



Bob Aaron bob@aaron.ca

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Lawyer disbarred for role in mortgage scheme

As part of its ongoing efforts to combat mortgage fraud, the Law Society of Upper Canada has disbarred Edwin Wayne Adler, 65, of Hamilton, for his role in a scheme to obtain mortgage financing based on inflated purchase prices of a dozen Hamilton properties.

Last July, a Law Society hearing panel found Adler guilty of professional misconduct for participating in a "dishonest, fraudulent, criminal or illegal" scheme to obtain mortgage financing in 1998 and 1999.

The properties are on E. 8th St., E. 15th St., E. 21st St., E. 23rd St., E. 31st St., Robert St., Wellington St., Maplewood Ave., Spadina Ave., Ottawa St. S., and Crockett Ave.

The pattern involved in each transaction was essentially the same. Each property was purchased by a straw purchaser from a legitimate, unsuspecting vendor at market value. It was then resold, or flipped, to a subsequent purchaser at price increases ranging from 53 per cent to 203 per cent, with an average jump of 67 per cent. No improvement was made to any property to justify the sudden price increase.

The resale typically took place within a very short period of time, ranging from a few days to eight months. Seven of the flip transactions occurred within a month of the original purchase.

The ultimate purchaser would always arrange a high-ratio mortgage representing between 80 and 95 per cent of the artificial purchase price.

The straw purchaser, or flipper, and the ultimate purchaser, or "flippee," entered into an agreement reducing the price by way of some type of rebate or credit, but the rebate agreement and the true underlying net price were never communicated to the lender.

If the lender in each case had been aware of the kickback, it presumably would never have advanced a loan, which often exceeded the true value of the property. Here's how the scam worked on a property on Wellington St. N. On July 17, 1998, the property was sold at market value to a straw purchaser for \$58,500. Royal Bank provided 95 per cent financing.

Six weeks later, the straw purchaser "resold" the property to a confederate for \$89,500 an increase of 53 per cent. Again, Royal Bank provided new 95 per cent financing of \$88,213 including CMHC high ratio fees, and its prior mortgage was paid off.

The second purchaser never paid any money to the straw purchaser, and the bank handed over almost \$30,000 more than the \$58,500 the property was really worth.

The schemers took the \$30,000, and abandoned the property. After the mortgage went into default, the property was eventually sold by CMHC for \$26,000.

According to the Law Society panel decision, the evidence revealed that Torham Realty was involved in every transaction handled by Adler. The website of the Real Estate Council of Ontario this week indicated that Torham was no longer in business, and there is no record of a discipline decision against it or its principal.

In each case, Adler was the lawyer representing the vendor, purchaser and mortgage lender in the second, or resale, transaction. The Society panel found that he failed to disclose this to the lenders, failed to notify them of material information he was aware of, and failed to make inquiries and obtain explanations for the unusual and questionable aspects of the transactions.

The Society panel concluded that Adler provided the facade of supplying legal services to the lenders when in fact he either conveyed false information to them, or deliberately failed to communicate material facts, or both.

Adler did not appear at the hearing against him, and agreed to the underlying facts and penalty. "The member was not a dupe," the panel ruled, and ordered that he be disbarred.

The Adler case is only one of as many as 72 cases currently being handled by Law Society staff.

According to a recent Law Society report, each mortgage fraud investigation involves, on average, the cataloguing, copying, reviewing and analyzing of as many as 75 property deals.

A Law Society investigation of one lawyer in a mortgage fraud case is equivalent to a caseload of 20 non-mortgage fraud investigations.

Due to the volume and complexity of mortgage fraud investigations, the Society spent \$1.5 million in this area in each of 2003 and 2004, and \$2.5 million in 2005. This year, the budget has been increased by an additional \$300,000 to \$2.8 million.

Very few, if any, of the Society's mortgage fraud investigations lead to criminal charges against any of the parties involved. A confidentiality provision in the Law Society Act prevents the Society from sharing the fruits of its investigations with the police unless a court order has been obtained.

