

2011 : No. 4 Winter

Deepak Azak Chodha

Vancouver, BC

Called to the bar: February 20, 1998

**Discipline hearing** : May 12, 2011

**Panel** : Carol Hickman, QC, Chair, David Mossop, QC and Gregory Petrisor

**Report issued** : September 23, 2011 (2011 LSBC 31)

**Counsel** : Jean Whittow, QC for the Law Society and Henry Wood, QC for Deepak Azak Chodha

## Facts

Deepak Azak Chodha represented the sellers in a residential real estate transaction in which the purchasers were taking title to the property -subject to a builders lien.

On July 14, the purchaser's lawyer delivered the closing proceeds on Chodha's undertaking to pay sufficient funds to obtain a discharge of the lien, to file the discharge at the land title office and to provide her with a filed copy within 60 days of the completion date.

On September 16, the purchaser's lawyer phoned and told Chodha that the lien had not been resolved; Chodha abruptly ended that call. Between September 18 and 29, the lawyer phoned and faxed Chodha numerous times to explain that he was in breach of his undertaking.

On October 1, the purchaser's lawyer reported Chodha's breach of undertaking to the Law Society.

On October 19, the purchaser's lawyer wrote again to Chodha regarding the undertaking. The next day, another lawyer with Chodha's firm responded and said that the discharge would be filed in the "next day or two." There were several more communications between the two parties before, on November 10, the purchaser's lawyer finally received confirmation that the pending discharge had been finalized.

## Admission and disciplinary action

Although the panel recognized that Chodha and another lawyer in his firm did, eventually, discharge the builders lien, there was a period of approximately two months during which the breach was outstanding.

Chodha had been the subject of a conduct review arising from the failure to comply with an undertaking in 2008. The panel noted the relatively close proximity in time between that conduct review and this case as an important aggravating factor and determined that any penalty imposed must be meaningful. It must be obvious to the public that undertakings are properly regarded and breaches of undertakings are appropriately dealt with.

While it seemed apparent to the panel that Chodha felt the undertaking imposed upon him was unreasonable and unnecessary in some respects, he accepted the undertaking and failed to comply with it. The panel saw no suggestion of Chodha being unable to fulfill the undertaking by reason of any incapacity and, accordingly, his conduct was culpable in the circumstances.

Chodha admitted that his conduct constituted professional misconduct. The panel accepted his admission and ordered that he pay:

1. a \$5,000 fine; and
2. \$2,500 in costs.