

## DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

October 2008

**SWINDERPAL (SWEENY) SARAO**

Commissioned: May 2006

A Notice of Inquiry was served on the member on or about August 5, 2008 alleging breaches of the following provisions of the Society's governing documents:

- a. Section 28 of the *Notaries Act*;
- b. Rule 10 of the Rules of The Society of Notaries Public of British Columbia;

### Introduction:

The inquiry was initiated when a lawyer lodged a complaint alleging that the member breached an undertaking imposed by him with respect to a mortgage transaction.

The Society and the Member entered into an agreed statement of fact, admission and proposed penalty as follows:

### Agreed Facts:

1. The member acted for "P" with respect to a refinance of his property in October 2007. Lawyer "VS" acted for the private lender.
2. By letter dated October 31, 2007, "VS" advised the member that the net mortgage proceeds would be provided to her on certain undertakings including to "attend to payment of the outstanding property taxes/utilities to the City of Surrey and provide our office with proof of same".
3. The member did not conduct a tax search of the property.
4. When the member met with her client to sign documents, her client informed her that property taxes were paid by the existing mortgage lender. The member confirmed that with the existing lender and obtained a copy of the tax payment receipt provided to her by her clients. As well, the existing lender's payout statement provided for a credit balance in the tax account.
5. The member returned documents to VS with a copy of the tax receipt as provided by her client, although VS denies receiving such a receipt. In her letter to VS dated November 8, 2007, the member stated "I hereby accept your undertaking

- posed[*sic*] on me in your letter of October 31, 2007”. By letter dated November 14, 2007, VS sent the member the net mortgage proceeds and stated “the enclosed funds are forwarded to you on your undertaking contained in our letter to you dated October 31, 2007”.
6. Unknown to the member, her client’s utility taxes for 2007 had not been paid. Between January and April 2008, VS contacted the member several times asking that the unpaid taxes be paid. On each occasion, the member merely faxed back a note saying that they had been paid and finally re-faxed the tax receipt that had been given to her by her client. On April 23, 2008, VS emailed the member advising that the tax receipt was only a receipt for the Home Owner Grant application and attaching a tax search showing that there were still outstanding taxes for 2007 (the utility assessment having been converted to taxes on January 1, 2008).
  7. In response to the evidence received, the member advised VS that she would take care of it as soon as possible. The member then contacted her client and the client provided the City with a post-dated cheque dated May 27, 2008 in payment of the outstanding 2007 taxes.

Agreed Admission:

1. The member admits that she breached her undertaking by failing to pay the taxes and utilities.
2. The member admits that if she had conducted a tax search at the beginning of the file, she would have known that there were outstanding utility taxes.
3. The member admits that when she realized that there were in fact outstanding taxes, she should have complied with her undertaking to pay them immediately rather than waiting until her client paid them.
4. The member admits that an undertaking is a solemn promise to do something personally and that she never did comply with the undertaking imposed on her in this matter, but rather put the obligation on to her client, thereby breaching her undertaking and putting VS to the inconvenience and trouble of having to wait for confirmation of payment of taxes.

Penalty:

**The member is a relatively new member and has no discipline history. Without minimizing the seriousness of the charge, the Society accepts that she honestly**

**believed that the taxes were paid in the matter. The member co-operated completely with the Society and made her admission readily.**

Accordingly, the Board accepted the proposed penalty:

- A reprimand be placed in the member's file;
- The member pay a fine of \$500.