

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF RAJ ABBI
A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

[1] On May 1, 2007, a hearing committee comprised of Peter Michalyshyn, Q.C. (Chair), Hugh Sommerville, Q.C., and Dr. Larry Olhauser, convened at the Law Society offices in Edmonton, Alberta to inquire into the conduct of Raj Abbi. Mr. Abbi was represented by Stewart Baker. The Law Society was represented by Lois Maclean. Mr. Abbi was present throughout the hearing.

Introduction

[2] Mr. Abbi is a lawyer in Edmonton, carrying on amongst other things a solicitor's practice in real estate law.

[3] An Agreed Statement of Facts including an admission of guilt was exhibited before the Panel. The Panel found the citation to have been made out. The Member was reprimanded, fined \$1,000, and ordered to pay the actual costs of the hearing.

Citation

[4] The Member faced the following Citation:

It is alleged that you took advantage of the inadvertent error of the Complainant (a member of the Law Society of Alberta), and that the error was, or ought to have been, apparent to you prior to the matter being brought to your attention by the Complainant, and that such conduct is conduct deserving of sanction.

Jurisdiction

[5] Jurisdiction was established by entering as Exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Mr. Abbi accepted the jurisdiction and composition of the Panel.

Private Hearing

[6] No application was made to hold any portion of the hearing in private. However, in these Reasons and for purposes of any transcript, no reference is made to client names or identifying client information.

Other Preliminary Matters

[7] There were no other preliminary matters.

Agreed Facts

[8] The following facts were agreed to before the Panel:

- Mr. Abbi is a member of the Law Society of Alberta, having been admitted in 1988. Mr. Abbi was a member at all times relevant to this proceeding;
- The complaint arises out of a file in which Mr. Abbi acted for the purchaser on a residential real estate file, and the complainant, Mr. T. acted for the vendor;
- The chronology of the steps taken on the file is as follows:

2005

- Sept. 15 Original closing date of the transaction;
- Dec. 09 Mr. T. provided Mr. Abbi with the conveyancing documents under trust conditions including the cash to close to be provided to Mr. T. by December 22, 2005;
- Dec. 16 The closing of the transaction was amended to this date;
- Dec. 22 Mr. T. did not receive the cash to close from Mr. Abbi and Mr. Abbi did not request an extension;
- Dec. 23 Mr. Abbi prepared a Caveat (*Ex. 6, Tab 1*) claiming his client had an interest in the land;

2006

- Jan. 11 Mr. Abbi registered the Caveat on title;
- Jan. 17 The vendor became aware of the Caveat on title and instructed Mr. T. to cancel the transaction;
- Jan. 17 -
Feb. 27 Correspondence was exchanged between Mr. T. and Mr. Abbi arguing over the issue of the transaction being cancelled;
- Feb. 27 By letter of this date, (*Ex. 6, Tab 8*) Mr. T. wrote to Mr. Abbi as follows:

Our client's Chief Executive officer (based on discussions of the Board) instructed us to make the following proposal concerning the revival of the agreement between the parties:

- (a) Our client will agree to revive the agreement on the basis that the date for payment is extended to March 16, 2006;
- (b) Your client will be responsible to pay for the daily interest cost at a rate of 18% per annum from the closing date of December 16, 2005 to March 16, 2006; (emphasis added)**
- (c) Your client shall pay our client's costs of your client's delay in the amount of \$671.80;
- (d) You, at your client's instruction, shall provide our office with a registerable discharge of the caveat that you submitted to land titles on December 23, 2005 no later than March 2, 2006, and your client shall agree that no further Caveat be registered by your client pertaining to this property; and
- (e) Failure to complete the transaction on or before March 16, 2006 (based on the assumption that we have provided you with the required transfer of land prior to this date) shall signify that this transaction is hereby cancelled;

If you are in agreement with the above terms, please forward such approval by March 1, 2006 and provide the discharge of the caveat no later than March 2, 2006;

