



The Law Society of Saskatchewan

RANDY KIM KATZMAN

December 16, 2013

Law Society of Saskatchewan v. Katzman, 2014 SKLSS 1

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF RANDY KIM KATZMAN,
A LAWYER OF SASKATOON, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

Hearing Committee: Darcia R. Schirr, Q.C. (Chair), Robert Heinrichs and Thomas Campbell
Counsel for Member: Nicholas Stooshinoff
Counsel for Law Society of Saskatchewan: Timothy Huber

1. This hearing was held by conference call on December 16, 2013. There was no objection by counsel to the composition of the Hearing Committee or to dealing with the hearing by conference call.
2. By Formal Complaint dated March 1, 2012, alleges one count which is that the Member:
 - a. Did fail to serve his client, the Royal Bank of Canada, in a conscientious, diligent and efficient manner in relation to the M. Mortgage file.
3. The hearing proceeded on the basis of an Agreed Statement of Facts and Admissions which was marked as Exhibit P-2. Paragraph 2 of the Agreed Statement of Facts indicated the Member intended to enter a guilty plea. Through his counsel, the Member entered the guilty plea at the hearing.
4. The Hearing Committee accepts the Member's guilty plea and finds that Mr. Katzman is guilty of conduct unbecoming as outlined in the Formal Complaint and as described in the Agreed Statement of Facts. The Agreed Statement of Facts should be considered as part of this decision. Further, the Agreed Statement of Facts is available on the Law Society website.
5. Based on the Agreed Statement of Facts and submissions, the essential facts are these. The Member received mortgage instructions from the Royal Bank of Canada on September 9, 2008. The mortgage instructions related to a home under construction with the possession date

being December 27, 2008. The value of the mortgage was \$278,417.67. On December 23, 2008, the Member received the mortgage instructions along with a cheque for the mortgage amount. On December 24, 2008, the Member released the mortgage funds to the lawyer for the vendor/builder. At the time the Member deposited the funds into his trust account and at the time the mortgage funds were paid out, the Member had not complied with the instructions of the Bank. The details are set out at paragraph 8 of the Agreed Statement of Facts:

- a. The Bank's instructions required a formal or certified tax search confirming the absence of rights or claims that would take priority over the Bank's mortgage. The Member completed an informal tax search as a certificate could not be completed until several months after possession. In addition the purchaser owned the lot before construction commenced;
- b. No survey or title insurance had been secured, nor had it been ordered until January 2009. The purchaser did however own the lot before construction;
- c. The home was initially uninsured. Fire insurance was not in place until December 30, 2008, 3 days after possession;
- d. The required protection of the mortgagee by 'loss payable' designation was initially absent. It was placed 3 days after possession;

6. Further and although less serious, the Member failed to provide a final report to the Royal Bank until August 31, 2009 despite two written requests from the Bank on May 6, 2009 and June 8, 2009. On July 29, 2009, the Royal Bank filed a complaint with the Law Society. A month later, the Member produced the final report to the Bank. In responding to the Law Society complaint, the Member advised that a final report could not be completed until additional documentation was in hand and specifically, the surveyor's certificate. However, the Member never provided that simple explanation to the Bank.

7. In his submissions, counsel for the Member indicated that the Member was away from the office for two weeks as of December 20, 2008, but he left detailed instructions with his staff. Having said this, the Member indicated that he accepted full responsibility for failure to properly manage and follow up on the matter. Further and by way of explanation, paragraph 11 of the Agreed Statement of Facts indicates that at the time of the transaction, the Member was dealing with "... an enormous increase in the volume of work without an increase in able and trained assistants working in the law firm". The Member's counsel properly recognized this explanation was not a justification for the dilatory practice.

8. Counsel presented the Hearing Committee with a joint submission suggesting that a reprimand and payment of costs in the amount of \$2,075.00 was appropriate. The Hearing Committee accepts the joint submission and finds that it is fit, reasonable and not contrary to the public interest. The Member has practiced for 34 years. The Hearing Committee was advised that this is the Member's first sanction. A penalty at the low end of the scale is appropriate and meets the purposes of sanctions in discipline cases with the primary ones being specific and general deterrence.

9. The Committee therefore orders:

- a. Randy Kim Katzman shall receive a reprimand;
- b. Randy Kim Katzman shall pay costs fixed in the amount of \$2,075.00. Such costs shall be paid on or before February 28, 2014.

DATED at Regina, Saskatchewan, this 15th day of January, 2014.

"Darcia G. Schirr, Q.C." (Chair)

DATED at Swift Current, Saskatchewan, this 14th day of January, 2014.

