

**THE LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*;**  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF TERRANCE DAWE,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee:**

Rob W. Armstrong, QC, Chairperson  
Corinne Petersen (Bencher)  
Michael Mannas (Public Adjudicator)

**Counsel Appearances:**

Sharon Heine for the Law Society of Alberta (“LSA”)  
Terrance Dawe on his own behalf

**Hearing Date:**

July 24, 2017

**Hearing Location:**

Law Society of Alberta at 500, 919 – 11<sup>th</sup> Avenue S.W., Calgary, Alberta

**HEARING COMMITTEE REPORT**

**INTRODUCTION**

1. On July 24, 2017 a Hearing Committee of the Law Society of Alberta convened to inquire into the conduct of Terrance Dawe.
2. Mr. Dawe faced four citations arising from his representation of the vendor, the purchaser and the lender on a real estate transaction.
3. The hearing was scheduled for one half day. It proceeded on the basis of a comprehensive Agreed Statement of Facts and Admissions of Conduct Deserving of Sanction. Mr. Dawe also gave evidence in the proceedings on his own behalf.

4. At the conclusion of the evidentiary portion of the hearing, submissions were made by the parties including a joint submission on sanction.

### **SUMMARY OF DECISION**

5. On the basis of the Agreed Statement of Facts and Admissions of Conduct Deserving of Sanction and with careful consideration of the arguments and authorities presented on behalf of the LSA and on behalf of Mr. Dawe, the Hearing Committee finds that Mr. Dawe is guilty of conduct deserving of sanction in respect of citations 1 and 2. Citations 3 and 4 are dismissed.
6. With respect to the finding of conduct deserving of sanction on citations 1 and 2, the Committee imposed a sanction consisting of a 14 day suspension and payment of costs in the amount of \$3,360.00.

### **JURISDICTION AND PRELIMINARY MATTERS**

7. The Chair of the Hearing Committee inquired of Mr. Dawe whether he was prepared to proceed without counsel. Mr. Dawe confirmed he was prepared to proceed and he did not wish to have counsel present.
8. Exhibits 1, 2, 3 and 4, consisting of the Letter of Appointment dated June 19, 2017, the Notice to Solicitor dated June 22, 2017, the Notice to Attend dated June 22, 2017 and the Certificate of Status of the Member dated June 23, 2017 established the jurisdiction of the Hearing Committee.
9. The Chair of the Hearing Committee inquired as to whether there were any objections with respect to the jurisdiction of the Committee and no objections were raised.
10. There were no objections with respect to the composition of the Hearing Committee by the LSA or by Mr. Dawe.
11. The Certificate of Exercise of Discretion was entered as Exhibit 5 in the proceedings. There was no private hearing application and the entire hearing was conducted in public.
12. The Agreed Statement of Facts and Admissions of Conduct Deserving of Sanction was entered by agreement as Exhibit 6 in the proceedings and Exhibits 7 through 33 which consist of the supporting documents to the Agreed Statement of Facts were also entered at the commencement of the hearing by agreement. Exhibit 34 is the disciplinary record of Mr. Dawe and Exhibit 35 is the Estimated Statement of Costs. Exhibits 34 and 35 were entered by agreement during the sanctioning phase of the hearing.

### **CITATIONS**

13. Four citations were issued against Terrance Dawe:

1. It is alleged that you failed to properly supervise your staff and that such conduct is deserving of sanction;
2. It is alleged that you failed to conduct yourself as a reasonable and prudent solicitor which enable your client and others to achieve an improper purpose and that such conduct is deserving of sanction;
3. It is alleged that you failed to conscientiously serve your clients, the vendors JDH and AM and the purchaser TH, and that such conduct is deserving of sanction; and
4. It is alleged that you failed to protect the interests of your lender client and that such conduct is deserving of sanction.

