

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

April 2017

Arti Sood
Commissioned: May 2014

Hearing Date: August 25, 2016
Panel: Kate Manvell (chair), Linda Manning, Ken Sherk, Patricia Wright, Rhoda Witherly
For the Society of Notaries Public: Marny Morin
For the Member: In Person

Appeal by Member to Supreme Court: Dismissed
Application by Member to Board of Directors for Non-Publication: Dismissed

Background

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.

The inquiry into this matter was conducted June 10, 2016. The member attended at that time and the member and the Society made submissions to the panel. The inquiry panel report dated July 27, 2016 was reviewed by the Directors.

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

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

Re: HMSY, also known as HMY (“HMSY” and “HMY”)

That you materially altered the Power of Attorney signed by your client, H.M.S.Y., also known as H.M.Y. and filed the altered version of the Power of Attorney in the Land Title Office, intending to use it for the execution of the Form A Transfer for the sale of H.M.Y.’s property to DSW and CDW.

Thereby violating your Oath of Office, your Juricert Digital Certificate Agreement, Principles 1, 2 and 3 of the Society’s Principles for Ethical and Professional Conduct, and committing professional misconduct.

Facts and Admissions

1. By way of agreement between the member and the Society, the member admits the facts that follow, which are accepted by the Board.
2. On or about October 21, 2015 the member attended upon H.M.S.Y. to sign an Enduring Power of Attorney appointing her daughter S.A.K. to be her attorney and her son, D.D.Y. as alternate attorney. The signature of the attorney, S.A.K., was attested before the member on or about October 21, 2015 on page 2 of the document and the signature of the alternate attorney, D.D.Y., was attested before the member on or about November 12, 2015 as page 3 of the document (the “Signed Power of Attorney”).
3. Between November 12, 2015 and December 29, 2015, the member altered the signed Power of Attorney to delete part of H.M.S.Y.’s name, to make it read H.M.Y., and to delete the appointment of the alternate attorney, D.D.Y., such that the altered version of the signed Power of Attorney purported that H.M.Y. only appointed S.A.K. as her attorney and not D.D.Y. as the alternate attorney. The third page of the Signed Power of Attorney containing the Declaration of the alternate attorney, D.D.Y., was not included in the new, altered document.
4. The altered version of the Signed Power of Attorney was submitted for registration by the member on December 29, 2015 using her digital signature on the required Form 17 (the “Altered Power of Attorney”). The Altered Power of Attorney was registered as number CA4901639.
5. In January of 2016, the member acted for the sellers, H.M.Y., S.A.K. and D.D.Y., in their sale of their property in Surrey, BC.
6. H.M.Y. signed the Contract of Purchase and Sale by her Attorney, S.A.K., and a copy of the Signed Power of Attorney was provided to the Real Estate Brokerage through its licensee (the “Purchase Contract”).
7. J.R., Notary Public, acted for the buyers, D.S.W. and C.D.W. with respect to the Purchase Contract.
8. When the member returned the sale documents to J.R., she returned a signed Form A Transfer signed by S.A.K. as attorney for H.M.Y. and provided J.R. with a registered copy of the Altered Power of Attorney as evidence of the attorney appointment.
9. J.R. noted the differences between the version of the Power of Attorney she had been given with the Purchase Contract and the Power of Attorney given to her by the member and contacted the Society of Notaries Public of British Columbia for advice in how to deal with the issues raised by the two versions of the Power of Attorney.
10. Upon advice from the Society’s PAL advisor, the member had a new Form A Transfer signed by H.M.Y. personally, having determined that she still had capacity to do so. It was that Form A Transfer that was used in the sale transaction.