- Mar. 01 By letter of this date, (*Ex. 6, Tab 9*) Mr. Abbi informed Mr. T. that his client was prepared to accept the proposal provided the interest from February 8, 2006 to March 16, 2006 was waived;
- Mar. 01 By letter of this date, (*Ex. 6, Tab 10*) Mr. T. informed Mr. Abbi that the proposal regarding waiving the interest was rejected and extended the deadline for acceptance to noon on March 2, 2006;
- Mar. 02 By letter of this date, (*Ex. 6, Tab 11*) Mr. Abbi informed Mr. T. that his proposal as set out in the February 27, 2006 letter was accepted and went on to state:

As far as our client's caveat is concerned, we would suggest that your trust letter include a trust condition that we forward the discharge of caveat for registration together with the transfer of land. You may wish to include a further trust condition requiring the writer to forward the discharge of caveat to your office, in the event that this transaction is not completed by our client;

We also confirm that the March 16, 2006 closing date is totally predicated on the timely delivery of your conveyancing documentation, and on the further requirement that your trust conditions be acceptable to the writer;

By further letter of this date, (*Ex. 6, Tab 12*) Mr. T. wrote to Mr. Abbi as follows:

Further to your letter dated today's date, our client wants to ensure that the Caveat is removed so that if your client does not close on March 16, 2006 then it is a done deal;

However, due to the lateness of the date we will accept that you will send us the discharge no later than March 6, 2006 on the basis that we will try to send the trust letter to you by March 7, 2006. In any event we will not submit the discharge to land titles until we send you the trust documents;

By further letter of this date, (*Ex. 6, Tab 13*) Mr. Abbi provided Mr. T. with a registerable discharge of the caveat under the following trust conditions:

1. That no use whatsoever shall be made of the enclosed discharge of caveat, unless you have firstly received our written authorization that you are at liberty to do so;
2. That you shall forward your transfer of land to the writer, under appropriate trust conditions, by no later than 12:00 noon on Tuesday, March 7, 2006, for receipt by our office by no later than 12:00 noon on Wednesday, March 8, 2006;
3. That the trust conditions set forth in your trust letter must be reasonable, and acceptable to the writer, to enable the writer to submit the transfer of land for registration;
4. That you agree to extend the March 16, 2006 closing date, if any delay in closing is attributable to any actions or omissions by your office, and your client shall be responsible for the cost of registering the enclosed discharge of caveat;
5. That you shall forthwith return the enclosed discharge of caveat to this office, if you cannot fully comply with any of the foregoing trust conditions;

We look forward to receiving documents by no later than 12:00 noon on Wednesday, March 8, 2006.

Mar. 06 By letter of this date (*Ex. 6, Tab 14*) Mr. T. informed Mr. Abbi that the trust conditions regarding the discharge of caveat were contrary to their previous agreement and requested Mr. Abbi remove trust conditions 1,4 and 5 by 2:00 p.m. that day or the transaction would be cancelled;

By further letter of this date (*Ex. 6, Tab 15*) Mr. Abbi responded to Mr. T. as follows:

Further to your fax of today's date in respect of the above noted transaction, we are not in a position to amend any of the trust conditions set forth in our letter of March 3, 2006.

Your insistence for the requested amendments suggests that your client is more interested in having our client's caveat discharged, than in actually completing the sale and purchase transaction. The completion of this transaction would not only accomplish your client's objective to have our client's caveat discharged, but your client would also be in receipt of the cash to close monies plus accrued interest.

If you do not comply with the trust conditions set forth in our March 3, 2006 correspondence by the deadline stipulated therein, our client will proceed with the appropriate legal action and costs will also be sought on a solicitor and his own client basis, both against your client and you personally.

Kindly govern yourself accordingly.

By further letter of this date (*Ex. 6, Tab 16*) Mr. T. responded to Mr. Abbi as follows:

We are in receipt of your fax dated today. We acknowledge that you have attempted to change the terms of the agreement reached between our parties and have not completed with the agreed upon terms.

The reason that we want to be in a position to use the discharge immediately is because, as already discussed, our client wants to ensure that the caveat is removed so that if your client does not close on March 16, 2006, that this is the end of it. We confirm that we were in a position to send you the trust conditions this afternoon. We also confirm that by not allowing us to use the discharge unconditionally, you have effectively not provided it to us at this time.

