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
Walter Pavlic, KC – Chair and Former Bencher
Ryan Anderson, KC – Bencher
Edith Kloberdanz – Adjudicator

Appearances
Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Brett Code, KC and Heather Richardson – Counsel for Mercy Amanoh

Hearing Date
November 17, 2022

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citation (Citation) was directed to hearing by the Conduct Committee Panel on April 12, 2022:

> It is alleged Mercy A. Amanoh unknowingly assisted others in carrying out fraudulent activities and that such conduct is deserving of sanction.

2. On November 17, 2022, the Hearing Committee (Committee) convened a hearing into the conduct of Mercy Amanoh.

3. The matter proceeded before the Committee by way of a Statement of Admitted Facts and Admission of Guilt (Agreed Statement) and a joint submission on sanction.

4. After reviewing all of the evidence and exhibits, and hearing the submissions of counsel for the LSA and for Ms. Amanoh, for the reasons set out below, the Committee found

Ms. Amanoh guilty of conduct deserving of sanction of the Citation and ordered a two-week suspension. She was also ordered to pay costs of $7,500.00.

Preliminary Matters

5. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested.

Facts/Background

6. The LSA and Ms. Amanoh collaborated on the Agreed Statement. A summary of the facts from the Agreed Statement is set out in the following paragraphs.

7. Mercy Amanoh practices in Calgary as a sole practitioner. In 2015 she acted on behalf of the vendors of a residential property in Edmonton. The vendors purchased the property in 2013 with a stated value of $350,000.00. In 2015 the property indicated a sale price of $1,350,000.00. Ms. Amanoh was advised by one of the vendors that the property had been redeveloped. Ms. Amanoh did not pursue the dramatic increase in value any further, notwithstanding that the title showed no new mortgage in place since the property was purchased in 2013 and contained a caveat relating to a Stop Work Order issued by the City of Edmonton in 2013.

8. In addition to the dramatic increase in value, one of the vendors resided in Vancouver, and the other vendor was a numbered company in Edmonton. At no time did Ms. Amanoh question being retained on a real estate transaction where neither the property nor the vendors were based in Calgary.

9. As a result of the Stop Work Order, Ms. Amanoh provided an Undertaking to Holdback Sufficient Funds until the Stop Work Order was resolved, and a Certificate of Compliance was issued by the city. Ms. Amanoh retained a holdback of $30,000.00, based upon an estimate received from an environmental engineering company. Ms. Amanoh believed that the estimate of $30,000.00 was to address the issues arising from the Stop Work Order, but in fact the estimate was for the cost of preparing a slope stability assessment required to obtain the necessary building permit.

10. Matters became further complicated when the vendors signed a Marketing Agreement with a dual agent, where the dual agent was to receive any sale proceeds exceeding $825,000.00.

11. Ms. Amanoh subsequently received the purchase funds. On the direction of the dual agent a trust cheque was issued from her account to the purchasing lawyer, in the amount of $250,857.95. The money was forwarded on Ms. Amanoh's understanding that the dual agent of the purchasers was closing a different transaction and the money needed to be sent over immediately.

12. Ms. Amanoh subsequently received the remaining cash shortfall. However, that cash shortfall was in fact the mortgage proceeds that she had sent to the purchaser's lawyers, plus a small additional sum. The trust reconciliation statement prepared by Ms. Amanoh's office made no reference to the funds that had been returned to the purchaser's lawyer.

13. The purchaser subsequently defaulted on the mortgage, and the property was sold pursuant to a foreclosure in the amount of $200,000.00.

14. Despite numerous red flags in the transaction, Ms. Amanoh failed to recognize that the parties were engaged in fraudulent activities. Ms. Amanoh admitted that she unknowingly facilitated conduct that resulted in mortgage fraud by the purchasers and dual agent.

Finding on Citation

15. The Committee accepts the Agreed Statement pursuant to section 60 of the *Legal Profession Act* and so the Committee finds Ms. Amanoh guilty of conduct deserving of sanction of the Citation.

Sanction and Costs

16. This is not the first citation related to a real estate transaction for which Ms. Amanoh has been brought before a hearing committee. In June of 2020 she was found guilty of four citations relating to real estate transactions that occurred in 2016 and 2017. As a result, Ms. Amanoh was suspended for three months, ordered to be permanently restricted from carrying on the practice of real estate, and ordered to pay costs. In a prior hearing in November of 2010 Ms. Amanoh admitted to guilt to one citation of breaching an undertaking to another lawyer with respect to the discharge of mortgages. That hearing committee imposed a sanction of reprimand and ordered costs.

