

2010 : No. 3

Donald Alexander Boyd

Surrey, BC

Called to the bar: December 19, 1985

Discipline hearing : July 21, 2010

Panel : David Renwick, QC (single Benchers panel)

Report issued : September 9, 2010 (2010 LSBC 21)

Counsel : Maureen Boyd for the Law Society and Leonard Doust, QC for Donald Alexander Boyd

Facts

In February 2005, Boyd's adult son entered into a pre-sale contract to purchase a condominium. The son assigned his interest in the contract of purchase and sale of the condominium to his mother, Boyd's former wife, to enable her to handle the purchase for him.

Boyd's former wife arranged financing for the purchase of the condominium by obtaining a mortgage from the bank on her own property. Boyd represented his former wife in the purchase of the condominium and the mortgage of her existing property. He also represented the bank.

The bank instructed Boyd to prepare and register a first mortgage on the existing property. On March 10, 2008, Boyd received the mortgage proceeds, which he deposited to his trust account. On March 13 and 14, he disbursed the funds to complete the purchase of the condominium and paid the bank for the outstanding amount of the prior mortgage.

At the end of March or the beginning of April 2008, Boyd ceased to act for the bank in respect of the new mortgage, without carrying out the instructions of the bank. He did not advise the bank that he was withdrawing his services, that his former wife had not executed any mortgage documents, or that he had disbursed the mortgage proceeds.

Admission and Penalty

Boyd admitted that he released the mortgage funds without first obtaining and registering a mortgage against his former wife's property as security, contrary to the bank's instructions. He further admitted that he failed to report to the bank that he had not secured its position, by releasing the mortgage funds without first obtaining and registering a mortgage against the property of his former wife.

Boyd admitted that his conduct constituted professional misconduct.

The misconduct in this case ultimately caused no financial harm, but did create a significant risk of harm for the client. He abandoned the bank and the obligations he owed to it as its solicitor. Further, when the bank wrote several letters to Boyd in early 2009 requesting a title report and duplicate registered mortgage, he did not reply to those letters.

The panel noted that Boyd did not receive any gain or benefit from his misconduct.

An aggravating factor was Boyd's professional conduct record, which consists of two conduct reviews in 1993 and 2006 and a referral to the Practice Standards Committee in 2006.

The panel determined that there was little likelihood of any reoccurrence as Boyd did not practise real estate law. His involvement was unique to the circumstances, and therefore there was no need to deter him.

The panel accepted Boyd's admission and ordered that he pay:

1. a \$3,500 fine; and
2. \$2,000 in costs.