With respect to your threat to sue the writer personally, we will be most interested to learn the nature of such a claim as I have had no contact with your client or any obligations whatsoever. Please review the law with respect to filing a vexatious lawsuit prior to filing such a claim. Interestingly, we note however that you registered a caveat on a property knowing that you were in breach of trust conditions concerning the completion of the transaction and did nothing to discuss an extension of such a breach with the writer prior to doing so. You should know that this was a major factor in our client's refusal to extend the closing date further for your client. You may wish to disclose this point to your client. It is the writer's belief that if you registered this caveat on title without your client's permission (which is apparent on the basis that you have indicated that you could not

reach your client at that time) after the cut-off date provided to you in our trust letter, your client may have a cause of action against you.

Our client has instructed us to give you and your client until noon tomorrow, March 7, 2006 to comply with the terms of the new agreement. Please comply with our request or inform us to send back the discharge and we will do so.

Mar. 07 By letter of this date (*Ex. 6, Tab 17*) Mr. Abbi informed Mr. T. that his client remained ready to close the transaction and proposed the following:

1. You will immediately forward to us, under reasonable trust conditions, the transfer documentation so that the land may be transferred into our client's name at the Land Titles Office, with our client's mortgage registered against the title, so that we may call upon the Royal Bank to advance the mortgage proceeds;
2. Immediately upon your forwarding those transfer documents to us in registerable form you may disregard the trust conditions in our letter of March 3, 2006, and you will be free to use the Discharge of Caveat as you see fit. Provided your documentation is registerable at the Land Titles Office, our client agrees that no further Caveat will be registered by our client pertaining to the property.
3. We will submit your transfer documentation to the Land Titles Office as soon as reasonably possible and we will request mortgage funds as soon as registration has been confirmed.
4. **We will forward to you the cash to close plus interest at the rate of 18% per annum from December 16, 2005 to the date the funds are forwarded to you. In addition we will forward to you a further sum of \$671.80 as requested in your letter of February 27, 2006.** (emphasis added)

Mar. 07 By letter of this date (*Ex. 7, Tab 1*) Mr. T. provided Mr. Abbi with the Transfer of Land documents under trust conditions and in relation to the issue of interest to be paid, stated as follows (trust condition #8):

In consideration of the time required for registration, on or before March 16, 2006, you will pay to us the total Cash to Close for compliance with our undertakings herein and unconditional release to our client. **If all the said funds are not received in our office by 12:00 noon on the said March 16, 2006, interest will be payable at your client's interest rate on your client's mortgage amount from and including December 16, 2005 to**

March 13, 2006, thereafter, interest will be payable on the full Cash to Close at a rate of 18% per annum until funds are received in our office (emphasis added)

Mar. 16 By letter of this date (*Ex. 6, Tab 18*) Mr. T. requested Mr. Abbi provide him with \$671.80 representing payment of their Statement of Account and \$3,251.12 representing the outstanding interest;

Mar xx Mr. Abbi provided Mr. T. with \$1,535.88;

Mar. 22 Mr. T. telephoned Mr. Abbi since he had not heard from Mr. Abbi and discussed the issue with Mr. Abbi;

Mr. T. expressed the view that Mr. Abbi could not rely on T.'s inadvertent error. Mr. Abbi expressed the view that Mr. T. had not made an error and Mr. Abbi could rely on Mr. T.'s trust conditions of March 7, 2006;

Mar. 27 By letter of this date (*Ex. 6*) Mr. T. lodged a complaint with the Law Society against Mr. Abbi as follows:

I wish to lay a complaint concerning the conduct of Raj Kumar Abbi, who I believe took advantage of a clerical error by me in a trust letter dated March 7, 2006 (copy enclosed) which pertained to a real estate transaction and which is in contravention of Rule 3 of Chapter 4 of the Code of Professional Conduct

...

