



**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct
of MERCY AMANOH, a Member of the Law Society of Alberta**

INTRODUCTION

1. On November 29, 2010, a Hearing Committee for the Law Society of Alberta (LSA), convened at the Law Society office in Calgary to inquire into the conduct of Mercy Amanoh, (the Lawyer). The Hearing Committee consisted of: Sarah J. King-D'Souza, Q.C., Chair, Steve Raby Q.C., and Miriam Carey, Ph.D. The LSA was represented by Molly Naber -Sykes. The Lawyer was present for the Hearing and was represented by M.J. Donaldson.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1, 2, 4 and 5, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Certificate of Status of the Lawyer, and the Certificate of Exercise of Discretion by the Director, Lawyer Conduct, established the jurisdiction of the Committee.
3. The Parties had no objections about the composition or jurisdiction of the Committee to deal with this matter.
4. Counsel for the LSA advised that service of Notices to Attend were successfully delivered by courier or registered mail to: T.M., P.C, to H.T. Co. c/o D.H. and to C. D.M.D.Mortgage Investment Co. c/o D. H.
5. Counsel for the LSA advised that with respect to T.W., and H. and A. M., service of Notices to Attend had been attempted upon each of them but they were believed to be out of Canada.
6. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Neither counsel for the LSA nor the Lawyer requested a private hearing; therefore the Hearing was held in public.

CITATIONS

7. The Lawyer initially faced the following citations:
 - a. IT IS ALLEGED THAT you contacted a party represented by other counsel without counsel's consent and that such conduct is deserving of sanction.
 - b. IT IS ALLEGED THAT you breached an undertaking to another lawyer, T.M., to discharge mortgages and that such conduct is deserving of sanction.
8. The Lawyer had signed an Agreed Statement of Facts on November 26, 2010. At the Hearing, the Lawyer entered a Statement of Admission of Guilt admitting her guilt to citation 2 and that the facts admitted by her with respect to citation 2 constitute conduct deserving of sanction.
9. Counsel for the LSA applied to discontinue citation 1 for the following reasons:
 - a. The Complainant complained only of the breach of undertaking. He was aware that the Lawyer had spoken to T.W. but did not complain of it.
 - b. Citation 1 was directed by a Conduct Committee panel but not brought to the Lawyer's attention; therefore she had no opportunity to respond.
 - c. The Conduct Panel had an obligation to notify the Lawyer that it was considering directing the issue to a citation and to invite her to respond, on the basis of procedural fairness.
 - d. The Threshold Guide requires the Conduct Panel to consider, amongst other things, any defenses.
 - e. Had the Lawyer had an opportunity to respond, she would have clarified that T.W. had three involvements in the transaction: as realtor, as agent for the "M....s" and as a Purchaser, (in addition the Hearing Panel notes that he was the brother of both "M....s") and was speaking to her in his role of assisting the "M....s" with the Discharges of Mortgages.
 - f. Had the Conduct Panel been aware of this defense, they might not have found a reasonable prospect of conviction on Citation 1.
10. Section 62 of the Legal Profession Act permits either party to apply to discontinue proceedings. The Threshold Guide also addresses this matter and should be referred to, in particular paragraphs 4-15, 21, and paragraphs 28-32.
11. Paragraph 32 of the Threshold Guide provides as follows:

"32. There are two cases in which a discontinuance application may be entertained:

 - a) Where counsel for the Law Society takes the position that the threshold test is not met. In such cases, the position of counsel for the Law Society is entitled to great deference..."*

12. The Panel ordered that Citation 1 be discontinued for the reasons expressed by counsel for the Law Society.

EVIDENCE

13. A Binder with Agreed Exhibits 1 – 20 was entered by consent of the Parties.
14. A letter dated July 29, 2008 was entered as Exhibit 21 by consent of the Parties.
15. An Agreed Statement of Facts was entered as Exhibit 22 by consent of the Parties.
16. The discipline record of the Lawyer with the LSA was entered as Exhibit 23 by consent of the Parties.
17. A bundle of courier receipts and Canada Post Tracking Status for either courier or registered mail services upon: T.M., P.C, H.R.V., P.C., and C.D.M.D. Mortgage Investment Co. c/o D.H. was entered as Exhibit 24 by consent of the Parties.
18. Counsel for the LSA tendered an estimated statement of hearing costs, which was entered as Exhibit 25 by consent of the Parties.

