SUPREME COURT OF LOUISIANA

No. 95-B-2764

IN RE: ROGER C. SELLERS

LEMMON, J., Dissenting

The majority constructs a "house of cards" based on the undisputed, but relatively unimportant, fact that respondent knew of the mortgage on July 26, 1989. Although respondent took no part in the negotiations during the following four weeks between Mrs. Wood and her nephew regarding the sale of the property, the majority then leaps to the conclusion that respondent not only knew that payment of the mortgage had not been incorporated in the negotiations, but also had the duty to notify the nephew of the mortgage. This conclusion cannot be clearly and convincingly drawn from the evidence in the record.

On the day of (or the day before) the sale, respondent was asked simply to serve as notary. The nephew's New Orleans attorney prepared the sale document. The nephew came to the sale in Abbeville with the document prepared by his lawyer and delivered the document to respondent in order for respondent to notarize the signatures. The nephew had possession of the document at all times before and after the sale, and recorded it after the sale.

The mortgage was of record, available to the nephew or his attorney who normally would check the records or order mortgage certificates before purchasing property. Neither the nephew nor his attorney for the sale asked respondent to check the mortgage records or order mortgage certificates. In fact, neither contacted respondent until the eleventh hour before the sale and then only to notarize the

signatures. Respondent at that late hour could not have ordered mortgage certificates before the sale.

As far as this record shows, respondent had no reason to question whether or not payment of the mortgage had been included in the negotiations, in which respondent absolutely took no part.[1] The nephew, for all respondent knew, could have had the mortgage certificate in his pocket at the act of sale. Respondent had no reason to doubt that the nephew or his attorney ordered mortgage certificates and recorded them with the notarized act of sale, or to suspect that Mrs. Wood was contemplating any fraudulent concealment of the recorded mortgage.

Hence, Disciplinary Counsel failed to prove by clear and convincing evidence that respondent knew of the fraud perpetrated by his client or that respondent aided and abetted his client in the fraud.

[1]Respondent knew that Mrs. Woods did not want her nephew to know about the recently obtained mortgage loan on the property when they began negotiations, but reasonably believed she did not want her nephew to know the extent of her financial difficulties while she was negotiating the sales price with him. It is easy to understand why a person negotiating a sale would not want the other party to the negotiations to know of the seller's dire need for money.