



DISCIPLINE CASE *DIGEST*

Case 17-06

Member:	John Loring Patrick Sinclair
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 7, 1965
Particulars of Charges:	Professional Misconduct (3 Charges): <ul style="list-style-type: none">▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust condition]▪ Breach of Rule 7.2-5 of the <i>Code</i> [duty to lawyers – failure to respond to communications]▪ Breach of Rule 7.2-1 of the <i>Code</i> [duty to lawyers – failure to be civil, courteous and act in good faith]
Plea:	Guilty
Date of Hearing:	October 4, 2017
Panel:	<ul style="list-style-type: none">▪ Catherine Finnbogason (Chair)▪ James Shaw▪ Marston Grindey (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Date of Decision:	Oral Decision: October 4, 2017
Disposition:	<ul style="list-style-type: none">▪ Suspension (15 days commencing November 23, 2017)▪ Costs of \$3,500.00

Duty to Lawyers / Breach of Trust Condition

Facts

Mr. Sinclair acted for the purchasers of real property and for their mortgage lender in a transaction that closed on September 1, 2015. Mr. Sinclair accepted trust conditions from the vendors' lawyer requiring him to forthwith register the transfer documents, to forthwith remedy any defects in registration documents required of the purchasers upon being advised of such defects and to requisition mortgage proceeds upon completion of registrations. It was also a trust condition that upon acceptance of the trust conditions, Mr. Sinclair was satisfied that all lender conditions sufficient to advance mortgage funds, other than registration, had been met. In breach of the trust conditions, upon acceptance, Mr. Sinclair had not satisfied himself that all of the

lender's requirements for advance of funds had been satisfied and, in fact, was aware that he had by then taken no steps to satisfy some of those conditions. In further breach of the trust conditions, Mr. Sinclair did not act forthwith to register the transfer documents. When defects in documents he had prepared were brought to his attention by The Property Registry, he did not forthwith remedy those defects, further delaying registration. Mr. Sinclair did not requisition mortgage proceeds until 12 days after registrations were finally completed.

Five weeks after closing, the vendors' lawyer sent correspondence to Mr. Sinclair inquiring as to the status of registrations, expressing concern about the delay in the transfer and payment of the balance of the purchase price out of the expected mortgage proceeds. Follow up correspondence was sent on four occasions over the next four days. When Mr. Sinclair finally responded on the fifth day, he advised that title was expected to issue that day and that he would requisition mortgage funds on the next business day. Title did issue on that day, but Mr. Sinclair did not requisition the mortgage funds for a further eight days as the lender's requirements still had to be met. In the meantime Mr. Sinclair, however, gave the vendors' lawyer assurances that he would pick up the mortgage proceeds and pay over the balance of the purchase price on a specific day, but he did not do so. Despite his assurances to the opposing lawyer, on the two occasions when Mr. Sinclair said that he would requisition mortgage funds, he was not in a position to do so, having not completed the lender's requirements.

Plea

Mr. Sinclair entered a guilty plea to the 3 charges of professional misconduct.

Decision and Comments

The Panel accepted a joint recommendation that Mr. Sinclair be suspended for 15 days and that he pay costs of the investigation and prosecution of his misconduct.

The Panel noted that the vendors were forced to carry two mortgages for a period of time with a higher than normal rate of interest. Although the financial part was resolved, there was anxiety to the vendors and to their counsel. There was an element of aggravation in the failure to be candid with the vendors' lawyer.

The Panel took note of Mr. Sinclair's extensive discipline history and observed that he had previously been subjected to all manner of dispositions including reprimands, fines, supervision, remedial education and most recently, a three month suspension. That suspension, it was observed, was ordered after the events giving rise to the current manner. There was comfort that under conditions imposed by the previous Panel, Mr. Sinclair will be required to permanently practise under conditions and under supervision.

Penalty

As jointly recommended, the Panel ordered that Mr. Sinclair be suspended for a period of 15 days to commence immediately upon the expiry of his current term of supervision. The Panel ordered that Mr. Sinclair pay the sum of \$3,500.00 to the Law Society towards costs associated with the investigation and prosecution of this matter.