

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A RESIGNATION BY
IRVIN P. ADLER,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Resignation Committee:

Fred R. Fenwick, QC – Chairperson
Gillian Marriott QC – Panel Member
Miriam Carey, PhD – Panel Member

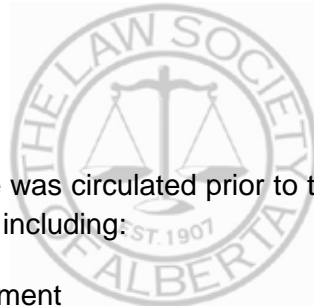
Appearances

Counsel for Irvin P. Adler - Gavin D. Price
Law Society of Alberta Counsel (LSA) - Nicholas Maggisano

REPORT OF THE RESIGNATION COMMITTEE

Introduction and Summary

1. Mr. Adler faced complaints arising out of his participation as conveyancing solicitor, in house transfer and mortgage transactions alleged to be supportive of mortgage frauds orchestrated by his client EO.
2. He seeks to resign from the LSA pursuant to s. 32 of the *Legal Profession Act*, as opposed to pursuant to s. 61 of the *Legal Profession Act* (resignation while facing discipline), as a s. 61 resignation would be the equivalent of a disbarment.
3. In support of his resignation application Mr. Adler submits an Agreed Statement of Facts agreeing to the material particulars of the transactions involved but stating that he was duped by the mortgage fraud perpetrator with regards his participation. He now undertakes to resign, wrap up his practice and not return to the practice of law.
4. Counsel for the LSA did not oppose the application.
5. The Resignation Committee accepted Mr. Adler's application to resign pursuant to s. 32 and assessed costs of the investigation to be paid in the event Mr. Adler requests that he be relieved of the undertaking he has given to not reapply active practice status.



Hearing

6. The Resignation Committee was circulated prior to the hearing with the material entered in support of the application including:

Exhibit 1 – Letter of Appointment

Exhibit 2 – Certificate of Exercise of Discretion

Exhibit 3 – Certificate of Status

Exhibit 4 – Members Record

Exhibit 5 – Members Materials including

- a. Application for Resignation
- b. Statutory Declaration
- c. Undertaking
- d. Statement of Admitted Facts
- e. Certificate of Enrollment

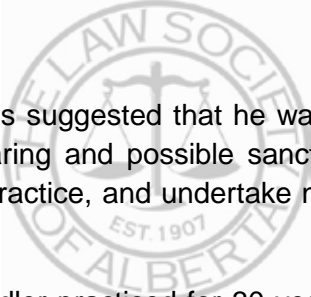
Exhibit 6 – Transcript of April 10, 2014 interview between Mr. Adler and LSA investigator

Exhibit 7 – Estimated Statement of Costs

Exhibit 8 – (entered at the hearing) Amended Statutory Declaration

7. At the opening of the hearing counsel for Mr. Adler and counsel for the LSA consented to the jurisdiction and composition of the Committee. The Resignation Committee found that it had jurisdiction and proceeded with the hearing.
8. Counsel for Mr. Adler took the Committee through the application materials including the Statement of Admitted Facts (which will be attached as Appendix A to this decision) and Mr. Adler's Statutory Declaration and Amended Statutory Declaration deposing to the winding up of his practice and accounts, and directing his remaining active files to an actively practicing member.
9. On behalf of Mr. Adler it was suggested by his counsel that Mr. Adler was duped by the mortgage "fraudster", known throughout these materials as EO. At a specific point in Mr. Adler's interview with the LSA investigator (page 343) where when asked, towards the end of the interview about his involvement with EO, Mr. Adler stated:

It's a moving scale. And initially I..clueless, and then probably willfully blind. But seriously, I didn't..understand what the hell was going on with these mortgage value things.

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10. On behalf of Mr. Adler it was suggested that he was nearing his 61st birthday and that rather than face a LSA hearing and possible sanction, that he would resign from the LSA, properly wrap up his practice, and undertake not to reapply to the LSA or another law society.
 11. It was also noted that Mr. Adler practiced for 30 years without sanction, and that these matters did not arise from a client or other member complaint, but out of the LSA investigation of EO generally.
 12. Counsel for the LSA did not object to the application to resign (with associated undertakings).

