

West Vancouver, B.C.
Called to the Bar: September 14, 1976

Discipline hearing:

Date: November 21, 2001

Panel: Peter J. Keighley, Q.C., as a one-Bencher panel by consent

Report issued: December 4, 2001

Indexed as [2001] LSBC 36

Counsel:

James A. Doyle, for the Law Society
Richard R. Sugden, Q.C., for Mr. Dent

Summary

In financing the purchase of a family home, Mr. Dent borrowed money from E. Mr. Dent performed legal services for E respecting security for her loan despite the fact that he had a personal interest in the transaction, contrary to Chapter 7 of the *Professional Conduct Handbook*. He placed his own interests in direct conflict with hers by negotiating a new loan on the property, to be secured by a second mortgage, in priority to E's mortgage on title. He did so without advising her on the nature of her security or recommending independent legal advice. When the property was later sold, there were insufficient sale proceeds to repay E and discharge the third mortgage. After recognizing his failure to obtain adequate security for E, Mr. Dent further failed to advise her of her potential claim against him, failed to recommend that she obtain independent legal advice and failed to report to the professional liability insurer. After E successfully sued Mr. Dent, insurance coverage was denied on the basis of Mr. Dent's personal interest in the transaction. Mr. Dent admitted, and the hearing panel found, that Mr. Dent's conduct amounted to professional misconduct. After considering various factors respecting penalty, the hearing panel ordered that Mr. Dent be suspended for one month, beginning February 1, 2002, and pay costs of the hearing. The panel noted that a longer suspension might have been imposed but took into account Mr. Dent cooperated in expediting the discipline proceedings and, in particular, took steps to repay his debt to E.

Facts

To finance the purchase of a family home in 1992, Mr. Dent obtained two loans from institutional lenders, secured by first and second mortgages respectively, and a \$50,000 loan from E, a friend of his wife. When Mr. Dent later took steps to consolidate family debts, he sought a new loan from a private lender and agreed to provide that lender with a

new second mortgage on the family home as security. He intended the proceeds of the new mortgage to pay off the existing second mortgage and certain other debts.

At that time Mr. Dent prepared and registered a third mortgage on title as security for E's loan, thereby performing legal services for her when he had a financial interest in the matter, contrary to chapter 7, Rule 1 of the *Professional Conduct Handbook*.

In 1996 Mr. Dent and his wife separated and the property was sold after the commencement of foreclosure proceedings. The sale proceeds were sufficient to discharge the first mortgage and most of the second mortgage, but not the third mortgage, such that E was not repaid her loan. Mr. Dent admitted that he breached the fiduciary obligations he had assumed in respect of E by placing his own interest in obtaining a new loan directly in conflict with her interest in having adequate mortgage security. At the time he prepared the third mortgage, he did not advise E that a new second mortgage would take priority over hers, did not send her either a copy of the mortgage or the state of title certificate for 10 months and did not recommend that she obtain independent legal advice.

After recognizing that he had not obtained adequate security for E, Mr. Dent failed to advise E of her potential claim, failed to recommend that she obtain independent legal advice and failed to report to his professional liability insurer as required under his liability insurance policy, contrary to Chapter 4, Rules 5 and 5.1 of the *Handbook*. He in fact took steps to prevent the client from recovering from the program so as to reflect adversely on the profession, contrary to Chapter 2, Rule 1 of the *Handbook*.

E sued Mr. Dent for negligence and breach of fiduciary duty. She obtained a judgment for the amount of the loan and special costs, but liability insurance coverage was denied on the basis of Mr. Dent's personal interest in the transaction.

At the time of these incidents, Mr. Dent was experiencing severe financial hardship, both personally and professionally, and was under significant stress.

Decision

Mr. Dent admitted, and the hearing panel found, that Mr. Dent's conduct constituted professional misconduct.

Penalty

The hearing panel considered a range of factors affecting penalty, noting the importance of undivided loyalty of a lawyer to a client, the fact that Mr. Dent received a personal advantage from his misconduct and the fact that his client received no worthwhile security for her loan but was in fact obliged to commence legal proceedings to collect the debt he owed her.

The panel also noted, however, that Mr. Dent's conduct arose in a period of considerable stress and was not typical of his practice. He had apologized to E, helped to expedite the

discipline proceedings and was making monthly payments to E to settle his debt. The panel found this latter point of particular significance, noting that without it, a longer suspension might otherwise have been imposed.

The hearing panel ordered that Mr. Dent:

1. be suspended for one month, beginning February 1, 2002; and
2. pay \$5,923.22 as costs of the hearing.

On December 17 the Discipline Committee resolved to apply to the Benchers for a review of penalty in this decision pursuant to section 47 of the *Legal Profession Act*.

Discipline Case Digest — 2001: No. 25 December (Dent)