## **SUMMARY OF RESULTS**

14. An Agreed Statement of Facts and Admission of Guilt with respect to citations 1 and 2 was tendered at the commencement of the hearing. The Hearing Committee found that the Agreed Statement of Facts and Admission of Guilt was in an acceptable form and that the conduct described was conduct deserving of sanction.
15. A joint submission by Mr. Dawe and counsel for the LSA was made regarding sanction. It was jointly submitted that Mr. Dawe be suspended for 14 days and pay costs. The Hearing Committee agreed with the joint submission and fixed the costs in the amount of \$3,360.00.

## **FACTS**

16. The Agreed Statement of Facts and Admission of Guilt is attached to this decision as Schedule "A".
17. In addition to the Agreed Statement of Facts and Admission of Guilt, Mr. Dawe gave additional evidence under oath.
18. At the relevant time, Mr. Dawe's standard practice was to have his staff manage the real estate transaction files. Staff was trained not to give legal advice and to consult with Mr. Dawe as required.
19. The file in question was of some concern to Mr. Dawe from the beginning. The vendors were an estranged couple and due to the conflict between them, it was difficult to even get them into the office at the same time to sign documents.

20. Despite his concerns, Mr. Dawe did not see some of the red flags associated with a potential mortgage fraud on this file. Irregularities with respect to an addendum to the Real Estate Purchase Contract were overlooked and other issues such as the change to the closing date and the payment of significant amounts from the proceeds from the sale to a third party did not raise a concern in Mr. Dawe's mind sufficient for him to step in and make further inquiries.
21. Ultimately the property in question went into foreclosure but the lender was able to make full recovery of the funds advanced through the foreclosure process so that the lender was made whole.
22. Since the matters giving rise to the complaint against Mr. Dawe, he has been engaged in the practice review process. Mr. Dawe gave evidence with respect to his participation in practice review and he noted that he had a good, productive relationship with the practice review team.

## DECISION

23. Upon thorough review of the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction, the Hearing Committee was satisfied that it was in a form acceptable to it pursuant to s. 60 of the *Legal Profession Act*. Pursuant to s. 60(4), each admission of guilt is deemed to be a finding of the Hearing Committee that the conduct of Mr. Dawe is deserving of sanction.
24. The Agreed Statement of Facts clearly supports the admissions of conduct deserving of sanction. Mr. Dawe was not properly supervising the staff he had working on his real estate files and it was also clear that the training of the staff was insufficient. Failing to properly train and supervise staff is conduct deserving of sanction. In failing to properly oversee the transaction in question, Mr. Dawe did not meet the standard of a reasonable and prudent solicitor. The abdication of his responsibility for oversight on the file allowed the facilitation of an improper purpose in the form of a mortgage fraud that may well have been discovered had Mr. Dawe properly discharged all of his obligations as the lawyer on the file.
25. The parties jointly submitted that citations 3 and 4 are lesser and included citations and upon a finding of guilt to citations 1 and 2, citations 3 and 4 should be dismissed. The Hearing Committee agreed with the submissions of the parties on this point and dismissed citations 3 and 4.
26. A joint submission as to sanction was tendered before the Hearing Committee. The joint submission was for a 14 day suspension. Where a submission on sanction is made jointly, the Hearing Committee is not bound by the submission; however, it should give serious consideration to the joint submissions and should accept it unless it is unfit, unreasonable or contrary to the public interest.

