

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
ABDI MOHAMED ABDI, A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

A. INTRODUCTION

1. On October 21, 2011, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Donald Scott, and Wayne Jacques (the Hearing Committee), convened at the Law Society of Alberta (LSA) office in Calgary, Alberta, to inquire into the conduct of Abdi Mohamed Abdi (the Member). The Member was represented by Mr. D.O. Ellert, Esq. (Mr. Ellert) and the LSA was represented by Ms. M. Naber-Sykes (Ms. Naber-Sykes).

B. JURISDICTION AND OTHER PRELIMINARY MATTERS

2. Exhibits 1 through 4, consisting of Letter of Appointment of the Hearing Committee (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), and Certificate of Status of the Member (*Exhibit 4*), establish jurisdiction of the Hearing Committee.

C. PRIVATE HEARING

3. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Neither counsel made an application for a private hearing. Thus, the Hearing was held in public.

D. AGREED STATEMENT OF FACTS

4. At the Hearing, the following Agreed Statement of Facts (the Agreed Facts) was proffered by counsel for the LSA and counsel for the Member and entered as Exhibit 13:

INTRODUCTION

1. Mr. Abdi was admitted to the Law Society of Alberta on August 25, 2006.
2. Mr. Abdi practiced at Your Lawyer Law Office from July 1, 2005 to current.
3. Mr. Abdi's current status is Active/Practising.

CITATIONS

4. On January 20, 2011, the Conduct Committee Panel directed the following conduct to hearing:
 1. IT IS ALLEGED THAT you failed to ensure that the support staff assigned to deal with the S. mortgage transaction were supervised and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED THAT you lied to or misled another lawyer and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED THAT you failed to honour all undertakings given to another lawyer and that such conduct is conduct deserving of sanction.

FACTS

5. In July, 2008, Mr. Abdi acted for A. and R. S. to refinance their home. Mr. Abdi, who also acted for Lender #1, was instructed by Lender #1 to pay out mortgage A to Lender #1. Mortgage B to Lender #2 was to remain on title and be postponed to the new Lender #1 first mortgage.
6. In September 2008, the S.'s sold their home to L. and J. N. Janice Papp of Hashizume & Papp acted for the S.'s.
7. On September 22, 2008, Ms. Papp wrote to Your Lawyer to ask it to "confirm to us in writing that your offices paid out and will be discharging mortgage A and mortgage B". (*Exhibit 6*)
8. By fax dated and sent September 22, 2008, by Mr. Abdi to Ms. Papp, Mr. Abdi stated "Please note that we have paid out and will be discharging Lender #1 mortgage A and Lender #2 mortgage B. (*Exhibit 7*)
9. On November 6, 2008, Ms. Papp's office emailed Mr. Abdi's assistant to ask the status of the discharge of the Lender #1 and Lender #2 mortgages. (*Exhibit 8*)
10. On January 12, 2009, Ms. Papp's office asked Mr. Abdi's assistant for an update on the discharge from Lender #2 (*Exhibit 9*).
11. On February 24, 2009, Ms. Papp's office spoke with Mr. Abdi's assistant who said she had not received the discharges and would follow up with the lender. (*Exhibit 9*)
12. On March 23, 2009, Ms. Papp's assistant spoke with Mr. Abdi's assistant. Mr. Abdi's assistant said she did not follow up with the lender. Ms. Papp's assistant asked her to do so. (*Exhibit 9*)
13. By fax dated March 23, 2009, Ms. Papp's assistant wrote to Mr. Abdi's assistant. Ms. Papp's assistant wrote "your offices paid out mortgages A and B in August 2008. On September 22, 2008, you gave our offices your written undertaking to discharge the same." Ms. Papp's assistant asked Mr. Abdi's assistant to contact the lender, obtain the discharges and report back to her at an early date. (*Exhibit 10*)
14. By May 15, 2009 letter, Ms. Papp wrote to Mr. Abdi to ask him to send her a Certificate of Title evidencing discharge of the two mortgages by June 15, 2009,

failing which she would report this matter to the Law Society of Alberta. (*Exhibit 11*)

15. By June 15, 2009 letter, Ms. Papp advised Mr. Abdi she had not received the Certified Copy of Title evidencing the discharge of mortgage B. She extended the deadline to June 30, 2009, failing which she would report the matter to the Law Society of Alberta. (*Exhibit 12*)
16. By June 30, 2009 letter, Ms. Papp complained to the Law Society of Alberta.