As a result of this mistake, there is a deficiency in the amount agreed upon in the sum of \$3,922.92, which was not forwarded to us by the agreed upon date of March 16, 2006;

Mr. T. then basically sets out the above chronology. Mr. T. further set out his concerns as follows:

If Mr. Abbi had relied on my erroneous trust condition fully believing that no error had occurred, I would not be making this complaint. My reasons for taking the position that Mr. Abbi was aware that an error occurred are as follows:

(a) The trust condition concerning interest did not correspond to the Agreement, which was reached through the letters of the lawyers;

(b) There exists correspondence between the lawyers that is dated after the Agreement was reached that reiterate the interest and legal fees owing. Prior to sending our second (2nd) and final trust letter dated March 7, 2007 to Mr. Abbi (which included our error) letters were exchanged between the offices concerning the terms of the Agreement as there was an issue which arose pertaining to the time of the usage of a Discharge of

Caveat. The last letter received by Mr. Abbi on point was received on March 7, 2006 prior to us sending the trust letter with the erroneous Paragraph 8 condition. In that letter, Mr. Abbi again reiterated in his Paragraph 4 that we would receive interest at 18% per annum of the full Cash to Close and our account of \$671.80 on or before March 16, 2006 if we complied with certain terms (which were complied with);

- (c) The contested issue of the clients between February 26, 2006 and March 2, 2006 when the Agreement was reached between the lawyers was the Eighteen (18%) Percent interest from December 16, 2005 until closing. Accordingly, it would seem unlikely that Mr. Abbi could believe that our client has suddenly given up its right to almost \$4,000.00 after such negotiations took place;
- (d) In Mr. Abbi's March 7, 2006 letter, he indicated that his office was in a position to submit upon receipt of the trust letter. This statement leads the writer to conclude that the amount necessary to close the transaction as per the Agreement was either available in the form of Mortgage proceeds or in a cash shortfall deposited to Mr. Abbi's trust account on March 7, 2006. The drafting of a cheque to release excess funds to his client on or before March 16, 2006 again provided Mr. Abbi with an opportunity to note an error in the trust letter as Mr. Abbi would have had almost \$4,000.00 extra at that time to provide back to his client. Although we occasionally collect contemplated interest in advance of closing, such sums refunded to the client upon closing are never as high as the amount refunded to Mr. Abbi's client. Such an opportunity, if matters had been reversed, would have provided the writer with a bold red flag that an error had occurred which required investigation.

At no time did Mr. Abbi contact us upon receiving our trust letter to confirm that the March 7, 2006 trust letter contained an error.

Subsequent Correspondence

Upon receipt of the cash to close on March 16, 2006, we contacted Mr. Abbi via facsimile immediately to notify him of the error and the outstanding balance. On March 22, 2006 after receiving no definitive answer to our request, the writer discussed the issue directly over the phone with Mr. Abbi. During the conversation it was clear that we were not in agreement concerning our obligations to each other and I indicated that I felt that it would probably be best to let the Law Society review the facts and determine whether a duty to our office had been fulfilled.

Conclusion

Accordingly, I am looking for a ruling that indicates that our office is still owed the sum of \$3,922.92 from Mr. Abbi's office on the basis that Mr. Abbi breached the Code of Conduct in that he took advantage of our mistake knowing that under the relevant circumstances, the trust conditions concerning interest were not realistic as written. We also request the relevant relief that is available to us through this procedure. At present our office has reimbursed our client to ensure that it suffered no inconvenience due to my mistake.

In the event that the Law Society finds that there are no grounds for this complaint, we apologize in advance to both the Society and Mr. Abbi...

Mar. 30 By letter of this date (*Ex. 8*) the Law Society provided Mr. Abbi with Mr. T.'s letter of complaint and requested a response;

Mr. Abbi did not respond;

April 19 By letter of this date (*Ex. 9*) the Law Society requested Mr. Abbi provide a response;

May 04 By letter of this date (*Ex. 10*) Mr. Abbi responded to the Law Society as follows:

In answer to the whole of the noted complaint I am of the opinion that I have fully complied with the trust conditions set forth in Mr. T.'s trust letter dated March 7, 2006, and I totally disagree with Mr. T.'s characterization that trust condition #8 in his March 7, 2006 correspondence, arose out of a "clerical error". There was clearly some thought given in drafting of this trust condition.

Although my March 7, 2006 letter to Mr. T. did include the undertaking set forth in paragraph 4 of your March 30, 2006 letter, at no time did I receive any written confirmation that Mr. T. accepted my undertakings. Mr. T.'s response to my fax of March 7, 2006 was to send his March 7, 2006 trust letter to my office, without any reference whatsoever to my fax of the same date.

Further, Mr. T.'s client arbitrarily and unilaterally established the December 1, 2005 closing date, without any input whatsoever from, or agreement by, my client, and the agreement by my client, if any, to pay the alleged amounts, arose out of duress.