27. The Hearing Guide for the LSA sets out a number of relevant factors that ought to be taken into account in determining an appropriate sanction:
60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.
- a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
  - b) Specific deterrence of the member in further misconduct.
  - c) Incapacitation of the member (through disbarment or suspension).
  - d) General deterrence of other members.
  - e) Denunciation of the conduct.
  - f) Rehabilitation of the member.
  - g) Avoiding undue disparity with the sanctions imposed in other cases.
28. Following deliberations on the joint submission as to sanction, the Hearing Committee was satisfied that the joint submission on sanction was not unfit, unreasonable or contrary to the public interest. The joint submission on sanction was within the range of reasonable sanctions available taking into account consideration of the relevant factors.
29. The sanction is sufficient to denounce the conduct in question and deter both Mr. Dawe and other members from engaging in similar conduct while also recognizing the mitigating factors present in this case which include:
- a. the admission of guilt and taking of responsibility for the conduct in question by Mr. Dawe;
  - b. Mr. Dawe was cooperative with the investigation;
  - c. this was an isolated incident and there was no pattern or ongoing involvement in mortgage fraud transactions;
  - d. successful participation in the practice review process and the implementation of the recommendations made by the Practice Review Committee; and
  - e. no recent or related disciplinary record.

## CONCLUSION

30. Mr. Dawe is guilty of citations 1 and 2. The remaining citations are dismissed. The sanction imposed consists of a 14 day suspension. Mr. Dawe is ordered to pay costs in the amount of \$3,360.00.
31. There shall be no notice to the Attorney General.
32. There shall be a notice to the profession in accordance with section 85 of the *Legal Profession Act* and Rule 107 of the Rules of the Law Society of Alberta.
33. The Hearing Committee Report, the evidence and Exhibits in this hearing shall be made available to the public subject to redaction to protect confidential or privileged information, as well as the names of any clients and such other confidential personal information as may be necessary.

Dated at the City of Calgary, in the Province of Alberta this 3rd day of October, 2017.

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Rob W. Armstrong, QC  
Bencher, Hearing Committee Chair

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Corinne Petersen  
Bencher, Hearing Committee Member

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Michael Mannas  
Public Adjudicator, Hearing Committee Member

## SCHEDULE A

### IN THE MATTER OF THE *LEGAL PROFESSION ACT*

### AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF TERRANCE M. DAWE A MEMBER OF THE LAW SOCIETY OF ALBERTA

### LAW SOCIETY HEARING FILE HE20160203

### AGREED STATEMENT OF FACTS AND ADMISSIONS OF CONDUCT DESERVING OF SANCTION

#### BACKGROUND

1. Terrance M. Dawe (“Mr. Dawe”) was admitted as a member of the Law Society of Alberta (the “Law Society”) on July 19, 1983.
2. Mr. Dawe practices law in a two-person law office doing business as Dawe Law Office (“DLO”) in Calgary, Alberta
3. Mr. Dawe’s general law practice consists of approximately 30% real estate conveyancing.

#### CITATIONS

4. Mr. Dawe faces 4 citations as follows:
  1. It is alleged that you failed to properly supervise your staff and that such conduct is deserving of sanction.
  2. It is alleged that you failed to conduct yourself as a reasonable and prudent solicitor which enabled your client and others to achieve an improper purpose and that such conduct is deserving of sanction.
  3. It is alleged that you failed to conscientiously serve your clients, the vendors JDH and AM and the purchaser TH, and that such conduct is deserving of sanction.

4. It is alleged that you failed to protect the interests of your lender client and that such conduct is deserving of sanction.

### **AGREED FACTS**

5. Mr. Dawe acted for the purchaser, the vendors and the lender in respect of a residential real estate transaction for the purchase and sale of a property at XXX Street Address, Calgary, Alberta (the "Property").
6. The purchaser was TH ("Purchaser"). The lender was Bank A ("Lender").
7. The vendors were an estranged common-law couple, JDH and AM (together, the "Vendors"), who owned the Property as joint tenants.
8. During the relevant period of time, Mr. Dawe had two assistants: Assistant A and Assistant B (together, the "Assistants"). The Assistants typically prepared real estate transaction documents and met the clients without Mr. Dawe's supervision unless there was a specific issue or concern identified by the Assistants.
9. A Residential Real Estate Purchase Contract dated October 18, 2013 provides for the sale of the Property for \$568,000 (the "Purchase Contract"). The transactional amounts on page 1 of the Purchase Contract indicate \$10,000 for a total deposit, \$539,600 in new financing and \$18,400 in "other value".
10. A Residential Purchase Contract Addendum dated October 31, 2013 (the "Addendum") states as follows:

