

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

March 2010

FERNANDA HO

Commissioned: June 15, 1989

The Member was charged with a breach of Rule 11.04 of the Rules of the Society and Section 28(2) of the *Notaries Act* by failing to advise a party she was dealing with to obtain independent legal advice under circumstances when it would have been prudent to do so, failing to have a party to an agreement execute a conflict letter in accordance with Rule 11.04 and acting for parties on a marriage agreement or contract in circumstances when she knew the parties were in the process of separating.

The Member and the Society entered into an Agreed statement of Facts and Admission with respect to the charge.

Agreed Facts:

1. In January 2007 the Member acted for TS and FS in the drawing and execution of an agreement between them that related to a property that they jointly owned. Both TS and FS were established clients of the member.
2. The Member took instructions from her clients and prepared an agreement that purported to require FS to make mortgage payments, failing which he would transfer his interest in the property to TS and relinquish all right, title and interest in it.
3. The Member did not advise FS to obtain independent legal advice with respect to the agreement and FS did not obtain such advice. The Member did not have TS and FS sign a conflict letter confirming that the Member was to act for both parties.
4. The Member prepared the agreement and a Form A Transfer in favour of TS. TS and FS both attended her office to sign the Agreement and FS signed the Form A Transfer which the Member was instructed to hold in trust until receiving evidence that FS failed to make the mortgage payments as agreed. If such evidence was provided to the Member, she was allegedly instructed to register the Form A Transfer.
5. In June of 2008, TS provided the Member with a bank mortgage printout showing that two mortgage payments were in arrears. Without notice to FS, the Member filed the Form A Transfer for registration on June 10, 2008 effectively transferring the property from FS and TS to TS alone.

Admission:

The Member admits that she did not advise FS to obtain independent legal advice with respect to the agreement even though when he came in to sign the agreement with TS, FS showed some reluctance in signing the agreement and the Form A Transfer.

The Member further admits that she did not have her clients sign a conflict letter in accordance with Rule 11 of the Society's rules. She admits that she knew that TS and FS were in the process of separating and that she did not notify FS before registering the Form A Transfer of his interest in the property to TS.

Findings of the Inquiry:

The Inquiry panel met to review the Agreed Facts and Admission and found that the Member did breach the *Act* and the Society's Rule 11.04 as charged.

The panel was most concerned with the fact that the Member undertook preparation of this unusual agreement and exercised what was less than her described usual care because these parties were known to her and she felt she was doing them a favour. The panel feels a clear message has to be sent to both the public and the profession that these circumstances require no less care and attention to the Rules.

Penalty:

The Society and the Member agreed upon a recommendation for penalty. The recommendation was considered by the Inquiry Panel and accepted.

The Member has no discipline history. It appears that the agreement itself has not created an ongoing problem for the parties. Under these circumstances, the panel is content that the deficiencies in the Member's practice have been brought home to the member and are unlikely to be repeated.

The Inquiry Panel accepts the Member's Admission and recommends the agreed penalty of a reprimand and a fine of \$1,800 inclusive of costs.

- a. A reprimand be placed in the member's file;
- b. The member pay a fine of \$1,800 inclusive of costs.

Board of Directors:

The Report of the Inquiry Panel was reviewed and considered by the Board of Directors who accepted the Report and the recommended penalty.