Authorities

17. LSA Counsel presented a number of cases relating to sanction. The first case was the aforementioned *Law Society of Alberta v. Amanoh,* 2020 ABLS 16*.* This decision resulted in Ms. Amanoh being permanently suspended from practicing real estate and she was ordered to pay costs of $33,000.00. The events took place over a period of approximately 16 months in 2015 and 2016, after the matter at issue in this Hearing. In this previous decision, the hearing committee found that Ms. Amanoh had failed to consciously and diligently represent the best interests of her client, and had acted in conflict of interest in relation to her client.

18. In *Law Society of Alberta v. Fletcher,* 2017 ABLS 12, Fletcher was found guilty of four citations related to unknowingly engaging in conduct that enabled his client to carry out an improper purpose of a mortgage fraud scheme. While the hearing committee noted that he was not complicit in the mortgage fraud scheme, he was found to have failed to exercise the level of care and diligence of a prudent lawyer. As a result, Mr. Fletcher was suspended for 30 days and ordered to pay costs of $12,083.17.

19. The case of *Law Society of Alberta v. Laurich,* 2014 ABLS 41, Laurich was involved with three condominium syndications. These syndications involved a mortgage fraud scheme which impacted lenders who provided loans at inflated values.

20. Laurich admitted that he unwittingly engaged in conduct that enabled others to achieve an improper purpose and failed to serve his client, thereby committing conduct deserving of sanction. Laurich's conduct put numerous investors and his client at significant risk and facilitated the mortgage fraud scheme. In *Laurich*, the LSA argued that "a lawyer who was careless or inattentive may commit conduct that is deserving of sanction" by their participation in a fraudulent transaction. The LSA maintained that Laurich was extremely careless and inattentive, which included him swearing transactional affidavits that he ought to have known were false. The hearing committee found that while Laurich was not likely to be involved in such activity in the future, the amount of money at risk was very high (over $26,000,000.00). Laurich, although engaging unwittingly in inappropriate conduct, ought not to have worked on legal transactions that he did not understand, and failed to ask questions about or abdicate his responsibilities to others.

21. The hearing committee in *Laurich* concluded that Mr. Laurich be suspended for 5 months and pay costs of $46,851.00.

22. In *Law Society of Alberta v. Venkatraman,* 2013 ABLS 29, the member faced a number of allegations relating to the failure to follow client instructions and the failure to properly supervise a paralegal. In *Venkatraman*, a paralegal secretly became involved in a scheme to defraud lenders by fraudulent real estate transactions. In doing so, the paralegal opened files under a secret code and worked on them without Mr. Venkatraman's knowledge. Mr. Venkatraman also failed to maintain or apply the accounting rules to his trust accounts. The paralegal was subsequently charged with fraud and found guilty on sixteen accounts and sentenced to six years in prison. Mr. Venkatraman was never aware of the paralegal's schemes and fraud.

23. Following the discovery of the fraud, Mr. Venkatraman immediately addressed the issue. He self-reported himself and the firm and hired experts to analyze the paralegal's conduct. It was determined that the trust shortages equaled almost two million dollars. This shortfall was replaced by Mr. Venkatraman and the other lawyers in the firm, with the result that any losses were fully addressed. Mr. Venkatraman was suspended for a period of one month and ordered to pay costs of the proceedings in the amount of $10,481.00.

24. The *Law Society of Alberta v. Juneja,* 2014 ABLS 32 case was cited for the principle that the penalties imposed may be cumulative.

25. At paragraphs 49 to 50, the hearing committee in *Juneja* states:

> The error in CB's matter was relatively minor, though the conduct reflects poorly on the Bar and the administration of justice and deserves sanction.
>
> DC's case is much more serious. As the HC noted in its merits decision, DC's legal problems ballooned through AJ's lapses in representation. There was both a negative impact on DC's well-being and an increased risk to his liberty and dignity interests. Being charged with drinking and driving offences is stressful enough. Being charged under the Criminal Code[1] for failing to appear not once, but twice, on those offences merely because AJ failed to document or correctly remember steps taken on the files is something most members of the public would find beyond the pale. Also, DC was contacted by the police at his place of employment and told to come to the police station to turn himself in. Moreover, AJ's conduct heightened DC's risk of arrest and conviction. AJ did not develop the promised toxicology defence in a timely way. AJ did not tell DC in a timely way that he was liable to arrest for failing to appear. AJ did not provide an explanation to the Court for DC's non-attendances on two occasions. This misconduct occurred over a period of more than a year.