Sellers have received a total of \$15,000 deposit.  
Seller agrees to take a net sale proceed of \$490,000.  
Seller agrees to pay Realty Company listing fee amount as per listing contract from monies above \$490,000 total \$11,046.  
Seller agrees to pay \$22,000 to Company A from sale proceeds above \$490.  
Seller agrees to pay NY the extra proceeds approx. \$15,000 upon close.  
Seller agrees to pay \$14,900 FL.
11. The Addendum contains various irregularities in respect of the signatures of both the Vendors and the Purchaser. Slightly different transactional amounts were included on an amended page 1 of the Purchase Contract as follows: \$15,000 for a total deposit, \$539,600 new financing and \$13,400 "other value". Only the change in the deposit amount is initialed on the amended page 1.



12. On November 10, 2013, AH, an associate of Company A sent an email to Assistant B enclosing a copy of the Purchase Contract. AH's email indicated that "the seller will pay Company A \$16000" and that DLO would be acting for the Purchaser and the Vendors. Neither AH nor Company A were parties to the Purchase Contract.
13. On November 15, 2013, Realty Company provided a "Lawyer's Instruction Sheet" to DLO for the sale of the Property providing that:
  - a. the sale price for the Property was \$568,000;
  - b. the Listing Agent and Selling Broker was AL;
  - c. the total commission owed was \$11,046; and
  - d. the possession date was November 18, 2013.
14. On November 18, 2013, AH emailed Assistant B communicating the "sellers instructions" (sic) for a direction to pay as follows:
  - a. The Vendors to receive the "net sale amount of \$490,000" less payment of the mortgage, line of credit and joint visa, any outstanding property taxes, legal fees and closing costs; and
  - b. The balance of the proceeds "above \$490,000" to be distributed as follows:
    - i. \$30,748.19 to FL;
    - ii. \$22,000 to Company A;
    - iii. \$11,046 to Realty Company;
    - iv. Any remaining balance to NY.
15. A Residential Purchase Contract Amendment dated November 18, 2013 and executed by the Purchaser (but not the Vendors) amended the closing date to November 21, 2013.
16. The Purchaser signed a "Conflict Letter" on November 18, 2013 and the Vendors signed a "Conflict Letter" on November 19, 2013 permitting DLO to act on behalf of the Vendors and the Purchaser.
17. DLO receipted a total of \$30,923.19 from the Purchaser on November 19 and 20, 2013. The total deposit amount was received in the form of 3 bank drafts from 3 different banks.
18. On November 19, 2013, JDH met with Assistant B at the offices of DLO to execute the required documentation. JDH expressed two concerns: first, that he understood the sale price for the Property was \$505,000 not \$568,000; and

second, that the “Authority and Direction to Pay (Vendor)” directed payments to individuals and entities unknown to him, specifically Company A, FL and NY.

19. JDH made telephone calls from the DLO office to AL and AM to obtain information regarding his concerns. JDH also asked to speak to Mr. Dawe but he was not available.
20. Assistant B was unable to advise JDH regarding his concerns and told JDH that whether he signed or did not sign was up to him. Ultimately, JDH signed the required documentation despite his concerns.
21. Assistant B advised Mr. Dawe that JDH had expressed concerns but that he nevertheless signed the required documents.
22. Mr. Dawe’s handwritten notes entitled “Review File” and dated November 19, 2013 indicate that Mr. Dawe reviewed some portion of the file, including at least the Addendum, and considered the amount of the commission payment as well as the increase in value of the Property since the last transfer.
23. With respect to the commission amount, Mr. Dawe’s notes state as follows: “Listing Agreement usually provides for ordinary commission of 7% + 3%”. He calculated the “Ordinary Listing Commission” to be \$20,500 + GST. He notes further: “Addendum seems to anticipate that commissions will be calculated instead on basis of whatever is in excess of \$490,000” [i.e. \$78,000] ... Seems agreed bonus of \$50K – unusual but may be performance based”.
24. Mr. Dawe considered the sale price in terms of whether there was an unusual price increase that would raise concern regarding value. Mr. Dawe’s notes state as follows: “10% increase in 7 yrs – Value seems to Not be an issue. I expect average of 3%/yr”.
25. Mr. Dawe’s notes state further:

Sellers are JDH and AM. Were common law and are now estranged. AM wants out of the house and JDH just wants to be off the hook on the mtg and house. JDH is aware that AM is getting \$490,000 less mtg but was unaware of the distribution of the other monies. The excess on the \$490,000 after mtg payout is to be split equally between vendors – no adjustments. [emphasis added]
26. At no time did Mr. Dawe meet with or speak to JDH regarding his concerns nor did he meet with or speak to any of the other parties to the transaction.

27. Third parties to the Purchase Contract received a total of \$67,277.90 from the sale of the Property.
28. As a result of Mr. Dawe's failure to directly supervise his Assistants and to thoroughly review the relevant documents and circumstances, Mr. Dawe failed to conduct himself as a reasonable and prudent solicitor as follows:
  - a. He failed to consider as relevant that payout instructions were received from a third party to the Purchase Contract, who was benefiting financially from the transaction;
  - b. He failed to consider the information contained in the Addendum as significant or relevant to the transaction;
  - c. As a result of dismissing the Addendum as insignificant and irrelevant, he failed to note that the Purchase Contract and Addendum contained various irregularities, omissions and inconsistencies;
  - d. He failed to consider that the deposit funds were not paid to Realty Company as required by the Purchase Contract;
  - e. He failed to discover that JDH understood that the Property sold for \$505,000;
  - f. He failed to become specifically aware and respond prudently to JDH's concern that he did not know the third party recipients of the sale proceeds including FL, Company A and NY or why they were receiving a portion of the sale proceeds;
  - g. He failed to meet with the Purchaser and review the Purchaser's Statutory Declaration with her in detail and therefore failed to discover that she had no intention of living in the Property and that she did not pay any funds towards the purchase price of the Property;
  - h. He failed to consider or advise the Lender that third party recipients collectively received \$67,277.90 from the sale of the Property; and
  - i. He failed to recognize or advise the Lender that the Lender financed more than 100% of the price paid to the Vendors for the Property.
29. As a result of his failures as listed above, Mr. Dawe enabled his clients and others to achieve an improper purpose.

**ADMISSION OF FACTS**

30. I, Terrance M. Dawe, admit as facts the statements contained in this Agreed Statement of Facts for the purposes of these proceedings.

**ADMISSIONS OF CONDUCT DESERVING OF SANCTION**

**Citation 1: It is alleged that you failed to properly supervise your staff and that such conduct is deserving of sanction.**

31. For the purposes of s. 60 of the *Legal Profession Act*, I, Terrance M. Dawe, admit that I failed to properly supervise my staff and that such conduct is deserving of sanction.

**Citation 2: It is alleged that you failed to conduct yourself as a reasonable and prudent solicitor which enabled your client and others to achieve an improper purpose and that such conduct is deserving of sanction.**

32. For the purposes of s. 60 of the *Legal Profession Act*, I, Terrance M. Dawe, admit that I failed to conduct myself as a reasonable and prudent solicitor which enabled my client and others to achieve an improper purpose and that such conduct is deserving of sanction.

33. I make no specific admissions for the purposes of s. 60 of the *Legal Profession Act* with respect to Citations 3 and 4.

This Agreed Statement of Facts and Admissions of Conduct Deserving of Sanction is dated the 15<sup>th</sup> day of June, 2017.

“Original signed by Witness”

Witness

“Original signed by Terrance Dawe”

Terrance M. Dawe