SUMMARY OF FACTS

19. The material facts are found in the Agreed Statement of Facts (Exhibit 22), the most relevant portions of which are reproduced here, except that the names of the other counsel involved, lender and clients have been redacted. The paragraph numbering is reproduced as it appears in the Agreed Statement of Facts:

FACTS

The Transaction

4. *Mercy Amanoh represented the vendors H. and A. M. on the sale of their home at Calgary (the **Property**) to T.W. (who was represented by T.M.).*
5. *H. and A. M. are brother and sister. T.W. is their brother. T.W. had been living in the Property for some time and the sale transaction was intended to formalize the fact that all three siblings regarded this as T.W.'s house.*
6. *The three siblings signed a Residential Real Estate Purchase Contract on February 24, 2008. (**Exhibit 6**). It provided:*
 - (a) *T.W. would pay H. and A. M. \$685,000 comprised of a \$1,000 deposit, new financing of \$513,750 and other value of \$170,250;*
 - (b) *The transaction was to close on February 15, 2008.*

7. *The "other value" contemplated by the Contract was a gift from H. and A. M. to T.W.*
8. *The closing date was subsequently amended by the parties to be April 15, 2008.*
9. *On February 24, 2008, there were three mortgages registered against the Property:*
 - a. *Mortgage to T. Equity Corporation for an original principal amount of \$530,000;*
 - b. *Mortgage to T. for an original principal amount of \$110,000;*
*(These two mortgages are the **T. Mortgages**)*
 - c. *Blanket Mortgage to JLM Inc. (JLM) for an original principal amount of \$109,750, which charged several properties owned by the "M....s" and T.W. (the JLM Mortgage);*
*(Collectively the three mortgages are the **Mortgages**).*
10. *Originally, Ms. Amanoh was going to represent the vendors and the purchaser. The proposed new mortgagee, H.T. Co., requested that Ms. Amanoh not represent H.T. Co. or the purchaser because this was a private transaction between siblings. As a result, T.M. was retained to represent H.T. Co. and T.W.*

Background to the Transaction

11. *Ms. Amanoh first met T.W. in the first part of 2006, in T.W.'s capacity as a licensed real estate associate. Over the next two years, Ms Amanoh acted in approximately 40 residential real estate transactions in which T.W. was the realtor. About half of these transactions involved T.W.'s family members, all of whom were active real estate investors. This included T.W.'s brother and sister, A. and H. M.*
12. *In almost all of these family transactions, T.W. was instrumental in arranging mortgage financing for his family members who were purchasing the property. T.W. typically dealt on his family's behalf directly with the lender and directed the lender to provide mortgage instructions to Ms. Amanoh. In circumstances where there was a cash shortfall between the cash to close and the mortgage proceeds, T.W. was typically the one who brought the cheque for the shortfall to Ms. Amanoh even though he was not the purchaser.*
13. *A substantial proportion of the financing arranged by T.W. on behalf of his relatives was with a mortgage broker named M.R., who was also a principal of T. Equity Corporation.*

14. *Ms. Amanoh's impression of T.W. and his siblings was that they were sophisticated real estate investors who relied on T.W.'s expertise as a realtor to find and purchase residential properties and they also relied on T.W. to arrange financing for them.*
15. *It was Ms. Amanoh's experience when acting in these family transactions that T.W.'s relatives would typically direct Ms. Amanoh to speak to T.W. to answer inquiries relating to funding shortfalls, interim financing and long-term financing.*

Closing of the Transaction and the Undertaking

16. *By April 15, 2008 letter, Ms. Amanoh sent the Transfer of Land, Statement of Adjustments and Certificate of Exempt Supply of Property to T.M. on the express trust conditions in her letter. Ms. Amanoh undertook to discharge the Mortgages from the cash balance to close and provide T.M. a Certified Copy of Title evidencing their discharge in due course (the **Undertaking**). (**Exhibit 7**)*
17. *By April 16, 2008 fax, Ms. Amanoh sent an Amended Statement of Adjustments to T.M. (**Exhibit 8**) The Amended Statement of Adjustments confirmed a purchase price of \$685,000, a deposit of \$1,000, a tax adjustment of \$811.42 and other value of \$171,250, leaving \$511,938.58 as the cash to close.*
18. *By April 18, 2008 letter, Ms. Amanoh delivered the Real Property Report and also sent T.M. a trust cheque for \$7,450 (which she had received on T.W.'s behalf), described as "representing the balance of the cash to close from T.W.". (**Exhibit 9**)*
19. *By April 23, 2008 letter, T.M. sent Ms. Amanoh his trust cheque for \$512,697.40 to be held by her in accordance with her Undertaking. (**Exhibit 10**)*
20. *On April 29, 2008, title to the property issued in T.W.'s name. (**Exhibit 11**)*

