

**THE LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*, RSA 2000, c L-8,**

- and -

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF JOHN C. COHEN,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**HEARING REPORT**

**HEARING COMMITTEE:**

Derek Van Tassell, Q.C., Chair

Brett Code, Q.C., Committee Member

Glen Buick, Committee Member

**COUNSEL:**

Nicholas Maggisano, for the Law Society of Alberta

**MEMBER:**

John C. Cohen, Self-Represented

**INTRODUCTION**

1. John C. Cohen (“Mr. Cohen”), a member with the Law Society of Alberta (“LSA”), is subject to conduct proceedings under the *Legal Profession Act*, RSA 2000, c L-8, on the citations listed below.
2. On September 11, 2014, a Hearing Committee consisting of Derek Van Tassell, Q.C., Chair, Brett Code, Q.C. and Glen Buick convened at the LSA offices in Calgary, Alberta. The LSA was represented by Nicholas Maggisano. Mr. Cohen was present at the application and was self-represented.

**CITATIONS**

3. The following citations were referred to hearing by a panel of the Conduct Committee:

1. It is alleged that Mr. Cohen was less than candid with the Complainants by failing to disclose the release of their deposit when he should have made that disclosure, and such conduct is deserving of sanction.
  2. It is alleged that Mr. Cohen was less than candid in explaining why he relied on the authorization to release the deposit, and such conduct is deserving of sanction.
4. At the hearing, the parties agreed to amend Citation 1 to the following:
1. It is alleged that Mr. Cohen was less than candid by failing to disclose the release of the deposit to the Complainants' counsel when he should have made that disclosure, and such conduct is conduct deserving of sanction.

## PRELIMINARY MATTERS

### Jurisdiction

5. An agreed Exhibit Book, containing Exhibits 1 to 7, was entered at the hearing. The jurisdiction of the Hearing Committee was established with the admission of Exhibits 1 to 5, listed below. Exhibits 8 and 9 were admitted later on during the hearing.

Exhibit 1	July 28, 2014	Letter of Appointment
Exhibit 2	August 22, 2014	Notice to Solicitor
Exhibit 3	August 22, 2014	Notice to Attend
Exhibit 4	June 24, 2014	Certificate of Status
Exhibit 5	August 18, 2014	Certificate of Exercise of Discretion re: Private Hearing Application Notices
Exhibit 6	September 9, 2014	Agreed Statement of Facts
Exhibit 7	October 7, 2009	Letter from Mr. Rathgeber
Exhibit 8		Record of John C. Cohen
Exhibit 9		Estimated Statement of Costs

### Other

6. The Parties had no objection to the composition of the Hearing Committee.
7. The Hearing Committee was advised that no party had applied to have the hearing held in private, and as a consequence, the hearing proceeded in public.
8. The Hearing Committee was advised that the parties had agreed to a joint submission that included an admission of guilt to both citations as well as a joint submission on sanction.

## FACTS

9. The LSA and John Cohen had entered an Agreed Statement of Facts (attached as Schedule A).

## DECISION

10. The Hearing Committee accepted the Agreed Statement of Facts and admission of guilt on both citations, pursuant to Section 60 of the *Legal Profession Act*, and found Mr. Cohen guilty of Amended Citation 1 and Citation 2.
11. The Hearing Committee accepted the joint submission of the parties as to sanction, with minor variations as set out below. The sanction for this matter is a reprimand, which was delivered orally at the hearing by the Chair and reproduced below.<sup>1</sup> Also, Mr. Cohen is to pay \$2,000 in costs by March 2, 2015. (The joint submission of the parties proposed \$2,500 in costs, but that amount is reduced by \$500 to reflect the actual hearing time of two hours, as opposed to the four hours contemplated in the Estimated Statement of Costs.)

## CONCLUDING MATTERS

12. The Hearing Committee directed that the exhibits be made available to the public after redaction to protect privacy and solicitor-client privilege.
13. No referral to the Attorney General is directed.
14. There shall be no Notice to the Profession.

Dated this 6<sup>th</sup> day of May, 2015.

