

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MERCY AMANOH
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Robert Philp, QC – Chair
Buddy Melnyk, QC – Bencher
Michael Mannas – Public Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Amy Cooper – Counsel for Mercy Amanoh

Hearing Date

June 3, 2020

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT – SANCTION PHASE

Overview

1. A conduct hearing was held on March 2-4, 2020, and for the reasons set out in its decision dated April 30, 2020 (2020 ABLs 11 (CanLII)), the Hearing Panel (Panel) found Mercy Amanoh guilty of conduct deserving of sanction. This Hearing Committee was convened on June 3, 2020, pursuant to section 59(1)(b) of the *Legal Profession Act* (Act), to hear evidence and arguments regarding the appropriate sanction against Mercy Amanoh. The following were the citations for which the Panel found Ms. Amanoh guilty:

CO20172455

1. That Mercy Amanoh failed to conscientiously and diligently represent the best interests of her client, FH;
2. That Mercy Amanoh acted in a conflict of interest in relation to her client, FH.

CO20180768

4. That Mercy Amanoh failed to act in a thorough, conscientious, and diligent manner in providing legal services to her clients;
 5. That Mercy Amanoh unknowingly assisted others in carrying out fraudulent mortgage activities.
2. On citation #3, complaint CO20172455, the Panel found Ms. Amanoh not guilty of failing to appropriately supervise her staff.

Personal Background

3. Ms. Amanoh is originally from Ghana in West Africa where she obtained her law degree. In 1994 Ms. Amanoh obtained a master's degree in law at Queen's University and a second master's degree from McGill University in 1998.
4. Ms. Amanoh has been carrying on a general practice of law in Calgary since 2003. She serves a diverse background of individuals including immigrants and visible minorities. Ms. Amanoh is married with five children.

Findings of the Panel

5. The facts related to the sanctionable conduct are set out in the Panel's decision on the merits. This phase of this hearing is to consider the appropriate sanction for that conduct. While the details of the facts are set out in the Hearing Committee Report, a brief summary is set out here.

CO20180768

6. The Hearing Committee Report indicates that over a period of about 16 months in 2015 and 2016 Ms. Amanoh became unwittingly involved in some eight real estate deals involving a "straw buyer" scheme. This type of ploy used a straw buyer to purchase property at a value that is much higher than the actual value, and then used this inflated value to obtain a mortgage that in all likelihood exceeded the true property value. A significant increase in price over a short period of time is often an indicia of this type of fraud.
7. Ms. Amanoh participated in this ploy by failing to follow bank instructions and reporting requirements by not advising the bank of the significant increases in property values over very short time frames. The failure by Ms. Amanoh to advise the lenders of these short time price increases allowed others to carry out the fraudulent mortgage activities, though this was done unknowingly by Ms. Amanoh.

CO20172455

8. A client of Ms. Amanoh, FH, consulted with Ms. Amanoh regarding the sale of her matrimonial home and another revenue property owned by FH and her estranged husband. FH had been introduced to IS, who was a client of Ms. Amanoh. IS found a buyer for the matrimonial home and Ms. Amanoh acted on behalf of FH in respect of this sale. During the closing of the sale Ms. Amanoh was absent from the country and the sale was largely handled by Ms. Amanoh's assistant.
9. The Irrevocable Order and Direction to Pay provided that there would be a transfer to a company owned by IS's wife (which company was also a client of Ms. Amanoh) of "any

amount in excess of \$455,000.00". This ultimately resulted in the company being paid \$56,910.00 by way of an internal transfer at Ms. Amanoh's firm. There was also another \$17,000.00, which was not done by way of transfer, but was paid directly to IS by the buyers. FH did receive \$10,000.00 from the sale, but a total of \$73,910.00 was apparently paid to IS or IS's wife's company. All instructions for the sale were given by IS to the legal assistant on behalf of FH.

10. Ms. Amanoh, after a request from FH, sent out a reporting letter. When FH reviewed that reporting letter she saw a sale price of \$529,000.00. FH had been told the sale price was \$455,000.00. To add even more confusion the actual buyer claims to have paid \$511,000.00. The Panel found that Ms. Amanoh failed to conscientiously and diligently represent the best interests of her client, FH and that Ms. Amanoh acted in a conflict of interest in relation to her client, FH.