Lastly, in my respectful submission, the Law Society of Alberta is not the proper forum from which Mr. T. should be seeking relief.

May 10

By letter of this date (*Ex. 11*), the Law Society informed Mr. Abbi it had sent his May 4, 2006 letter to Mr. T. for response and went on to provide the following comments:

...I wanted to let you know that I do not agree that your response to his complaint is satisfactory. I have reviewed this matter with our Practice Advisor. He agrees with me that, firstly, there is a problem regarding your failure to clarify the obvious error in the trust conditions set out in Mr. T.'s letter dated March 7, 2006. However, more specifically, you gave an undertaking, in the clearest of terms, in your letter dated March 7, 2006 that if Mr. T. "forwarded to us, under reasonable trust conditions, the transfer documents", you would, upon registration:

'...forward to [him] the cash to close plus interest at the rate of 18% per annum from December 16, 2005 to the date the funds are forwarded to you. In addition we will forward to you a further sum of \$671.80 as requested in your letter of February 27, 2006.'

In response, you have taken the position that "...at no time did I receive any written confirmation that Mr. T. accepted my undertakings". This, I suggest to you, is not an acceptable response. Firstly, no "written confirmation" is necessary when the substance of the undertaking is "you provide the transfer documents and I will pay the interest and other monies set out in my undertakings". Mr. T. did, indeed, provide the transfer documents, in reliance on your undertaking. You used his documents and, in my opinion, you became bound to honour your undertaking.

As a statement that the Law Society "is not the proper forum from which Mr. T. should be seeking relief", this is correct, if the "relief" is enforcement of payment of the amount owing, pursuant to your undertaking...

However, we are reviewing Mr. T.'s complaint, not as "relief" that he is seeking on behalf of his client, but as a breach of our *Code of Professional Conduct* relating to your undertaking and failure to deliver the proper amount of interest and other the amount which, in my opinion, you undertook to do.

In considering what may be, in the circumstances, appropriate for you to do, the *Code of Professional Conduct* provides that a lawyer's "willfulness and deliberateness" is relevant in assessing whether conduct "will be sanctioned". In the past, where, through misinterpretation or other misunderstanding, a trust condition or undertaking has not been complied with, it has been a relevant consideration regarding appropriate sanctions, whether the lawyer rectified the breach in a timely manner, once it was brought to his or her attention.

After you have had an opportunity to consider my comments, I look forward to hearing from you.

- May 15 By fax (Ex. 12) Mr. Abbi informed Mr. T. that he had deposited the sum of \$3,922.12, representing payment of the balance owing, into Mr. T.'s trust account;
- Jul 04 By registered letter (Ex. 13) a s. 53 demand was made on Mr. Abbi by the Law Society regarding Mr. Abbi resisting complying with undertakings given to Mr. T., until Mr. T. sought Law Society intervention;
- Jul 11 By fax (Ex. 14) Mr. Abbi responded to the Law Society in part as follows (starting at the second paragraph):

Once it became clear as to the position of the Law Society concerning the issues between Mr. T.'s office and our office, I immediately forwarded to Mr. T.'s office payment of the deficient amount of interest (and confirmed with Mr. Hilborn, Q.C. that I would be doing so), and such deposit of funds was made on May 15, 2006. I also wish to reiterate that at no time was it my intention to take advantage of any mistake arising from Mr. T.'s office in respect of the subject transaction, and my recollection, from my telephone conversation with Mr. Hilborn, Q.C. was that such payment would conclude this matter with your office.

The intervention of the Law Society was sought by Mr. T. to obtain clarification as to the outstanding issues between my office and Mr. T.'s office, and I respectfully submit that an adverse inference should not be made by virtue of the involvement of the Law Society in this matter. A great deal of stress was caused to both myself and my client, Mr. D as a result of the vendor deciding to cancel my client's purchase transaction, and the involvement of third parties was required to persuade the vendor to resurrect my client's purchase agreement. In hindsight, I believe that both Mr. T. and myself could have communicated better during the material time, as it was only after the interest deficiency issue arose that I actually spoke with Mr. T. for the first time on this file.