Police forces are inundated with mortgage fraud cases, and often lack the resources to investigate and prosecute them fully. As a result, this type of crime is a growth industry not only in Ontario but all across North America, and the individuals who perpetrate the frauds often disappear and escape justice.

In recent years, concerted efforts to combat the fraud epidemic are being taken by all the industry stakeholders lenders, the real estate community, the legal profession, and the mortgage industry but evidence of substantial success may still be a long way off.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. The office address is 10 King Street East, #1400, Toronto, Ontario M5C 1C3. Visit the column archives at <http://www.aaron.ca/starindex.htm>.

Law Society of Upper Canada v. Adler

IN THE MATTER OF the Law Society Act
AND IN THE MATTER OF Edwin Wayne Adler, respondent of
the City of Hamilton

[2005] L.S.D.D. No. 62
2005 ONLSHP 27
Docket: 2005-00051

Law Society of Upper Canada
Ontario
Hearing Panel
J. St. Lewis (Chair), A.A. Chahbar and M.L. Dickson,
Q.C.

Heard: Toronto, Ontario, July 27, 2005.

Decision: October 20, 2005.

Summary

Edwin Wayne Adler (1968, 65) of the City of Hamilton, was found guilty of professional misconduct for:

- between May 1998 and December 1999, participating in a dishonest, fraudulent, criminal or illegal scheme to obtain mortgage financing based on inflated purchase prices concerning 12 properties located in Hamilton.
- between May 1998 and December 1999, failing to serve his mortgagee clients in respect of the second/resale transactions respecting the 12 properties located in Hamilton by:
 - failing to disclose to them when he represented the vendor as well as the purchaser in these transactions;
 - failing to notify them of material and important information of which he was aware in these transactions; and
 - failing to make the necessary inquiries with respect to, and obtain explanations for, the unusual and/or questionable aspects and circumstances of these transactions.
- on or about July 1998, failing to serve his mortgagee client in respect of a purchase and sale transaction concerning one of the 12 properties located in Hamilton by:
 - failing to disclose it when he represented the vendor as well as the purchaser in this transaction;
 - failing to notify it of material and important information of which he was aware in this transaction; and
 - failing to make the necessary inquiries with respect to, and obtain explanations for, the unusual and/or questionable aspects and circumstances of this transaction.
- between December 1998 and February 1999, when acting for private lenders, failing to maintain a file for each charge, containing completed Forms 18A and 18B, in accordance with By-Law 18, made pursuant to the *Law Society Act*.
- between May 1998 and September 1999, acting for all the parties, namely the vendors, purchasers/mortgagors and the lenders/mortgagees, to several real estate transactions, where there was a conflicting interest:
 - without providing adequate disclosure to or obtaining the consent of his mortgagee clients; and
 - without advising all your clients that no information received in connection with these transactions could be treated as confidential vis- -vis the other parties.
- between May 1998 and December 1999, failing to disclose to his mortgagee clients his ongoing relationship with D.S., T. Realty, S.C., A.C. and a numbered Ontario company and recommend that they obtain independent representation.
- on or about August 1999, commissioning an affidavit, even though he was not present when the affidavit was signed.

The Hearing Panel ordered that:

- the Member is disbarred.

(Counsel for the Society, Naomi Overend/ Member and his Counsel not present)

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The member and the Society agreed both as to the facts and the penalty in this matter. Among the particulars of misconduct alleged against the member were: participation in a fraudulent scheme to obtain mortgage financing at an inflated price; failing to serve his mortgagee clients in the resale transactions that occurred with respect to each property involved; he acted for all of the parties, namely the vendors, purchasers/mortgagors and the lenders/mortgagees, in several real estate transactions where there was a conflicting interest, without providing adequate disclosure to, or obtaining the consent of, his mortgagee clients; and he commissioned an affidavit, even though he was not present when the affidavit was signed.