"Robert R. Heinrichs"

DATED at Yorkton, Saskatchewan, this 14th day of January, 2014.

"Thomas Campbell"

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated March 1, 2012 alleging that he:

- a. **Did fail to serve his client, the Royal Bank of Canada, in a conscientious, diligent and efficient manner in relation to the M. mortgage file.**

JURISDICTION

10. Randy Kim Katzman (hereinafter "the Member") is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (hereinafter the "Act") as well as the *Rules of the Law Society of Saskatchewan* (the "Rules"). Attached at **Tab 1** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's practicing status.

11. The Member is currently the subject of a Formal Complaint dated March 1, 2012. The Formal Complaint is comprised of the single allegation noted above. The original Formal Complaint was served upon the Member on March 1, 2012. Attached at **Tab 2** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to enter a guilty plea to the allegation of conduct unbecoming set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

12. This matter came to the attention of the Law Society of Saskatchewan by way of a complaint from the Royal Bank of Canada (the "Bank"). This triggered a Professional Standards Committee review of the Member's practice. The Practice Advisor generated a report setting out

his concerns for the Chair of the Professional Standards Committee who then referred the M. matter to the Discipline Committee.

PARTICULARS OF CONDUCT

13. The original Professional Standards review arose due to a complaint by the Bank in relation to a late Final Report on the M. file where the Member had represented both the Bank and M. in a mortgage transaction.

14. The Member received mortgage instructions on or about September 9, 2008. The transaction related to a residential home that was under construction at the time with a possession date of December 27, 2008. The value of the mortgage on the property was \$278,417.67. This was to be a first mortgage.

15. The Member received specific mortgage instructions from the Bank attached at **Tab 3** along with a cheque for the mortgage amount. The specific mortgage instructions incorporated general mortgage instructions attached at **Tab 4**. These instructions have the effect of imposing a trust obligation on the Member vis-à-vis the Bank. Included in the instructions were conditions imposed upon when the Member could deposit the funds into his trust account and release the funds to the vendor/builder.

16. On December 23, 2008, the Member deposited the mortgage funds into his trust account. The following day he released the funds to the lawyer for the vendor/builder. Possession on the property in question was December 27, 2008.

17. At the time of the deposit of the funds into trust and his subsequent payout to the vendor/builder, the Member had not complied with the instructions of the Bank regarding the deposit and release of the funds and was in breach of his trust obligations to the Bank as follows:

- a. The Bank's instructions required a formal or certified tax search confirming the absence of rights or claims that would take priority over the Bank's mortgage. The Member completed an informal tax search as a certificate could not be completed until several months after possession. In addition the purchaser owned the lot before construction commenced;
- b. No survey or title insurance had been secured, nor had it been ordered until January 2009. The purchaser did however own the lot before construction;
- c. The home was initially uninsured. Fire insurance was not in place until December 30, 2008, 3 days after possession;
- d. The required protection of the mortgagee by "loss payable" designation was initially absent. It was placed 3 days after possession.

18. The Member also failed to file the Final Report in relation to the mortgage transaction with the Bank within a reasonable time. The Bank provided written requests to the Member for the Final Report on May 6, 2009 and June 8, 2009 [**Tab 5**]. On July 29, 2009 the Bank filed a complaint with the Law Society [**Tab 6**]. The Final Report was produced by the Member on August 31, 2009. The Member wrote to the Law Society on September 1, 2009 to advise that the Final Report had been completed and to acknowledge that the report had not been forwarded to

the Bank sooner due to a lack of a survey certificate and also due to a lack of follow up with the clients who had promised to provide that survey certificate.

19. The final report could not be completed in any event until the additional documentation was obtained. The notes on the file indicate that the member left instructions for his staff in writing on January 20th, 2009 to obtain “survey, fire ins. and tax cert. and then report to the bank”. This did not occur. Thus while the member left instructions for his staff on the file to ensure that the report would be submitted on a timely basis, he neglected to follow up with his staff and accepts responsibility for the errors and failures of his staff on this obligation.

20. At the time of this incident the member was dealing with an enormous increase in the volume of work without an increase in able and trained assistants working in the law firm.

21. When the closing occurred in relation to this file the Member was out of the country on vacation. Nevertheless the Member accepts full responsibility for the errors and failures of his staff that occurred on the file at the time of closing.

22. The quality of service provided by the Member in relation to the M file and associated mortgage falls below that which would be expected of a competent lawyer in a like situation.

PRIOR HISTORY

23. The Member has no prior findings of conduct unbecoming.