26. *Juneja* found that where there is overlapping misconduct a hearing committee ought to consider that the previous sanction may have already taken into account and may not necessarily have the same degree of importance in the subsequent sanctioning decision. The following passages from *Juneja* at paragraphs 41 to 46 provide insight:

> The HC does not agree that *Elgert* is authority that the sanction should be increased merely because the lawyer was previously sanctioned for overlapping misconduct. *Elgert* is authority for the proposition that in assessing an appropriate sanction for overlapping misconduct, the tribunal should be mindful that some considerations might already have been taken into account and may not necessarily have the same degree of (or any) importance in a subsequent sanctioning decision.
>
> For example, where a lawyer is sanctioned for practice management problems and the citations are split into multiple hearings, it might not be necessary to focus as closely on specific deterrence in a later hearing for similar misconduct committed during the same time frame. In contrast, general deterrence may

[1] *Criminal Code, RSC 1985, c C-46*

remain an important factor depending on the difference in the type and impact of the practice management misconduct.

While it is correct that the lawyer should not be punished twice for the same misconduct, this is not a punitive proceeding. Rather, the HC must consider all of the factors relevant to protecting the public interest. Some will have been satisfied through the prior conviction. In most cases, the purposes underlying the sanction in the later proceeding would not require assessing previous misconduct that occurred before or during the misconduct under consideration.

For example, where the question is whether the public interest has been protected through remediation, the HC has difficulty seeing the relevance of previous misconduct for which the lawyer has been sanctioned. Each sanction is intended to remediate the harm to the public interest and the reputation of the profession. Each hearing committee is free, within the bounds of reasonableness, to weigh the sanctioning factors and fashion an appropriate sanction. The sanction is often restorative. It would be unreasonable for a second hearing committee to seek to restore the impact on the profession's reputation arising from earlier misconduct or denounce misconduct where an earlier hearing committee has already done so.

However, the HC should not be taken as deciding that past overlapping conduct is never relevant. In *R v. Paquin*, (1989), 1989 CanLII 562 (QC CA), 70 CR (3d) 39 (Que CA), provided to the HC by AJ's counsel, the Court observes that in some circumstances a sentencing judge may consider subsequent convictions to assess the accused's character and prospects of rehabilitation. Though not cited by counsel, the HC is aware of similar case law in the disciplinary context. In *Law Society of Saskatchewan v. Merchant* (June 1, 2012), the committee stated:

> 17. …post-offence convictions, especially for similar offences, can be treated as an indicator of the offender's character and thus can be employed to negate any mitigating circumstances and displace any presumption that the offender might be a good candidate for a rehabilitative sentence. Indeed, this use of post-offence convictions has been approved by appellate courts, notwithstanding the rule that such convictions are not to be treated as a prior record or as an aggravating factor on sentence (see, for example, *R. v. Johnson*, [1989] B.C.J. No. 1542 (B.C.C.A.)).

Decision on Sanction

27. Counsel for Ms. Amanoh and LSA Counsel made a joint submission on sanction. They proposed that a two-week suspension, running from November 25 to December 9, 2022

would be appropriate. They also proposed that costs be capped at $7,500.00, payable over six months with payments commencing on March 15, 2023.

28. The Supreme Court of Canada, in *R. v. Anthony Cook,* 2016 SCC 43 has established that a public interest test is the appropriate test when determining whether to deviate from a joint submission on sentencing. That test requires a hearing committee to consider whether the joint submission on sanction would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

29. After reviewing and considering the authorities and the joint submission on sanction, the Committee determined that it would accept the sanction proposed.

Costs

30. An Estimated Statement of Costs in the amount of $12,537.00 was presented at the Hearing. The parties jointly proposed that Ms. Amanoh pay $7,500.00 in costs. The Committee accepted this proposal.

31. The parties also proposed to set out a payment plan for the costs and the Committee accepted the plan. Costs are payable by way of six monthly payments of $1,250.00 per month, commencing on March 15, 2023 and up to and including August 15, 2023.

Concluding Matters

32. Ms. Amanoh was ordered to serve a two-week suspension from November 25 to December 9, 2022 and pay costs of $7,500.00 pursuant to a payment plan.

33. A notice to the profession was ordered by the Committee.

34. No referral to the Attorney General was ordered.

35. 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)).

Dated March 24, 2023

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Walter Pavlic, K.C.

Ryan Anderson, K.C.

Edith Kloberdanz