Thirteen transactions were at issue. They all involved essentially the same pattern. A legitimate vendor sold property to an interim purchaser/vendor who then "flipped" them to a subsequent purchaser. Several notable consistent characteristics of these transactions emerged:

1. the initial property was subject to a price inflation that ranged from 53% to 203%, with an average of 67%;
2. the sale of the property was often over a very short period of time, with seven transactions less than one month;
3. the mortgages were always high ratio;
4. subsequent to the establishment of the purchase price for the "flip", there was an amendment which resulted in a reduction that was never communicated to the lender;
5. the second purchaser never advanced any money;
6. the only money which flowed throughout the transaction was that provided by the lender;
7. the same realtor, was involved in every transaction;
8. the member acted for the interim purchaser and vendor in the purchase of the "flipped" property;
9. the only document that was consistently witnessed/commissioned was the Land Transfer Tax Affidavit. Other documents, including Declarations/Statutory Declarations, were most often not witnessed or commissioned.

Order of the Hearing Panel (J. St. Lewis (chair), A. Chahbar, M.L. Dickson, Q.C.): Professional misconduct was established with respect to all of the alleged particulars. The member was disbarred.

The member created the facade of providing legal services to the lender/client. In reality, either false information was provided or material facts were deliberately not communicated, or both. The behavior involved in this case included: a failure to properly advise clients; a failure to address the conflict of interest between the vendor, purchaser and lender when representing all the parties; and a demonstrated lack of competence and quality legal service.

In this case, the member was not a dupe. There were no extenuating circumstances put before the Panel. The member was disbarred.

Appearances:

Naomi Overend, Counsel for the applicant.

Neil R. Jones, Counsel for the respondent.

REASONS FOR DECISION

NATURE OF THE APPLICATION AND FINDING

This matter came before the Panel by way of an Agreed Statement of Facts. Neither the member nor his counsel was present. The Society informed the Panel that an agreement as to both the facts and penalty had been obtained. The following particulars were established and found to be professional misconduct on the part of the member, pursuant to s. 33(1) of the Law Society Act:

1. Between May 1998 and December 1999, he participated in a dishonest, fraudulent, criminal or illegal scheme to obtain mortgage financing based on inflated purchase prices concerning the properties described by municipal address in Schedule "A" [to the Notice of Application].
2. Between May 1998 and December 1999, he failed to serve his mortgagee clients in respect of the second/resale transactions respecting the properties listed in Schedule "A" by:
 - a. failing to disclose to them when he represented the vendor as well as the purchaser in these transactions;
 - b. failing to notify them of material and important information that he was aware of in these transactions; and
 - c. failing to make the necessary inquiries with respect to, and obtain explanations for, the unusual and/or questionable aspects and circumstances of these transactions.
3. On or about July 1998, he failed to serve his mortgagee client in respect of a purchase and sale transaction concerning 53 Wellington Street North, Hamilton, by:
 - a. failing to disclose to it when he represented the vendor as well as the purchaser in this transaction;
 - b. failing to notify it of material and important information that he was aware of in this transaction; and
 - c. failing to make the necessary inquiries with respect to, and obtain explanations for, the unusual and/or questionable aspects and circumstances of this transaction.
4. Between December 1998 and February 1999, when acting for private lenders, he failed to maintain a file for each charge, containing completed Forms 18A and 18B, in accordance with By-law 18, made pursuant to the Law Society Act.
5. Between May 1998 and September 1999, he acted for all the parties, namely the vendors, purchasers/mortgagors and the lenders/mortgagees, to several real estate transactions, where there was a conflicting interest:
 - a. without providing adequate disclosure to or obtaining the consent of his mortgagee clients; and
 - b. without advising all his clients that no information received in connection with these transactions could be treated as confidential vis-a-vis the other parties.
6. Between May 1998 and December 1999, he failed to disclose to his mortgagee clients his ongoing relationship with David Sohol, Torham Realty, Sonia Core, Angela Centurami, and 1186515 Ontario Ltd., and recommend that they obtain independent representation.
7. On or about August 1999, he commissioned an affidavit, even though he was not present when the affidavit was signed.

