

**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 WESLEY MAH
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ORDER OF THE HEARING COMMITTEE

UPON THE ISSUANCE OF A CITATION by the Law Society of Alberta (LSA) to Wesley Mah pursuant to section 56 of the *Legal Profession Act* (the Act);

AND WHEREAS:

- a) Wesley Mah signed a Statement of Admitted Facts and Admission of Guilt (the Statement, attached to this Order) in relation to his conduct on April 3, 2020;
- b) Wesley Mah admits in the Statement that the conduct set out in the Statement is deserving of sanction;
- c) On May 12, 2020, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the Act;
- d) On May 28, 2020, 2020 the Chair of the Conduct Committee appointed a single Bencher as the Hearing Committee (Committee) for this matter, pursuant to subsection 60(3) of the Act;
- e) Pursuant to subsection 60(4) of the Act, it is deemed to be a finding of this Committee that Wesley Mah's conduct is deserving of sanction;
- f) On July 15, 2020, the Committee convened a public hearing into the appropriate sanction related to the conduct of Wesley Mah;
- g) The LSA and Wesley Mah have provided a joint submission on sanction for the Committee's consideration, seeking a reprimand;
- h) The parties have also agreed that it is reasonable for Wesley Mah to pay \$1,575.00 in costs in relation to this matter;

- i) The Committee has determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest;
- j) The Committee has accepted the joint submission on sanction, and accepted the submission with respect to the payment of costs.

IT IS HEREBY ORDERED THAT:

1. The appropriate sanction with respect to Wesley Mah's conduct is a reprimand, which was delivered orally by the Committee to Wesley Mah.
2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.
3. Wesley Mah must pay costs in the amount of \$1,575.00.
4. The costs of \$1,575.00 are payable by August 15, 2020.
5. No Notice to the Profession or Notice to the Attorney General is to be made.
6. The exhibits and this order 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 Wesley Mah will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, on July 15, 2020.

Corie Flett, QC

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
-AND-
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
WESLEY B. MAH
A MEMBER OF THE LAW SOCIETY OF ALBERTA
HEARING FILE NUMBER HE20200051

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on September 4, 1992.
2. My present status with the Law Society of Alberta is Active/Practising.
3. I am a sole practitioner in Calgary, Alberta practicing primarily in the area of Real Estate Conveyancing.

CITATIONS

4. On February 11, 2020, the Conduct Committee panel referred the following conduct to a hearing:

It is alleged that Wesley B. Mah failed to provide conscientious and diligent service to his clients, J.L. and S.T.G., and that such conduct is deserving of sanction.

FACTS

5. J.L. and S.T.G. retained me to act on their behalf as purchasers in of a residential property (“the property”), which purchase was to close on September 5, 2018.
6. On August 21, 2018, J.L. informed me that she suspected that the seller of the property was a non-resident of Canada for income tax purposes and asked me to confirm the seller’s resident status. In the event that the seller was a non-resident of Canada, J.L. instructed me to withhold 25% of the purchase funds and remit these funds to the Canada Revenue Agency if a Compliance Certificate was not received before closing.
7. On August 22, 2018, I spoke to a paralegal at the office of the seller’s lawyer who confirmed that the seller was a non-resident of Canada, and that they would provide an undertaking to withhold 25% of the purchase funds.

8. On the day of closing, September 5, 2018, I forwarded the cash to close to the seller's lawyer. I did not impose any trust conditions on the seller's lawyer when forwarding the cash to close or request any undertakings with respect to the non-resident holdback or the Compliance Certificate.
9. On September 5, 2018, I advised J.L. and S.T.G. that they could take possession of the property and that title would be transferred to them within three weeks. I did not advise them that I had not received transfer documents, a Compliance Certificate or appropriate undertakings from the seller's lawyer, nor did I advise them of the potential risks in taking possession before these documents had been received.
10. On October 19, 2018, I was informed by the seller's lawyer that he was unable to provide an undertaking to hold back 25% of the purchase funds, as they did not have sufficient funds for both the holdback and to pay out the mortgage. The seller's lawyer further advised that the seller would have to obtain a compliance certificate from Canada Revenue Agency before he would be able to deliver the transfer documents to my office, which could take a further three months.
11. On October 26, 2018, pursuant to instructions from J.L. and S.T.G. I sent a letter to the seller's lawyer demanding return their deposit and cash to close unless I was in receipt of the transfer documents and Certificate of Compliance by November 2, 2018.
12. On November 5, 2018, pursuant to instructions from J.L. and S.T.G., I sent a letter to the seller's lawyer advising that the purchasers had decided not to proceed with the transaction due to the seller's failure to comply with the terms and condition of the purchase contract and indicating that I had issued a stop payment on the trust cheque for the cash to close.
13. On November 6, 2018, the seller's lawyer sent me a letter which advised it was the seller's position that J.L. and S.T.G. were in breach of the contract and therefore the deposit would not be returned. The letter also indicated that the seller would sue J.L. and S.T.G. for damages on the basis that the purchasers had acquiesced in the process of obtaining the Compliance Certificate by accepting the keys to the premises without the Compliance Certificate and transfer documents.
14. On November 8, 2018, I advised J.L. that she and S.T.G. could either wait for the Compliance Certificate and proceed with the transaction or terminate the deal and risk being sued by the seller.
15. On November 13, 2018, I withdrew from the file. I did not bill J.L. for my services and forwarded all funds held in trust on behalf of J.L and S.T.G. to their new counsel.

ADMISSION OF FACTS AND GUILT

16. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

17. I admit that I failed to provide conscientious and diligent service to my clients J.L. and S.T.G. by:
- i. Failing to impose trust conditions on the cash to close or obtain the seller's lawyer's undertaking to withhold 25% of the purchase funds in trust until receipt of the Compliance Certificate, and
 - ii. Failing to advise my clients of the potential risks of accepting possession in these circumstances,
- and I admit that this conduct is deserving of sanction.
18. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.
19. I acknowledge that I have had the opportunity to consult legal counsel.
20. I acknowledge that I have signed this this Statement of Admitted Facts and Admission of Guilt freely and voluntarily.
21. I acknowledge that I understand the nature and consequences of this Admission.
22. I acknowledge that, although entitled to deference, a Hearing Committee is not bound to accept a joint submission on sanction.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 3rd DAY OF APRIL, 2020.

"Wesley Mah"

Wesley Mah

Reprimand

Mr. Mah, you are before me today on a conduct matter related to your representation of purchasers of a home involved in a dispute with the sellers. Your actions, or lack thereof in this matter, is cause for concern. When you accepted the privilege of practising law in Alberta you accepted the responsibility to the public and to the Law Society to represent your client's best interests. You failed in this case. You must do better.

Mr. Mah, you are an experienced lawyer. Your career has been unblemished until this citation. As a member of the Law Society, you will be expected to reflect upon your actions, to learn from this particular matter and to of course, move forward. So I hope that from today's appearance, that you appreciate the importance and severity of your conduct and I do require that you do more for the members of the public that you serve, now and into the future.

I wish you good luck, Mr. Mah, in your continued work.