Sanction Finding

11. After reviewing all of the evidence, exhibits, cases, hearing witness testimony and the arguments of the LSA and Ms. Amanoh, and for the reasons set out below, the Committee finds that the appropriate sanction is that Ms. Amanoh be suspended for a period of three (3) months. The suspension will take effect on August 1, 2020, but the commencement date may occur earlier with the consent of Ms. Amanoh and the LSA.
12. In accordance with section 72 of the *Act*, the Committee orders the following:
 - (a) That Mercy Amanoh be permanently restricted from carrying on the practice of real estate.
 - (b) That Mercy Amanoh pay costs in the amount of \$33,000.00 to be paid within two (2) years of the reinstatement of Ms. Amanoh. In the event that Mercy Amanoh does not seek reinstatement, or her reinstatement application is denied, then the costs are due and payable by December 31, 2023.

Preliminary Matters

13. As noted in the decision on the merits, cited above, there were no objections to the constitution of the Committee or its jurisdiction and a public hearing proceeded. No objections or private hearing applications were made during the sanction phase of the hearing, so the hearing continued before this Committee in public.

Submissions on Sanction

Submissions of the Law Society

14. LSA Counsel submitted the following arguments:

- (a) In 2011 Ms. Amanoh had received a reprimand that related to a real estate transaction that was similar to those in citations 4 and 5, and the “step-up” principle therefore warranted a suspension, rather than a further reprimand.
- (b) The proven citations involved serious issues that warranted a lengthy suspension. There were nine separate incidents over a period of less than two years.
- (c) Ms. Amanoh in her admissions of fact deflected responsibility onto the lender banks, or in the case of FH Ms. Amanoh was non-responsive to the client's concerns.
- (d) In the citations involving banks there was a possibility of loss, and in the case of FH there was very likely a loss suffered by the client.
- (e) This was a case of competency and negligence, and not one of intentional conduct or integrity.
- (f) Practice Review has been largely successful and undertakings by Ms. Amanoh have been complied with. However, Practice Review is not intended to usurp the conduct process.
- (g) The guiding factors are that conduct must be viewed in respect of the public interest and confidence in the legal profession.
- (h) It is not enough to say that Ms. Amanoh will not engage in this conduct again. There must be an element of denunciation and general deterrence.
- (i) There must also not be undue disparity with other cases.
- (j) The LSA was seeking a 12 month suspension and a permanent restriction on the practice of law.

Submissions of Ms. Amanoh

15. Counsel for Ms. Amanoh argued as follows:

- (a) A suspension does not meet the regulatory processes set out by the LSA, which regulatory objectives require that one consider the effect of Practice Review (including the 21 undertakings of Ms. Amanoh) and the voluntary withdrawal from real estate practice.
- (b) The regulatory objective to serve the best interests of the public requires access to legal services. A suspension of Ms. Amanoh will disrupt that public access to

justice given the significant amount of time that Ms. Amanoh commits to under-represented visible minorities and immigrants.

- (c) The LSA has moved away from a reactive approach to a proactive approach through the Early Intervention Program.
- (d) There is no further risk to the public in real estate matters given the voluntary withdrawal by Ms. Amanoh from such services.
- (e) This is not a case of governability or integrity.
- (f) Ms. Amanoh's personal background and legal practice is a "rarity" and it would not be in the public interest to suspend her.
- (g) The citations resulted from unique circumstances and there is no risk of similar behaviour. Ms. Amanoh has learned from her mistakes.
- (h) Ms. Amanoh was seeking a reprimand, which her counsel submitted would act as a lasting admonishment.

Analysis and Decision on Sanction

16. Section 72(1) of the *Legal Profession Act* sets out three sanctioning options:

72(1) If a Hearing Committee finds that a member is guilty of conduct deserving of sanction, the Committee shall either:

- (a) order that the member be disbarred,*
- (b) order that the membership of the member be suspended during the period prescribed by the order, or*
- (c) order that the member be reprimanded.*

17. Section 49(1) of the *Legal Profession Act* sets out the following factors to be considering in determining the appropriate sanction:

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- (a) is incompatible with the best interests of the public or of the members of the Society, or*
- (b) tends to harm the standing of the legal profession generally,*

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

18. We agree with Ms. Amanoh that it is not the role of this Committee to punish her for the conduct. It is however our role to ensure that the public is protected, that the public confidence in the legal profession is maintained and that there be a proper denunciation of the conduct. A fundamental aspect and purpose of sanctioning is to ensure that the public is protected and that public confidence in the profession be of a high degree.
19. It is fair to conclude that the reputation of the profession, as well as Ms. Amanoh, has been damaged as a result of the impugned conduct. The Committee is mindful of the comments in *Bolton v Law Society* ([1994] 2 All ER 486 at 492 (C.A.)):

It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order striking off. The second purpose is the most fundamental to all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence that it inspires.