Failure to supervise support staff

17. Mr. Abdi's instructions to Lender #1 were to discharge the first mortgage registered as A. Mr. Abdi had no instructions to discharge the Lender #2 mortgage. Mr. Abdi understood that this Lender #2 mortgage was to be postponed to the new Lender #1 mortgage.
18. Mr. Abdi's assistant prepared the September 22, 2008 response to Ms. Papp confirming their office had paid and would be discharging Lender #1 and Lender #2 mortgages. Mr. Abdi signed this letter but did not review it. He did not notice his assistant had included an undertaking to discharge the Lender #2 mortgage (for which he had no instructions). C.B., Mr. Abdi's legal assistant, did not show him or tell him about Ms. C.'s November 6, 2008 email, Ms. C.'s January 12, 2009 e-mail, Ms. C.'s February 24, 2009 telephone call, Ms. C.'s March 23, 2009 telephone call or D.'s March 23, 2009 fax.
19. Mr. Abdi failed to supervise the support staff assigned to deal with the S. transaction and discharge of mortgage.

Failure to honour undertakings

20. By fax dated September 22, 2008, Mr. Abdi confirmed his undertaking to pay out and discharge Lender #1 and Lender #2 mortgages.
21. Mr. Abdi failed to honour his undertaking to discharge Lender #2 mortgage.

ADMISSION OF FACTS AND GUILT

22. Mr. Abdi admits these facts the statements in this Agreed Statement of Facts for the purposes of these proceedings.
23. For the purpose of Section 60 of the *Legal Profession Act*, Mr. Abdi admits his guilt to Citations 1 and 3 directed January 20, 2011, and admits that his conduct is conduct deserving of sanction.
24. This Agreed Statement of Facts is not exhaustive. Mr. Abdi may lead additional evidence not inconsistent with the facts stated in this document. Mr. Abdi

acknowledges the Law Society may cross-examine him and adduce additional evidence with respect to Citations 1 and 3.

8. The Member did not testify. No evidence was lead by either counsel.
9. Following deliberations, the Chair advised that the Agreed Facts were acceptable to the Committee and the conduct of the Member is for all purposes considered conduct deserving of sanction.

E. DECISION REGARDING SANCTION

10. Counsel for the LSA proffered the Member's record, which shows no discipline record. With the consent of the Member, it was entered into evidence as Exhibit 14.
11. Lawyers & Ethics: Professional Responsibility and Discipline, by Gavin McKenzie (at pages 26-1):

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

12. As stated in Bolton v. Law Society, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

13. After due deliberation, the Chair, on behalf of the Hearing Committee, dismissed Citation #2 and delivered a reprimand, reinforcing that undertakings must be fulfilled.
14. The Member was ordered to pay a fine of \$1,000.

15. This Hearing Committee is satisfied that the interests of the public are served and protected by such a sanction.

F. COSTS

16. Counsel for the LSA proffered an Estimated Statement of Costs (the Cost Estimate). With the consent of the Member, the Cost Estimate was entered into evidence as Exhibit 15.

17. The Member was ordered to pay the actual costs of the Hearing.

18. The Hearing Committee heard argument from Mr. Ellert to extend the period of time for the Member to pay the costs to one year.

19. After deliberation, the Member was ordered to pay the actual costs of the Hearing within six months from receipt by him of the statement of actual costs, together with the \$1,000 fine.

G. CONCLUDING MATTERS

20. The Exhibits in these proceedings shall be available to the public with redaction of client names to protect solicitor-client privilege.

21. There shall be no Notice to the Profession issued.

22. There shall be no referral to the Attorney General.

DATED this 2nd day of April, 2012.

ROSE M. CARTER, Q.C.
Chair

DONALD SCOTT
Member

WAYNE JACQUES
Member