Attempts to Satisfy the Undertaking

21. *The Mortgages had a total original principal amount of \$749,750. Ms. Amanoh received \$575,557 to discharge the Mortgages and pay legal fees and other debts as directed by the vendors and purchaser.*
22. *Ms. Amanoh's ability to discharge the Mortgages depended on the implementation of agreements between H. and A.M. and T. to pay out and/or port T.'s mortgages to other properties. T.W. was responsible for negotiating this agreement with T. on the "M....s" behalf.*
23. *Ms. Amanoh believed there was such an agreement in place with T., but she did not get a written confirmation of this agreement prior to giving her undertaking to discharge the Mortgages.*

24. *T.W. (on behalf of the "M....s") and JLM agreed that JLM would discharge the JLM Mortgage in the amount of \$109,750 in exchange for a payment of \$15,000 and replacement security against other properties owned by T.W..*
25. *The JLM Mortgage was discharged in exchange for a \$15,000 payment.*
26. *By April 28, 2008 email to Ms. Amanoh, M.R. of T. set out the terms upon which T. would discharge the T. mortgages. (Exhibit 12) This included a payment to T. of \$535,000 and porting of the balance of the T. mortgages to other properties.*
27. *On May 1, 2008, Ms. Amanoh sent a trust cheque for \$535,000 to T. to discharge the T. mortgages. (Exhibit 13) T. returned this cheque to Ms. Amanoh. (Exhibit 14) T. told Ms. Amanoh that:*
 - a. *T.W. should pay an additional \$35,000.00 to JLM for JLM to discharge JLM's blanket mortgage from another property in which T. had an interest, and*
 - b. *T. would accept the reduced amount of \$500,000 and transfer the balance of the indebtedness under the T. Mortgages to other properties.*
28. *Accordingly, on May 9, 2008, Ms. Amanoh sent a trust cheque for \$500,000 to T. to discharge the T. mortgages. (Exhibit 15) T. returned this cheque to Ms. Amanoh three weeks later.*
29. *By May 13, 2008 fax and May 13, 2008 letter, K.E. of T. told Ms. Amanoh how T. proposed to resolve the discharge of the T. Mortgages. (Exhibit 16)*
30. *T.W. contacted Ms. Amanoh several times over this period to discuss his efforts to have T. discharge the T. mortgages. Both T. and the "M....s" also directed Ms. Amanoh to speak to T.W. about this issue.*
31. *At the same time that the subject real estate transaction was occurring, T.W. was helping H.M. sell another property. Ms. Amanoh was representing H.M. in that transaction and T.W. was periodically speaking with Ms. Amanoh about that transaction as well, as that property also had a T. Mortgage to be discharged on closing. T.W. told Ms. Amanoh that he had arranged to use some of the proceeds of sale of that transaction to discharge the JLM Mortgage.*
32. *T.W. was also involved, as a realtor, in other transactions closing over approximately the same time period. T.W. had signed a direction to Ms. Amanoh to pay T.W.'s share of real estate commissions to T. to pay down its mortgages. Ms. Amanoh also had discussions with T.W. about this during this time.*
33. *On June 22, 2008, Ms. Amanoh met with T.W. to review the implications of his inability to negotiate, on the "M....s" behalf, a porting and discharge of the T. Mortgages. Ms. Amanoh did not seek T.M.'s permission to speak to T.W. or advise T.M. she was going to do so. She believed she was dealing with T.W. in his*

capacity as the “M...s” agent appointed to negotiate with T., and not in his capacity as purchaser.

