

I agree with this.

[25] In his submission, the Respondent ultimately acknowledged and agreed that it was an implied term of the undertaking to obtain and register a release within a reasonable time, and failing such, to make the necessary Court application to compel the provision of such release on the part of C Mortgages Inc. He acknowledged that his failure to do so was a breach of his undertaking and amounted to professional misconduct.

Decision

[26] This panel adopts the reasoning of the panel in *Eric Bernard Heringa*, as expressed by the Chief Justice in confirming the decision of that panel.

[27] It is the determination of this panel, and acknowledged by the Respondent, that the Respondent is guilty of professional misconduct with respect to paragraphs 1 and 2 of the Schedule to the citation, as amended.

[28] It was the position of Counsel for the Law Society of British Columbia that the allegations contained in paragraph 1 and 3 of the amended Schedule were alternative, and as such, the panel orders that the allegation contained in paragraph 3 be dismissed.