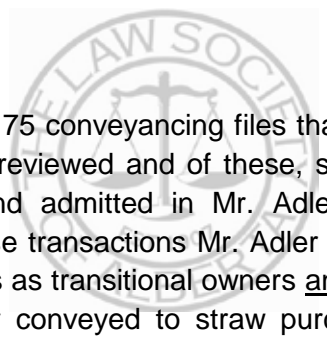
Decision

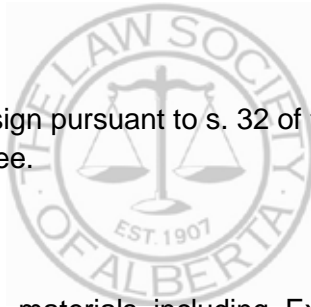
Section 32 or Section 61

13. The effect of a s.61 resignation in the face of discipline, would be in effect, a disbarment. Mr. Adler is technically resigning in the face of discipline, and taken as a whole the facts admitted in support of his application admit the citations involving participation in a series of mortgage frauds, with the exception of his denying knowing participation.
14. The task for the Resignation Committee is therefore to determine if Mr. Adler ought to be allowed to resign pursuant to s. 32, without the stigma of a disbarment.
15. The Resignation Committee decides that based on the materials before it, that if this was a Hearing Committee, charged with adjudicating on these citations that a disbarment would probably not be an appropriate remedy.
16. Mr. Adler is entitled to run a full hearing (with or without admissions), and accept the findings of a Hearing Committee based on the evidence at that hearing and the sanction, which if based on the admissions in front of this Resignation Committee may have included a suspension.
17. It is Mr. Adler's decision to resign rather than continue to face discipline and possible suspension, and this is his right. The Resignation Committee having decided that disbarment would be an inappropriate remedy under these admitted circumstances allows Mr. Adler's s. 32 resignation application, with the associated undertakings.

Participation in a mortgage fraud scheme

18. Based on the admissions, the Committee notes that Mr. Adler was not investigated pursuant to a complaint by one of his clients, or another lawyer but as a result of LSA investigators following the trail of EO as he used other lawyers in this jurisdiction to assist in the conveyances associated with mortgage frauds.

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19. LSA investigators reviewed 75 conveyancing files that Mr. Adler conducted on behalf of EO, 21 files were formally reviewed and of these, six conveyancing transactions were the subject of citations and admitted in Mr. Adler's Statement of Admitted Facts. Particularly, in three of these transactions Mr. Adler and/or his wife had taken personal ownership of the residences as transitional owners and profited by the rise in price when the properties were further conveyed to straw purchasers at the inflated prices and mortgage advances characteristic of these schemes.
20. Mr. Adler in his admissions stated that on the transactions where he and his spouse became transitional owners, it was in circumstances where EO had explained to them that financing for the purchase had fallen apart and that Mr. Adler felt at the time he was only helping keep the deal together. The Committee notes that Mr. Adler and his spouse took on transitional ownership of property and then passed it on at profit to themselves to subsequent straw purchaser (who were also clients of Mr. Adler) and then split the profits generated from the lift in the price and the associated mortgage financing with EO.
21. At that point Mr. Adler not only assisted in the conveyance associated with the mortgage fraud but profited from the sale at inflated price to his own clients.
22. Other context provided by Mr. Adler, are the familiar comments of practitioners who say they were duped into participating in the conveyancing portions of mortgage frauds:
- He was just trying to "keep the deal together"
 - The arrangement was a "done deal" when it came to him
 - The real estate market in 2006 and 2007 was overheated and practitioners were struggling to keep up with their work
- None of which speaks to a solicitor's duty to his purchaser and lender clients.
23. The Resignation Committee notes in mitigation of all this that Mr. Adler has served his clients with distinction for 30 years, has not been disciplined by LSA and that these events arose in 2005, 2006 and 2007 and were only uncovered by the LSA's following the trail of EO and the various lawyers which he had used in his mortgage fraud schemes.
24. The Committee accepts with regret that this is not the way that Mr. Adler (or the Committee) would have seen his previously unblemished career ending. That is, to have matters six to eight years old come "out of the woodwork" and face him with the hard choice of proceeding through discipline or resigning.
25. The Committee also notes that once these matters had come to light, Mr. Adler has dealt with them in as forthright a way as was possible under all of the circumstances, cooperating with the LSA in its investigation and interviews, making appropriate admissions and otherwise seeking to resolve the matter appropriately and efficiently.



26. Mr. Adler's application to resign pursuant to s. 32 of the *Legal Profession Act* is accepted by the Resignation Committee.

Concluding Matters

27. **Exhibits** – The application materials including Exhibits shall be made available for inspection and copying subject to the usual redaction of confidential information.
28. **Conditions and Undertakings** – Pursuant to the Statutory Declaration (Exhibit 5b) and the Undertaking (Exhibit 8), Mr. Adler's resignation shall be effective June 30, 2015, in conjunction with the undertaken winding up of his practice on that date.
29. **Statement of Facts** – The Statement of Admitted Facts (Exhibit 5d) is declared to be in a form acceptable to the Resignation Committee.
30. **Costs** – Counsel for the LSA has submitted Exhibit 7 and estimated Statement of Costs in the amount of \$79,808.89. The Resignation Committee orders that these costs will be payable if and at the time of Mr. Adler making any application to be relieved of his undertaking to not return to active practice status.
31. **Notice** –A notice to the profession and to the courts is not mandatory under s. 32 and the Committee decides that a resignation notice is not necessary in this case.
32. **Mr. Adler's practice** – The Resignation Committee confirms that the steps to dispose of his practice and client files as set out in his Statutory Declaration and undertaking are satisfactory.
33. **The Roll** – The LSA's membership roll concerning Mr. Adler's resignation shall include this written decision, the admitted facts, the Statutory Declaration, and the undertaking referred to herein.
34. **Referral to the Attorney General** – No referral is ordered.

Dated at Calgary, Alberta this 6th day of September, 2015.

Fred R. Fenwick, Q.C., Chair and
Panel Member

Gillian Marriott, Q.C., Panel Member

Miriam Carey, PhD., Panel Member