Inability to Satisfy the Undertaking

34. *By July 9, 2008 letter (Exhibit 17), Ms. Amanoh:*
 - a. *told T.M. she had not disbursed the cash to close because she was unable to fulfill her undertaking to discharge the T. mortgages;*
 - b. *informed T.M. that she would be returning the cash to close and requesting a transfer back if T. did not discharge its mortgages by July 11, 2008; and*
 - c. *told T.M. about her meeting with T.W. on June 22, 2008.*
35. *By July 22, 2008 letter, Ms. H., counsel for H.T.Co., told T.M. that H.T.Co. was commencing foreclosure proceedings on the property (Exhibit 18). Ms. H. sent T.M. a copy of Mr. L.'s July 22, 2008 letter to her confirming that T. Mortgages had not been paid and he was proceeding with T.'s foreclosure action against the property. (Exhibit 19)*
36. *By July 24, 2008 fax, T.M. forwarded the H. and L. letters to Ms. Amanoh and asked her to discharge the T. Mortgages by July 25, 2008. (Exhibit 20)*
37. *Ms. Amanoh was unable to discharge the T. Mortgages.*
38. *Foreclosure proceedings against the property were commenced by T. and H.T.Co. in July 2008.*
39. *Ms. Amanoh forwarded the cash to close minus the \$15,000 used to discharge the JLM Mortgage to counsel appointed to represent her and the matter was eventually resolved to the satisfaction of all parties.*

SUBMISSIONS ON SANCTIONING

20. Counsel for the LSA submitted that the appropriate sanction for the Lawyer for breach of citation 2 was a Reprimand and payment of costs of the hearing. Counsel for LSA advised that the Lawyer had participated in Practice Review and that process was considered successful. The Practice Assessors were of the view that the Lawyer understood and took to heart their recommendations.
21. Counsel for the Lawyer submitted that a Reprimand was appropriate but sought that only a portion of the costs be payable by the Lawyer. The citation, counsel argued, arose from the honest mistake of the Lawyer that there was a firm agreement between the Lender and Vendors that the mortgages would be

discharged, but the Lawyer did not verify this herself, instead relying on her knowledge of the previous dealings between the Vendors, Purchaser and Lender and their history of “getting the deal done”. The Lawyer now appreciated that she needs a commitment in writing from the Lender re terms of discharge of the mortgages, in advance.

22. Counsel also argued that the Lawyer tried to solve the problem. She sent the cheque for funds twice to the Lender who rejected them on the basis that it needed to be registered in a second mortgage position in the amount of \$156,000.00 on each of three other properties. Counsel also advised that the lawyer was commended by Practice Review for implementing their recommendations. The lawyer is a sole practitioner with five children and is not earning a great deal. A Reprimand and 1/3 costs was proposed as appropriate in the circumstances.

FINDINGS RELATED TO THE ADMISSION OF GUILT

23. In accordance with Section 60 of the *Legal Profession Act*, the Lawyer tendered to the Hearing Committee a Statement of Admission of Guilt to citation 2, and invited the Hearing Committee to accept that admission of guilt.

24. In these circumstances, where:

- a. the Lawyer having failed to obtain written mortgage payout statements from the Lender, and
- b. instead relying on her knowledge of past dealings with the Purchaser, Vendors and Lender, had undertaken to discharge three mortgages from the cash balance to close on a real estate transaction and provide counsel for the purchaser with a Certified copy of Title evidencing discharge of same, but subsequently,
- c. upon being advised by the Lender that they were not prepared to accept payout of the mortgages without further protection to the Lender, advised other counsel that she was unable to fulfill her undertakings and thus intended to return the cash to close with the expectation that title would simply be restored to the Vendors,

the Hearing Committee was satisfied that the member's conduct was deserving of sanction. Accordingly, the Statement of Admission of Guilt was accepted.

25. Following representations from the Parties, the Hearing Committee made the following Orders:

- a. An Order that the Lawyer be reprimanded;
- b. An Order requiring the payment to the LSA by the Lawyer of costs of the Hearing in the sum of \$1748.00;

- c. An Order requiring the payment of costs within six months.

CONCLUDING MATTERS

26. Exhibits will be available for public inspection; however the identities of the Complainant, any of the clients, other counsel, and any third parties shall be redacted.
27. In the event that any transcript of the proceeding is created, the identities of the Complainant, any of the clients, other counsel, and any third parties shall be redacted.
28. There will be no referral to the Attorney General.
29. There will be no Notice to the Profession directed.
30. The Chair delivered a reprimand, which expressed denunciation for the conduct of the lawyer and expressed that undertakings given by lawyers are fundamental to the practice of law and must be complied with, nor can a member who is unable to satisfy their undertakings, endeavor to put the onus of solving the problem back on to other counsel by returning the cash to close and requesting a transfer back from the buyer's lawyer.

Dated this 18 day of January, 2011.

Sarah King-D'Souza, Q.C., Bencher, Chair

Steve Raby Q.C., Bencher

Miriam Carey, Ph.D., Lay Bencher