Jeffrey Peter Andrews

North Vancouver, BC
Called to the Bar: May 18, 1990

Discipline hearing: July 23, 2003
Panel: Peter J. Keighley, QC
Decision: July 23, 2003
Report issued: July 28, 2003; indexed as [2003] LSBC 31
Counsel: Todd R. Follett, for the Law Society; Mr. Andrews, on his own behalf

---

Summary

While acting for clients in the refinancing of a property through a new mortgage, Mr. Andrews breached an undertaking to the mortgagee's lawyer. He did so by failing to use the net mortgage proceeds to pay down several outstanding consumer debts owed by his clients, to provide proof of that payment and to report to the mortgagee's lawyer any balances still owed by his clients thereafter. Instead, Mr. Andrews forwarded the net mortgage proceeds directly to his clients. Pursuant to Law Society Rule 4-22, Mr. Andrews admitted to the Discipline Committee and to the discipline hearing panel that his conduct in breaching his undertaking constituted professional misconduct. The Discipline Committee and the hearing panel accepted Mr. Andrews' admission and proposed penalty, and the panel ordered that he pay a $2,000 fine and $1,000 as costs.

Facts

In 2002 Mr. Andrews represented clients who were refinancing a property through a new mortgage.

On June 12, 2002 the lawyer representing the mortgagee wrote to Mr. Andrews imposing a number of undertakings on him, which he accepted. On June 18 Mr. Andrews received the mortgage proceeds in trust on those undertakings.

One of the undertakings required Mr. Andrews, after making certain other payments, to use the net mortgage proceeds to pay down $42,500 in consumer debts still owed by his clients, to provide proof of such payment and to report any balances still owed by his clients thereafter.

There were net mortgage proceeds of $20,733.23. Mr. Andrews did not use these funds to pay down his clients' consumer debts in accordance with his undertaking, but instead sent them directly to his clients.

On August 6, 2002 the lawyer for the mortgagee wrote to Mr. Andrews to request discharge particulars and to draw Mr. Andrews' attention to the undertakings. On August 22 Mr. Andrews sent the mortgagee's lawyer a state of title certificate, but did not send evidence of compliance with the other undertakings. The mortgagee's lawyer wrote to Mr. Andrews on September 3 and again on September 17 to draw his attention to his undertaking to pay down his clients' consumer debts and another undertaking to pay 2002 property taxes and provide proof of payment. That lawyer subsequently complained to the Law Society. Prior to being contacted by the Law Society, Mr. Andrews provided to the mortgagee's lawyer evidence that he had paid the property taxes and so satisfied that undertaking.

Admission and penalty

Pursuant to Law Society Rule 4-22, Mr. Andrews admitted to the Discipline Committee and the discipline hearing panel that his breach of undertaking in failing to pay down his clients' consumer debts from the net mortgage proceeds and to report to the mortgagee's lawyer constituted professional misconduct.

Mr. Andrews explained in a letter to the Law Society that, from his review of the file, neither he nor his conveyancer had made a note of the undertaking. He extended his apologies to the mortgagee and the mortgagee's lawyer. Mr. Andrews said that he took full responsibility for his conduct, viewed undertakings very seriously and deeply regretted the situation that had occurred. He further noted that, as a result of his transition into a general practice at the end of 2002, he had vastly reduced his monthly volume of conveyancing and was committed to ensuring that no further breach of undertaking occurred.

In light of Mr. Andrews' acknowledgement and the changes he had made in his practice, the panel determined that remedial measures were not required. The panel also noted that it was heartened by Mr. Andrews' assurance that his delay in responding to the mortgagee's lawyer would not recur.

The panel observed that the mortgagee had earlier been fully compensated by a $20,733.23 payment from the Lawyers Insurance Fund, of which Mr. Andrews paid the deductible portion. This payment was applied to the mortgage, which the mortgagee's lawyer had suggested as a resolution acceptable to his client. Both the Lawyers Insurance Fund and Mr. Andrews were subsequently reimbursed in full by Mr. Andrews' clients.

The Discipline Committee and the hearing panel accepted Mr. Andrews' admission and his proposed penalty, and the panel accordingly ordered that he:

1. pay a $2,000 fine, payable within 30 days; and

2. pay $1,000 as costs of the hearing, payable within 30 days.