

# DISCIPLINE DIGEST

## The Society of Notaries Public of British Columbia

May 2018

Patricia Thomson  
Commissioned: December 1992

Hearing Date: January 23, 2018

Panel: Patricia Wright (chair), Marco Castro, Hassan El Masri, Linda Manning, Daryl McLane

### **Background**

1. This was a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* of the report of the inquiry to determine whether the member is guilty of any of the conduct described in s. 28(1) as professional misconduct or a breach of a provision of the *Act* or a regulation or rule made under it or of a bylaw of the society, or conduct that in the opinion of the directors is contrary to the best interests of the public or the profession or tends to harm the standing of the notarial profession.
2. The inquiry into this matter was conducted March 23, 2017 with a report issued on October 3, 2017. The member attended the hearing of the Directors on review and the member and the Society made submissions to the panel regarding the Inquiry Report.
3. Counsel was present to assist the panel members at the hearing and the directors on review and in writing this report.

### **The Notice of Inquiry**

4. The Notice of Inquiry received by the member alleged the following:

*Between July and August 2016 in her professional relationship with her clients, she received confidential communications from the clients regarding their interest in purchasing a property, she did not disclose her ongoing personal interest in purchasing the same property and she used the information received from the clients for her own benefit to purchase the property without advising her clients*

*Contrary to Principles 1-P1, 2-P2, 6-P1, 6-P2 and 7-P1 of the Society's Principles for Ethical and Professional Conduct, thereby constituting professional misconduct as set out in s. 28(1)(c) of the Notaries Act, [RSBS 1996] Chapter 334*

*And that this conduct is contrary to the best interest of the public and harms the standing of the notarial profession.*

### **Member's History**

5. The member was commissioned on December 1992 and has had no prior discipline history.

### **The Joint Submission on Facts, Admission, and Proposed Penalty**

6. A Joint Submission on Facts, Admission, and Proposed Penalty (the "Joint Submission") was agreed to by the parties prior to the inquiry and was provided to the directors for consideration, along with the inquiry report.
7. The directors accepted the facts, admissions and proposed penalty contained therein.
8. On review, the directors accept the findings of the inquiry panel and adopt the facts and admissions contained in the Joint Submission, which are set out therein.

### **The Facts**

9. In June of 2016 F.N and K.N (**the “clients”**) became aware that a property they were interested in was available for purchase, although it was not publicly listed for sale.
10. F.N. contacted R.A., an individual who he understood was the son of the Property owner and was handling the negotiations on behalf of his mother.
11. On June 30, 2016, K.N. met with R.A. on the Property and engaged in negotiations for the purchase of the Property. No agreement was finalized that time.
12. In early July, 2016, K.N. spoke to the Member by telephone. The Member had acted for the clients regarding a number of matters over several years. During the conversation;
  - the Member spoke to K.N. in her capacity as her Notary and K.N. believed that the contents of the discussion were confidential and privileged;
  - K.N. advised the Member that she and F.N. were in negotiations to purchase the Property;
  - the Member advised K.N. and that she had attempted to purchase the Property previously; and,
  - K.N. and the Member discussed matters relating to the Property such as its location, details relating to the Property and the quality of the well water in the area.
13. Following the telephone call between the Member and K.N.;
  - K.N. did not believe that the Member had an ongoing interest in purchasing the property or a present intention to purchase the property; and,
  - the Member believed that K.N. was aware that she had an ongoing interest in purchasing the property and that she intended to negotiate the purchase of the property.
14. During this time, the clients made an offer to R. A. to purchase the Property.

15. Approximately 2 weeks later, R. A. contacted F. N. and explained that the owner had accepted a higher offer for the sale of the Property.
16. On August 17, 2016, the owner accepted an offer made by the member for the sale of the Property.
17. On August 2016, the sale of the Property to the member was completed.

**The parties agree to the following admissions:**

18. The member admits that her failure to clearly and adequately advise the clients that she had an ongoing interest in purchasing the Property and intended to pursue the purchase of the Property created a circumstance which could reasonably give rise to a conflict of interest or duty to the clients contrary to Principle 7-P1 of the Society's Principles for Ethical and Professional Conduct; and,

That the conduct is in breach of Section 28 (1)(c), is contrary to the best interests of the public and the notarial profession and is professional misconduct.

**Decision on Liability**

19. The directors are satisfied that the member accepts responsibility for not being careful and clear enough in her communications with her client about her interest in the property and accepts that there was no intentional deception on her part.
20. The directors also appreciate that the member has no prior discipline history despite being a member for 25 years. The member's misconduct arose from a lack of care and diligence in her communication with her client.
21. The directors agree that the penalty proposed in the Agreed Statement is reasonable and appropriate in the circumstances and order that the penalty be imposed:
  - a. A reprimand be placed in the member's record;
  - b. The member pay a fine in the amount of \$2,500.00;
  - c. The member pay a contribution to costs in the amount of \$1,000.00.