---

Derek Van Tassell, Q.C., Chair

---

Brett Code, Q.C., Committee Member

---

Glen Buick, Committee Member

---

<sup>1</sup> You admitted guilt on a broad reading of the *Code of Conduct (Code)*. My reading of the *Code* was narrower, and on a narrow interpretation, I believe there is not conduct deserving of sanction. Based on the Statement of Facts that were set out, I would not have found you guilty; however, your admission of guilt and your acceptance of a broad interpretation of the *Code* carries some weight, as does the desire to have this matter resolved in the interests of the public and the profession. As such, you are reprimanded. Judging from your letter of December 17, 2012, you've already found a method in that letter to ensure that these circumstances do not happen again.

## SCHEDULE A

**IN THE MATTER OF THE LEGAL PROFESSION ACT**  
**AND**  
**IN THE MATTER OF A HEARING INTO THE CONDUCT**  
**OF JOHN C. COHEN,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

### STATEMENT OF FACTS

#### INTRODUCTION

1. Mr. Cohen was admitted to the Law Society of Alberta (“LSA”) on May 28, 1979.
2. He practices law in Calgary, Alberta, as a sole practitioner primarily in the area of real estate conveyancing.
3. On March 20, 2014 the Conduct Committee Panel directed the following citations against Mr. Cohen:
  1. It is alleged that Mr. Cohen was less than candid with the Complainants by failing to disclose the release of their deposit when he should have made that disclosure; and such conduct is deserving of sanction
  2. It is alleged that Mr. Cohen was less than candid in explaining why he relied on the authorization to release the deposit, and such conduct is deserving of sanction.

#### COXXXXXXXX

4. On April 18, 2012 the LSA received a complaint from Mr. and Ms. S (the “complainants”) regarding Mr. Cohen [TAB 1].
5. In May 2007 the complainants entered into an offer to purchase with C Corp. (the “developer”) to purchase a condo located in Airdrie, Alberta [TAB 2]. A cheque for the deposit of \$24,581.00, payable to Mr. Cohen in trust, was given by the complainants to the developer and sent by the developer to Mr. Cohen to be held in his trust account [TAB 3]. At no time was Mr. Cohen general counsel for the developer, but only acted as their solicitor with respect to the sale of properties purchased by the complainants and other purchasers from the developer.
6. According to the offer the condo was to be completed on or about the fall of 2007. Construction was not completed on time and on December 16, 2008 the complainants wrote to the developer to advise that they would not proceed with the transaction and requested the return of their deposit [TAB 4]. The developer responded on December 19, 2008 advising that the deposit funds remained in trust with Mr. Cohen and that the

developer intended to proceed with the transaction [TAB 5]. Mr. Cohen was not involved in these communications and there is no indication that either party made him aware of these communications.

7. Mr. Cohen released the deposit to the developer on March 16, 2009, relying on an authorization apparently signed only by Ms. S (the “authorization”) [TAB 6]. Mr. Cohen was not involved in, or consulted with respect to, the preparation or execution of the authorization.
8. The complainants retained a lawyer, Mr. Rathgeber, to assist them in relation to this matter and on October 9, 2009 he sent a letter to the developer c/o Mr. Cohen, to the attention of Mr. Cohen [TAB 7]. Among other things, the letter advised that it was the complainants position that the offer to purchase appeared to be null and void but that the letter should not be taken as a repudiation of the agreement and requested evidence of waiver of financing conditions by the complainants or a return of the deposit. The letter was forwarded by Mr. Cohen to the developer for their response. On October 24, 2009 Mr. Cohen wrote to Mr. Rathgeber requesting confirmation that the complainants intended to proceed with the transaction [TAB 8].
9. On October 26, 2009 Mr. Rathgeber wrote to the developer c/o Mr. Cohen, to the attention of Mr. Cohen, requesting answers to his questions [TAB 9]. Mr. Cohen did not respond to this letter. Mr. Cohen states that he did not respond to the letter because he had forwarded it to the developer for their response.
10. On November 2, 2009 the developer wrote to the complainants advising that the condo title had been registered at Land Titles [TAB 10] and on the same day Mr. Cohen sent a trust letter enclosing documentation to complete the purchase to Mr. Rathgeber [TAB 11].
11. On November 16, 2009 Mr. Rathgeber returned the trust letter and enclosed documents unsigned [TAB 12]. This letter was forwarded to the developer and on November 16, 2009 the developer wrote to Mr. Rathgeber, copied to Mr. Cohen, informing him that their position was that there was a bona fide contract and offering to provide reasonable time for mortgage financing for the complainants to close, but requesting a per diem from October 30, 2009 [TAB 13]. On November 17, 2009 Mr. Rathgeber wrote to the developer c/o Mr. Cohen, to the attention of Mr. Cohen, stating that his October 9, 2009 letter claiming that there was no binding agreement had not been answered in a meaningful way and advising that the complainants would be commencing a legal action for return of their deposit [TAB 14]. Mr. Cohen did not respond to this letter. Mr. Cohen states that he did not respond to the letter because he had forwarded it to the developer for their response.
12. On April 19, 2010 the developer provided the complainants with a Mutual Release which released the complainants’ claim to their deposit [TAB 15]. The complainants would not sign the release and accordingly in May 2010 the developer commenced a lawsuit against them for breach of contract [TAB 16]. The complainants counterclaimed for return of their deposit [TAB 17]. The developer failed to appear in Court on the matter and on August 22, 2011 a judgment dated August 31, 2011 was granted in favor of the complainants, which was later amended on October 14, 2011 [TAB 18]. Mr. Cohen was not involved in these communications, there is no indication that he was made aware of such communications, and there were no further communications to Mr. Cohen from November 17, 2009 to September 13, 2011.

