



DISCIPLINE CASE *DIGEST*

Case 17-10

Member:	Neil William Sullivan
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1996
Particulars of Charges:	Professional Misconduct (2 Charges): <ul style="list-style-type: none">▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity]▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]
Plea:	Not Guilty
Dates of Hearing:	January 22, 23, 24, 25 & 26, 2018, February 8, 2018 and October 18, 2018
Panel:	<ul style="list-style-type: none">▪ Richard J. Scott (Chair)▪ Wendy Stewart▪ Marston Grindey (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member (January 22, 23, 24, 25 & 26, 2018 and February 8, 2018)▪ Saul Simmonds for the Member (October 18, 2018 – Disposition Hearing)
Date of Decision(s):	Written Reasons for Decision: March 26, 2018 Oral Decision: October 18, 2018 (Disposition Hearing) Written Reasons for Decision: November 14, 2018 (Disposition Hearing)
Disposition:	<ul style="list-style-type: none">▪ Fine of \$10,000.00▪ Costs of \$30,000.00▪ Order that Mr. Sullivan's Practising Certificate be cancelled and a new one issued subject to the condition that within three months of it becoming available Mr. Sullivan successfully complete a course of study in real estate law, practice and ethics to be developed and administered by the Education Department of The Law Society of Manitoba at Mr. Sullivan's expense
Appeal:	Notice of Appeal filed in the Court of Appeal on December 14, 2018

Integrity / Quality of Service

Facts

Mr. Sullivan acted for the purchasers of real property in Stonewall, Manitoba and for their mortgage lender, a chartered bank. The purchasers, AB and BB agreed to buy and the vendor to sell the two of three lots described in a single certificate of title on which a house was situated. The third vacant lot was excluded from the sale. An error in the listing agreement, carried forward into the offer to purchase, described the lots to be purchased as Lots 16 and 17 and the vacant lot as Lot 18. In fact, the lots purchased on which the house was situated were Lots 17 and 18 and the vacant lot that was not purchased was Lot 16. This description error was carried forward into the transfer of land delivered to Mr. Sullivan by the vendor's lawyer. The parties, however, were always in agreement as to what was actually bought and sold.

The mortgage, declaration as to possession, order to pay and acknowledgement of receipt of documents prepared in Mr. Sullivan's office described the mortgaged property as all three lots. Mr. Sullivan had not compared the legal description in the documents he prepared or in the building location certificate with which he had been provided to the status of title, offer to purchase and transfer of land. Mr. Sullivan did not investigate whether the title from which the transfer was made encompassed all but only the land agreed to be purchased, as required of him when acting for the mortgagee under the Western Law Societies Conveyancing Protocol. Upon requisitioning funds and after closing, Mr. Sullivan reported to the bank that he had complied with the Protocol.

Mr. Sullivan submitted the transfer of land for Lots 16 and 17 together with a mortgage of Lots 16, 17 and 18 to The Property Registry. A Land Titles Document Examiner noted the discrepancy and contacted the member's paralegal. Thereafter, on May 29, 2016, Mr. Sullivan signed and caused to be submitted a correction letter to add Lot 18 to the transfer. The transfer and mortgage of three lots were then registered.

Soon after the registrations were complete, AB and BB received their property tax bill and noted that they were being charged taxes for all three lots. Upon inquiry of the tax authority, they were told that all three lots of the original title were now registered in their names. On June 10, 2016, they contacted Mr. Sullivan seeking his help to rectify this. In so doing, they explained that they had purchased only the house lots and that they had not purchased the vacant lot, for which the seller had wanted an additional \$90,000.00.

Mr. Sullivan responded by telling AB and BB that "this sounds like good news" and a week later, he incorrectly advised them that it was impossible for the vendor to sell just two lots since all three were on the same title. Mr. Sullivan advised them to take down the "For Sale" sign the vendor had placed on the vacant lot and if they (referring to the vendor and family) tried to put it up again to tell them they were trespassing. He said that "it sounds like they're just a little off their rocker."

On July 1, 2016, AB and BB asked if Mr. Sullivan would notify the vendor's lawyer of the transfer error to which he responded that it was best not to involve their lawyer. He advised his clients to treat the extra lot as their own.

In late October 2016, the vendor went to pay her taxes on the vacant lot and discovered that it was not registered in her name. She contacted her lawyer who investigated and then wrote to Mr. Sullivan advising that the correction letter had been unauthorized and requiring that Mr. Sullivan fix the problem. Mr. Sullivan did not, at this point, advise his lender client that he had registered their security over more land than had been purchased.

Even though his paralegal had asked The Property Registry for directions about how to fix the error, which required a transfer back of the vacant lot and a discharge of that lot from the mortgage, Mr. Sullivan took the position with the vendor's lawyer, contrary to his client's position, that "the better view is that it was the three lot civic address for which they bargained."

Ultimately, with the assistance of Mr. Sullivan's insurer and the cooperation of the lender, the vacant lot which by then had been correctly identified, was transferred back to the vendor.

Plea

Mr. Sullivan entered a not guilty plea to the two charges of professional misconduct.

Decision and Comments

The Panel found Mr. Sullivan guilty of both charges of professional misconduct, except for certain of the particulars. The Panel rejected Mr. Sullivan's assertions that his failures were minor or of little consequence. They found that his advice to his purchaser clients when the error was discovered, demonstrated a careless and cavalier attitude and that his failure to follow the clear directions in the Protocol was unacceptable and not a mere technical violation. As to quality of service, the Panel noted that Mr. Sullivan failed to recognize and only belatedly addressed the potential conflict between his purchaser clients and lender client and that allowing the error to continue and advising his purchaser clients to keep quiet about it and use the vacant lot as their own demonstrated a lack of diligence, in addition to being unethical.

At the disposition hearing, Mr. Sullivan presented evidence that he had reached out to his purchaser clients and had apologized to them and to the vendor's lawyer. He advised as to changes he had made in his practice, and as to advice he had sought from a senior real estate lawyer. A representative of the lender client and the realtors involved in the transaction expressed support for Mr. Sullivan, as did others business associates. A risk assessment by a psychologist indicated that he had learned from the process and was low risk to re-offend. Mr. Sullivan acknowledged that his conduct had been wrong and apologized for it and expressed a willingness to continue to consult with more senior counsel and to participate in a course of education.

Penalty

Counsel for the Society and for Mr. Sullivan made a joint recommendation as to disposition. The Panel accepted this joint recommendation. In so doing, they stated that there is a very high bar to be crossed before departing from a joint recommendation. They consider the purposes of such a recommendation in the context of the principle applicable to dispositions in disciplinary cases and determined that there was no reason to depart from the joint recommendation. The Panel took into account the letters of reference, the psychologist's assessment and that Mr. Sullivan had expressed regret for his behavior, had apologized to his clients and took into account, also, the significant steps he has taken to ensure that history does not repeat itself.

In the result, the Panel ordered that Mr. Sullivan:

- a. Pay a fine of \$10,000.00;
- b. Pay costs in the amount of \$30,000.00 as a contribution to the investigation and prosecution of this matter; and that

- c. Mr. Sullivan's Practising Certificate be cancelled and a new one issued subject to the condition that within three months of it becoming available Mr. Sullivan successfully complete a course of study in real estate law, practice and ethics to be developed and administered by the Education Department of The Law Society of Manitoba at Mr. Sullivan's expense.

Appeal

Mr. Sullivan has appealed both the findings of professional misconduct and the penalty to the Manitoba Court of Appeal. A Notice of Appeal was filed in the Court of Appeal on December 14, 2018.