11. The Altered Power of Attorney remains registered at the Land Title Office.
12. The member admits that between November 12, 2015 and December 29, 2015, she did alter the Power of Attorney by modifying the wording thereon after it had been duly executed. True copies of the originally signed Power of Attorney and the altered version of the Power of Attorney are attached to the Agreed Statement of Fact and Admission.
13. The member admits that she caused the Altered Power of Attorney to be filed in the Land Title Office in order to facilitate a transfer of real property.
14. The member admits that the alteration of the Power of Attorney was not authorized by the member's client.
15. The member admits that her conduct violated the Juricert Digital Certificate Agreement, Principles 1, 2 and 3 of the Society's Principles of Ethical and Professional Conduct, is contrary to her oath of office, is contrary to the best interests of the public and the notarial profession, harms the standing of the notarial profession, and constitutes professional misconduct.
16. At the hearing before the Board, the member explained that she drafted the Signed Power of Attorney for the client's financial purposes. When the client wished to do a land transfer, the member reviewed the Signed Power of Attorney and realized that it would not be suitable for land title office purposes and that is when she decided to alter it. She stated that she decided to do so because she did not want to unduly stress or inconvenience her client by requiring her to execute a new Power of Attorney.

Decision

17. After considering the agreed statement of fact and admission, the inquiry report and the submissions of the Society and the member, the Board accepts the inquiry report and finding that the member's actions constitute professional misconduct.
18. The Board finds the comments in *Law Society of BC v. Williams*, 2010 LSBC 31 instructive:

[23] The Respondent made a grave error. Lawyers have a crucial and trusted role to play in the use of electronic documents. As such, he is an example of a lawyer making a bad decision on the basis of expediency and client pressures.
19. The Board agrees with the comments of the inquiry panel regarding the gravity of the member's actions. The member's misconduct in this case goes right to the core of what notaries do and undermines the public trust placed in our profession.

Penalty

20. After deciding the issue of liability, the Board received submissions on penalty from the member and the Society.

21. The Society submits that manipulating and altering documents for the sake of expediency is one of the most serious offences a notary can commit.
22. In her submissions before the Board, the member expressed remorse and stated that she suffered a complete lapse in judgment. The member also indicated a willingness to help others learn from her mistakes.
23. The Society refers to the decisions in *Law Society of BC v. Batchelor*, 2014 LSBC 11 and *Law Society of BC v. Nielsen*, 2007 LSBC 35 for guidance on the appropriate penalty to be imposed in this case. The member did not refer to any decisions. The Board reviewed and considered the decisions in *Batchelor* and *Nielsen* and notes that the range of disciplinary action available to the Society is limited relative to those available to the Law Society. Nevertheless, the decisions, particularly *Batchelor*, provide a useful summary of the penalties imposed in similar cases involving lawyers.
24. The Board recognizes that the Society has a duty to protect the public and the integrity of the land title system. There must be a strong message to the member and to all members of the Society that misconduct of this nature is an extremely serious breach of the Society's core principles and values and will be dealt with in a severe manner. The Board is satisfied that a penalty on the higher end of the range is appropriate.
25. In view of the agreed statement of fact and admission and the submissions on penalty, the Board has assessed the following penalty in this matter:
 - a. The member be suspended for a continuous period of one month to be served at a time to be agreed by the parties but to commence within 60 days of this decision;
 - b. The member pay a fine of \$2,500 plus costs.
 - c. The member attend the new notaries' workshop in December to speak about her experience with this power of attorney matter.

The Member appealed the Board's decision to the Supreme Court of British Columbia pursuant to Section 41 of the Notaries Act. The Honourable Mr. Justice D.M. Masuhara found in favour of the Society and dismissed the Member's appeal. The decision of the Directors stands. See Reasons for Judgment in Sood v. The Society of Notaries Public of British Columbia 2017 BCSC 409

The Member applied for non-publication of the discipline decision to the Board of Directors at its meeting on April 7, 2017. The Board considered Rule 8.04 but was not persuaded by evidence from the Member that non-publication was warranted in view of Rule 8.04(3). The Member was informed of the Board's decision by the Chief Executive Officer after the Board meeting.

The Member will serve her suspension from and including May 15, 2017 through and including June 11, 2017.

At its meeting on April 7, 2017, the Board waived the requirement of the Member to attend the New Notary Workshop to speak about her experience with this Power of Attorney matter.

The Board waived the requirement that the Member pay costs of \$1,500.00 for the Board hearings.