

2012 : No. 3 Fall

David Harvey Stoller

West Vancouver, BC

Called to the bar: January 13, 1981

Discipline hearing : June 13, 2012

Panel : Thelma O'Grady, Chair, John Lane and Sandra Weafer

Report issued : July 20, 2012 (2012 LSBC 26)

Counsel : Carolyn Gulabsingh for the Law Society and Henry Wood, QC for David Harvey Stoller

Facts

In a real estate transaction in which David Harvey Stoller acted for the owners of two properties, he inadvertently registered a mortgage against the wrong property. As a result, the vendor's property was subject to a mortgage at the time of the sale. Stoller gave his undertaking to discharge the mortgage in a letter to the purchaser's lawyer dated August 26, 2009.

Beginning in November 2009, the purchaser's lawyer made numerous inquiries of Stoller's office seeking the discharge pursuant to the undertaking. By March 22, 2010 the purchaser's lawyer still had not received the discharge. As a result, he filed a complaint with the Law Society.

The mortgage was ultimately discharged on November 23, 2010.

Admission and disciplinary action

Stoller admitted that he breached his undertaking and that this conduct constituted professional misconduct.

The panel noted that Stoller had no conduct history of breaches of undertaking. However, his prior conduct record sets out two earlier matters -relating to delay and procrastination, as well as failing to document files appropriately. Stoller's breach of undertaking in this case was not the result of dishonesty or failure to understand his obligations. The panel found that his conduct in this matter, like the earlier matters, demonstrated an underlying element of delay and procrastination.

The panel accepted Stoller's admission that his failure to discharge the mortgage for almost 15 months constituted professional misconduct, and ordered that he pay:

1. a \$3,000 fine;
2. \$3,100 in costs; and
3. \$224 in disbursements.