THE EVIDENCE

The Panel admitted into evidence three document books, constituting 225 pieces of evidence related to the 13 transactions at issue. These 13 transactions related to properties that were all located in the City of Hamilton. The pattern involved in the transactions was essentially the same. A legitimate vendor sold property to A (termed as interim purchaser). The property was then "flipped" by the interim purchaser/vendor to a subsequent purchaser. Several consistent characteristics of these transactions are worth noting:

- (a) the initial property was subject to a price inflation which ranged from 53% to 203%, with an average of 67%;
- (b) the sale of the property was often over a very short period of time, though the time ranged from a few days to eight months, with seven transactions less than one month;
- (c) the mortgages were always high ratio;

- (d) subsequent to the establishment of the purchase price for the "flip", there was an amendment which resulted in a reduction which was never communicated to the lender;
- (e) the second purchaser never advanced any money;
- (f) the only money which flowed throughout the transaction was the money provided by the lender;
- (g) the same realtor, David Sohol or Torham Realty was involved in every transaction;
- (h) the member acted for the interim purchaser and vendor in the purchase of the "flipped" property;
- (i) the only document which was consistently witnessed/commissioned was the Land Transfer Tax Affidavit. Other documents, including Declarations/Statutory Declarations, were most often not witnessed or commissioned.

In this case the member provided the facade of providing legal services to the lender/client. In reality, either false information was provided or material facts were deliberately not communicated, or both. The range of behavior in this case involved a failure to properly advise clients (Rule 3), a failure to address the conflict of interest between the vendor, purchaser and lender when representing all the parties (Rule 5) and a demonstrated lack of competence and quality legal service (Rule 2). These references are to the pre-2000 Rules of Professional Conduct.

Distinctions have been made between "dishonesty, fraud, crime and illegal conduct" in the jurisprudence. In this case, there was often fraud. Dishonesty requires that the conduct be knowingly engaged in (R. v. Harding (2001), 52 O.R. (3d) 714). There is no question on these facts that the member was not a dupe, though this would not obviate the obligations which flow from the fiduciary relationship (Commerce Capital Trust Co. v. Berk (1989), 68 O.R. (2d) 257 (Ont. C.A.)).

The case engaged three Rules of Professional Conduct (pre-2000): Rule 3, which relates to advising clients; Rule 5, which looks at conflict of interest; and Rule 2, which looks at issues of competence and the quality of service.

PENALTY

There was an agreement as to the penalty. In all cases where a member is guilty of misappropriation, the penalty is disbarment, unless there are extenuating circumstances. Such circumstances must fall within a limited range and must be of such a compelling nature that the appropriate penalty is that the member be given permission to resign.

We were provided with a number of cases to assist us. In *Law Society of Upper Canada v. Baksh*, [2004] L.S.D.D. No. 58, the professional misconduct involved a series of mortgage transactions over a three-year period. The member was not found to have been the architect or a beneficiary of the scheme. Disbarment was the outcome. The case of *Law Society of Upper Canada v. Allport*, [1995] L.S.D.D. No. 194, involved matters including: a failure to disclose conflict of interest, improperly commissioned affidavits and other failures to serve in a context where over 20 condominiums were 'flipped'. The member was found to be a dupe. The circumstances of this case were akin to a previous matter in which the member had also been a dupe. The member was disbarred. Being a dupe does not automatically lead to disbarment. In *Yungwirth v. Law Society of Upper Canada*, 2004 ONLSAP 1, a suspension of 12 months was confirmed by the Appeal Panel. Mitigating factors can be considered, as was the case in *Victor Prousky*, Ontario Discipline Summaries 1972 - 1992, edited by Steven Traviss, p. 362, where a nine-month suspension was ordered when the member knowingly participated in four real estate 'flips'. The Discipline Committee considered: the member's personal and business pressures, his honesty and integrity demonstrated throughout the process, his efforts to assist his clients, his reliance on the integrity of another and 189 character letters, among other evidence.

In this case, the member was not a dupe. There were no extenuating circumstances put before us. The Panel orders that the member be disbarred.