20. The Committee accepts that it is not expected that Ms. Amanoh will engage in similar conduct and that specific deterrence is not a significant factor. However, it is still necessary that there be a general deterrence to other members of the profession. While suspension may arguably not be necessary to either protect the public from further misconduct, or to act as a specific deterrence, the same cannot be said from the perspective of public confidence and a general deterrence.

21. There can be no doubt that the actions of Ms. Amanoh put her clients in a position of vulnerability, and hence put the public at risk. While no evidence was tendered at the Hearing of actual loss arising from fraud, the potential for such fraud against the clients was, and is, very real.
22. In the case of FH, Ms. Amanoh continues to deflect any wrongdoing in this matter or that FH has suffered a loss. There was in all probability some loss to FH and it is fair to assume that the lender banks in the other complaint may also suffer a loss in the future. Furthermore, in the FH matter Ms. Amanoh acted in a conflict of interest, or potential conflict of interest, which relates to the protection of the public.
23. There were some nine incidents over about two years. The Committee appreciates that there was no intent on the part of Ms. Amanoh and this was a case of competency. However, there was an appreciable number of incidents over an extended period of time.
24. The participation in Practice Review is not a substitute for imposing sanctions as provided for in the *Act*. The successful completion of Practice Review is a mitigating factor, but it is not a form of sanction.
25. Ms. Amanoh did not engage in any reckless or deliberate misconduct, but rather her errors appear to have arisen from inattention relating to competency.
26. The prior record of Ms. Amanoh related to real estate transactions that were similar to citations 4 and 5. The Committee accepts the “step-up” principle and that “conduct deserving of sanction are cumulative and future offences will attract progressively more severe penalties.”¹
27. The Committee is cognizant of the significant contributions that Ms. Amanoh has made, and continues to make, in serving under-represented members of our society. We applaud her for these efforts. The witnesses called, and the supporting letters of reference, speak very positively about Ms. Amanoh. However, the Committee notes that the majority of these witnesses were not aware of the specific facts surrounding the findings of guilt and the witnesses merely offered their personal opinions about Ms. Amanoh. This Committee would agree with the comments by the Court in the *Bolton* case:

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from

¹ *Law Society of Alberta v. Estrin*, 1992 ABCA 265 (CanLII)

his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points will be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequences for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.

28. We certainly sympathize with Ms. Amanoh's family circumstances, the likely financial stresses of a suspension and effect on her community activism, but these do not necessarily amount to significant mitigation: see *Law Society of Alberta v. Ihensekhien-Eraga* (2019 ABLs 16), at paragraph 32.
29. The regulatory objectives as set out by the LSA do not replace or supersede the *Act* as regards sanctioning factors. It is possible that a suspension of Ms. Amanoh will disrupt public access to justice given the significant amount of time that Ms. Amanoh commits to under-represented visible minorities and immigrants. However, this fact alone cannot override the other factors which support the need for a suspension.

Precedential Decisions

30. A number of prior decisions were put before the Committee for consideration on sanction. Although not binding upon the Hearing Committee, we have reviewed all the cases submitted by both parties. These cases range from a reprimand to a 12 month suspension. The Committee has endeavoured to avoid undue disparity with the sanctions imposed in other cases and we would offer the following comments regarding the proffered decisions.
31. In the *Law Society of Alberta v. Westra* (2011 CanLII 90716 (ABLS)) case, the Member was found guilty of assisting a client in an improper purpose, of failing to disclose to a lender the existence of an addendum, of failing to disclose to purchaser client that the vendor was a realtor, that the member commissioned an affidavit knowing it to be false

and that the member sought to deceive the LSA in his response to the complaint. This case revolved around these facts:

- i. An Addendum to a real estate contract was signed after the initial contract, which gave the purchasers a \$40,000.00 credit on the possession date for renovations.
 - ii. This Addendum was not disclosed to the Lender, who proceeded to grant a mortgage on the basis of the purchase price in the original contract.
 - iii. The Member had the purchaser client swear an affidavit of value that deposed that the “true consideration paid” and the “current value of the land in my opinion” for the property was the amount set out in the contract.
 - iv. The Member had incorrectly advised the LSA that he had sent the Lender a copy of the Addendum prior to funds being advanced, which in fact was not true.
32. The Committee in *Westra* held that the Member was not a willing participant in this scheme and that the Member had an honest belief that the Lender was aware of the Addendum. The Committee further held that the vendor’s identity was provided to the purchasers by the Member before the closing date. The Committee found that the Member did fail to serve the Lender client by not following instructions. In essence, the Member did not comply with express instructions regarding the actual purchase price. Of the seven citations, only one was proven.
33. In *Westra* the Member received a reprimand, a referral to practice review and costs. The Member had no prior disciplinary record. The case involved only one instance of the Member failing to properly follow the reporting instructions of the lender.
34. The Member in the *Law Society of Alberta v. Fletcher* (2017 ABLS 12) case acted as the lawyer in a mortgage fraud stratagem involving 24 properties. This concerned either “flip transactions”, in the form of skip transfers, or straight purchases whereby mortgage funds were advanced, and the vendors paid a lesser amount than what appeared on the cash to close. Mr. Fletcher was suspended for 30 days and ordered to pay costs. Mr. Fletcher had no prior discipline record.
35. In the matter of *Law Society of Alberta v. Hodgson* (2017 ABLS 11), the issue concerned the Member participating in a straw buyer plot, that he did not advise the lender of a prior transfer within the preceding twelve months, that he acted for a second mortgagee without consent of the all parties and a number of other complaints similar in nature. Joint submission was for a 30 day suspension, for the Member to continue in Practice Management and costs. No prior discipline record was attributed to the Member.

36. In the matter of the *Law Society of Alberta v. Venkatraman* (2013 ABLs 29), the Member was unknowingly involved in mortgage fraud where his legal assistant was a criminally convicted fraudster. The assistant opened secret files, manipulated financial records to conceal the fraud, met with clients surreptitiously to swear false documents and if that was not enough, she destroyed evidence of her misconduct. The fraud was only discovered after an extensive audit which revealed a trust account shortfall of \$1.9 million. The individual in question operated a fraud scheme that involved superficial, if any, renovations, the recruitment of straw buyers and artificially inflated property values. The bookkeeper would process the suspicious transactions without the Member's knowledge.
37. Mr. Venkatraman admitted to not properly supervising this staff person in a number of transactions and to not following proper accounting rules. As the Hearing Committee noted, Mr. Venkatraman's conduct following his discovery of the fraud was "rapid, remedial and forthright" and exemplary. Mr. Venkatraman was suspended for one month. There is nothing in the decision regarding any prior disciplinary record.
38. *Law Society of Alberta v. Fong* (2011 ABLs 24) was a decision on Appeal to an Appeal Panel from a decision that resulted in a 30 day suspension. The Member had been found guilty on eight of ten citations arising from two complaints as follows:
- i. In the first matter, the Member was acting for a corporate client that had borrowed monies. The member was under a trust condition to provide a Certified Copy of Title evidencing discharge of a mortgage, which Title was not provided until some 26 months after the funds had been advanced.
 - ii. In the second complaint the Member acted for both purchaser and vendor of a residential property. The vendor instructed the Member to transfer the property to a third party to ensure that the third party would be personally liable on the insured high ratio mortgage. This was not disclosed to the intended purchaser.
39. The Hearing Committee found that the Member had acted deceitfully by failing to notify his purchaser client of the transfer to a third party. The Member appealed the 30 day suspension to an Appeal Panel. That Appeal Panel was divided on their opinion. Four Members of the Appeal Panel would have overturned the suspension and ordered a fine and reprimand, while the other four Members of the Appeal Panel would have upheld the 30 day suspension. As there was a split number of votes on the Appeal Panel, section 77(2) of the *Act* governed, which resulted in the suspension being upheld. The Member had an older, dated prior record from 1990.
40. In *Law Society of Alberta v. Souster* (2016 ABLs 1), the Member was involved in a "skip transfer mortgage fraud scheme" that resulted in 21 citations. The various complaints involved similar conduct which involved recruitment of a straw buyer who would

purchase property at an inflated rate and a corresponding inflated mortgage. In this instance the Member facilitated these schemes by, among other things, failing to confirm that the straw buyer was not intending to reside in the property, failing to obtain a conflict letter, failing to advise the straw purchaser of the much lower purchase price and failing to comply with the mortgagee's instructions.