13. By letter dated September 13, 2011 Mr. Rathgeber forwarded the judgment dated August 31, 2011 to Mr. Cohen and asked for the deposit. On September 19, 2011, the same date that the letter was received in the mail by Mr. Cohen, he responded by advising Mr. Rathgeber, and by extension the complainants, for the first time that the deposit had been released to the developer on March 16, 2009 in accordance with the authorization [TAB 19]. At no time prior had Mr. Rathgeber specifically asked Mr. Cohen if he had released the deposit to the developer.
14. The authorization apparently only contained the signature of one of the complainants, Ms. S. There are two versions of the authorization: one with the notation “no signed paper” at the bottom and another without that notation. Mr. Cohen states, and there is no indication otherwise, that:
  - there was no notation at the bottom of the authorization which was originally provided to Mr. Cohen by the developer.
  - When Mr. Cohen enquired of the developer about an original authorization at the request of Mr. Rathgeber, a further authorization was faxed to his office with the notation “no signed paper” appearing at the bottom
  - Subsequently in course of his conversations with the developer two further authorizations were faxed to Mr. Cohen’s office which did not have any notation
15. On October 11, 2011 Mr. Rathgeber responded asking for the original authorization, raising questions about its authenticity and pointing out that it only contained the signature of Ms. S [TAB 20].
16. Mr. Cohen responded on October 18, 2011 to that letter which was received by him in the mail on October 17, 2011 [TAB 21]. Mr. Cohen states that the statements made in this letter were to dispute the allegations contained in Mr. Rathgeber’s October 11, 2011 letter and that he extended those same statements when responding to the complaint against him. At no point did Mr. Cohen contact the complainants to confirm their authorization to release the deposit.
17. On April 24, 2012 Mr. Cohen provided a response to the complaint [TAB 22] and provided a further response on June 15, 2012 [TAB 23].
18. On June 29, 2012 the complainants responded to Mr. Cohen’s April 24<sup>th</sup> and June 15<sup>th</sup> letters [TAB 24]
19. On July 11, 2012 Mr. Cohen responded to the complainants’ June 29<sup>th</sup> letter [TAB 25].
20. On July 27, 2012 the complainants responded to Mr. Cohen’s July 11<sup>th</sup> letter [TAB 26].
21. On December 12, 2012 the LSA wrote to Mr. Cohen asking for his explanation of his statement that Mr. S’s signature was “integrated above” Ms. S’s signature on the authorization [TAB 27].
22. On December 14, 2012 Mr. Cohen responded to the LSA’s letter [TAB 28] and provided a further response on December 17, 2012 [TAB 29].
23. On February 22, 2013 the complainants wrote a further letter to the LSA [TAB 30]. Mr. Cohen responded to this letter on February 28, 2013 [TAB 31].

## **CONCLUSION**

24. Mr. Cohen admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. Mr. Cohen admits that all correspondence sent to or by him was received or sent by him on or about the dates indicated, unless stated otherwise.

**ALL OF THESE FACTS ARE ADMITTED THIS 9<sup>th</sup> DAY OF SEPTEMBER, 2014.**

**“John C. Cohen”**

**JOHN C. COHEN**