

Douglas Warren Welder

Kelowna, BC

Called to the bar: May 12, 1981

Discipline hearing : December 18, 2013

Panel : Lee Ongman, Chair, Jasmin Ahmad and Jory Faibish

Decision issued : August 30, 2013 (2013 LSBC 24) and April 30, 2014 (2014 LSBC 20)

Counsel : Geoffrey Gomery, QC for the Law Society; Douglas Warren Welder on his own behalf

FACTS

Between May and December 2011, Douglas Warren Welder was retained to represent a business owner and her company in defence of several claims against them including, but not limited to, bank foreclosure proceedings that had commenced in July 2011.

In February 2012, Welder's former clients renegotiated the terms of a loan with a lender, and the business owner granted a mortgage over her personal residence to the lender. Welder did not represent either of the former clients in respect of that mortgage.

In April 2012, Welder accepted a retainer from the lender to foreclose on the mortgage granted over his former client's personal residence and for judgment against each of the former clients. Welder did not seek consent from his former clients before agreeing to represent the lender in proceedings against them.

DETERMINATION

The panel concluded that, on the basis of the bank foreclosure alone, Welder's representation of the lender was not "substantially unrelated" to the representation of the former clients so as to relieve Welder from the overriding prohibition from acting in conflict with his former clients without consent.

As a result of his representation of the former clients, Welder came into possession of confidential information that could reasonably affect his representation of the other client's foreclosure. Welder admitted he was in possession of the former client's draft financial statements for 2010 and 2011 and had intimate knowledge of the company's financial affairs.

The panel found that Welder committed professional misconduct when he acted in a conflict of interest by representing a client in a foreclosure proceeding against former clients, contrary to the rules.

Professional conduct record and ungovernability

The Law Society's primary position was that Welder should be found ungovernable, not solely on the basis of the professional misconduct in this matter, but on the totality of his professional conduct record. If Welder was found ungovernable, the Law Society submitted that he must be disbarred.

The panel found the length and the content of Welder's record were serious aggravating factors. His record disclosed six conduct reviews, six citations and a practice standards referral. Previous disciplinary sanctions include a reprimand, conditions, fines, costs and four separate suspensions of 60 days, three months, 45 days and, most recently, three months.

Each of the six citations involved allegations of professional misconduct in a series of different circumstances. Welder admitted professional misconduct in respect of four of the six citations and entered into agreed statements of fact in respect of three.

The panel found a few mitigating factors that could indicate that Welder is not consistently unwilling to be governed by the Law Society:

- although Welder was not exonerated on each conduct review, no further action was taken in any of the six conduct reviews and the one practice standards review;
- Welder acknowledged and admitted improper conduct in respect of several of the matters set out in the record;
- Welder cooperated with the Law Society in numerous of the matters set out in the record; and
- there was an indication of “underlying psychological issues impinging on Welder’s ability to practise in a reasonable and professional manner” and, more significantly, he voluntarily attended at counselling to address those issues.

At the time of the hearing on facts and determination, Welder did not recognize the conflict of interest issue, insisting that, having reviewed the rules and considering the matter, he had formed the opinion that he was free to represent the lender in the foreclosure proceeding against his former clients.

However, at the hearing on disciplinary action, Welder seemed to recognize the error of his conduct and was able to identify the action he should have taken in the circumstances. By identifying the appropriate conduct, Welder demonstrated that he is likely to handle a similar situation appropriately in the future. The panel was not ready to close the door on remediation and rehabilitation quite yet.

DISCIPLINARY ACTION

Having considered the evidence and the law before it, the panel concluded that Welder’s conduct fell just short of warranting a finding that he was ungovernable.

In the panel’s view, a one-year suspension was easily supported by the length and the content of Welder’s conduct record and was consistent with the principle of progressive discipline. When combined with remedial courses and practice reviews focused on specified topics, a one-year suspension also served the important functions of rehabilitation and ensuring public confidence in the disciplinary process and in the profession.

The panel ordered that Welder:

1. be suspended from practice for one year and until he has:
 - a) completed approved continuing professional development with a minimum credit of 12 units, and
 - b) completed a remedial course on professional ethics, including conflicts;
2. undergo two consecutive semi-annual practice reviews that successfully demonstrate satisfactory trust accounting procedures, satisfactory file management, appropriate conflict checks and decisions, and an understanding of substantive legal issues at the level of a competent practitioner; and
3. pay \$13,692 in costs.