Mr. Abbi's evidence

[9] Mr. Abbi gave brief evidence before the Panel. As noted in the Agreed Statement of Facts and exhibits, the real estate deal became emotionally charged, leading to an extremely difficult situation for all concerned.

[10] Worth noting, and contrary to aspects of the agreed Statement of Facts and exhibits, Mr. Abbi testified that during all material times he was fully aware that Mr. T.'s March 7, 2006 trust letter was in error as to the appropriate rate of interest. Mr. Abbi testified that he brought the error to his own client's attention. He advised his client it was unlikely the error could go uncorrected. Mr. Abbi's client deposited sufficient funds in trust to meet the true interest obligations. Nevertheless, Mr. Abbi testified that his client instructed him to

attempt to rely on the lower interest figure set out in the March 7, 2006 trust letter. Mr. Abbi testified he accepted those instructions. He did so knowing he would be taking advantage of the mistake of another lawyer, when his own client was not entitled to the fruits of that mistake.

Decision

[11] Mr. Abbi did not contest the submission of counsel for the Law Society that on the agreed facts his conduct was conduct deserving of sanction. The Panel agreed the conduct was conduct deserving of sanction.

[12] The conduct complained of is addressed at Chapter 4, Rule 3 of the *Code of Professional Conduct*. Chapter 4 obliges a lawyer to deal with all other lawyers honourably and with integrity. Rule 3 specifically obliges a lawyer to take no advantage of a mistake on the part of another lawyer if to do so would obtain for the lawyer's client a benefit to which the client has no *bona fide* claim or entitlement.

[13] Mr. Abbi did not contest that on the evidence he was in breach of Rule 3 of Chapter 4 of the *Code*, and that his breach was conduct deserving of sanction.

Sanction

[14] Counsel effectively made a joint submission in favour of a reprimand and payment of the actual costs of the hearing. The Panel did not accept that submission, but rather imposed a \$1,000 fine in addition.

[15] The Panel expressed concern for Mr. Abbi's evidence under oath that he was always aware Mr. T's March 7, 2006 trust letter contained the error as to interest, and that he accepted his client's instructions to attempt to take advantage of the situation. While his evidence in this regard showed candour, there was no reconciling Mr. Abbi's other evidence in exhibits that he believed Mr. T's March 7, 2006 trust letter was carefully drafted, and should be accepted on its face. Mr. Abbi maintained this position even in his initial response to the Law Society, on May 4, 2006. In that letter, Mr. Abbi wrote that he "totally disagree[d]" with Mr. T's position that the March 7, 2006 trust letter contained a clerical error.

[16] It was only after further dealings with the law society that Mr. Abbi decided to pay funds to Mr. T based on the correct interest rate. And it was only at the hearing of this matter on May 1, 2007 that Mr. Abbi stated he was always aware Mr. T's March 7, 2006 letter contained an error. (In his July 11, 2006 letter to the Law Society -- expressing surprise that notwithstanding the appropriate interest payment had been made, he still faced a formal complaint -- Mr. Abbi stated "I wish to reiterate that at no time was it my intention to take advantage of any mistake arising from Mr. T's office in respect of the subject transaction.")

[17] In answer to questions from the Panel, Mr. Abbi agreed he was aware of the distinct obligations he owed the Law Society on the one hand, and civil obligations on the other.

[18] Mr. Abbi has been a Member of the Law Society of Alberta some 19 years. He came before the Panel with a discipline record for two earlier findings of conduct deserving of sanction, in 1995 and 1999. Neither was related to the conduct before this Panel.

[19] In all the circumstances the Panel was persuaded to impose a reprimand upon Mr. Abbi, together with a \$1,000 fine and actual costs of the hearing.

[20] The Chair delivered the reprimand.

Time to pay

[21] The Member has until September 4, 2007 to pay the \$1,000 fine and the actual costs of the hearing.

Exhibits Order, other matters

[22] Exhibits will be available for inspection upon request. Should a request be made, the names of individuals will be reduced to initials, in the interest of privacy.

[23] No order was sought, nor made, for a practice review referral. The outcome of the hearing will not be published, and there will be no referral to the Attorney General.

Dated this ____ day of May, 2007.

Peter B. Michalyshyn, Q.C., Chair

Hugh Sommerville, Q.C.

Dr. Larry Olhauser