41. The Member received a 5 month suspension (which was a joint submission). Mr. Souster had no prior disciplinary record.
42. Like many of the cases which were provided to the Committee, the decision in *Law Society of Alberta v. Laurich* (2014 ABLIS 45) involved skip transfers whereby title went directly from the developer to the investor, skipping over the intermediary party who had agreed to buy the development. The investor obtained financing at the higher purchase price and then sold the condominium units back to the intermediary in exchange for an option payment. The investor was of course a straw buyer.
43. In total Mr. Laurich received sale proceeds of \$11,754,651.34 and the Panel noted that the "dollar value of the transactions here is highly relevant." The Panel determined that Mr. Laurich was a dupe in this scheme and his actions put a significant amount of bank funds at risk. The Member was suspended for five months and directed to pay costs.
44. The decision in the *Law Society of Alberta v. Aujla* (2018 ABLIS 4) dealt with real estate transactions involving a "lapping scheme" implemented by a real estate agent, which is a form of accounts receivable fraud. The realtor was effectively using one client's funds to complete another client's real estate transaction. By way of joint submission, the Member was suspended for 12 months. There was no express indication of any prior disciplinary record, though Mr. Aujla had been admonished by a previous Hearing Committee.
45. The LSA placed emphasis on the *Aujla* matter as being most similar and appropriate regarding sanction. However, given the joint submission, and the lack of analysis of the facts, the Committee did not feel compelled to follow the sanction in that case. Ms. Amanoh would have this Committee give credence and emphasis to the *Westra* case, but we would distinguish that decision since that Member had no prior disciplinary record, and there was only one incident of failing to properly follow the reporting instructions of the lender.

Decision

46. Ms. Amanoh shall be suspended for a period of three (3) months. The suspension will take effect on August 1, 2020, but the commencement date may occur earlier with the consent of Ms. Amanoh and the LSA.
47. In accordance with section 72 of the *Act*, the Committee orders the following:

- (a) That Ms. Amanoh be permanently restricted from carrying on the practice of real estate.
- (b) That Ms. Amanoh pay costs in the amount of \$33,000.00 to be paid within two (2) years of the reinstatement of Ms. Amanoh. In the event that Ms. Amanoh does not seek reinstatement, or her reinstatement application is denied, then the costs are due and payable by December 31, 2023.

Costs

- 48. The LSA sought costs in the amount of \$42,876.75 based on the large volume of material and investigative time, which resulted in additional costs directly attributable to Ms. Amanoh. Counsel for Ms. Amanoh argued for a reduction in costs due to the admission of facts and the willingness of Ms. Amanoh to testify first in the hopes of shortening the hearing.
- 49. Pursuant to section 72(2) of the *Legal Profession Act* this Committee has a discretion in awarding costs. Though Ms. Amanoh did provide a statement admitting to most of the relevant facts, an admission of facts is not an admission of guilt. The LSA was still required to present evidence to support the citations. Furthermore, had Ms. Amanoh testified first during the Hearing, it is doubtful that this would have saved any time. Given that the LSA was forced to bring this matter to a Hearing, and the failure of Ms. Amanoh to assist in reducing the time and expense incurred by the LSA, the Committee grants costs of \$33,000.00.
- 50. The costs are due and payable within two (2) years of the reinstatement of Ms. Amanoh. The Committee in awarding a longer payment time is mindful of the COVID-19 pandemic as was noted by the Hearing Panel in the *Law Society of Alberta v. Egbase* (2020 ABLs 12). This case recognized the “extraordinary situation caused by the COVID-19 pandemic” which resulted in a longer period of time for payment of the fine and costs. Counsel for the LSA was not opposed to a lengthy time for payment.

Concluding Matters

- 51. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Ms. Amanoh will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).
- 52. The Committee further directs that a Notice to Profession be provided with respect to the suspension of Ms. Amanoh.

53. No notice to the Attorney General is required in these circumstances.

Dated at Calgary, Alberta, June 22, 2020.

Robert Philp, QC

Buddy Melnyk, QC

Michael Mannas