



THE LAW SOCIETY OF BRITISH COLUMBIA

ORDER (RULE 4-60)

TO: The Executive Director and Jessica E. Abells

AND TO: [REDACTED]

FROM: Barbara Stanley, KC
Chair of the Discipline Committee

RE: [REDACTED]: Administrative Penalty File No. PE20230008

Pursuant to Rule 4-60 of Law Society Rules 2015 (the “Rules”), I am satisfied that the breach alleged in the above matter has been established on a balance of probabilities and I am also satisfied that the penalty originally assessed should be upheld.

The Rule Breached

1. [REDACTED] is alleged to have breached Rules 3-102 (Requirement to Verify Client Identity), 3-103 (Requirement to Identify Directors, Shareholders and Owners) and 3-104 (Use of an Agent for Client Identification) as follows:
 - (a) [REDACTED] represented [REDACTED] (“[REDACTED]”) and its instructing individuals [REDACTED], the president and [REDACTED], director of marketing and sales, involving a dispute and settlement of that dispute with another entity known as matter #11446-1;
 - (b) [REDACTED] and its instructing individuals are located in Portland, Maine, USA. [REDACTED] did not meet with [REDACTED] or [REDACTED] in person to verify their identification or hire an Agent to verify their identities for non-face-to-face transactions. In addition, [REDACTED] failed to obtain the name and addresses of all persons who own directly or indirectly 25% or more of the shares of [REDACTED].

Facts

2. Based on the information before me and by [REDACTED]'s own admission, the above elements of the rule breach have been met:
 - (a) A financial transaction took place on July 28, 2021, when [REDACTED] wired settlement funds of \$60,000.00 CND to [REDACTED]'s law firm trust account. On August 19, 2021, a trust cheque was issued by the law firm for \$60,000.00 payable to the opposing parties' law firm in settlement of the matter;
 - (b) This was a non-face-to-face financial transaction and [REDACTED] did not meet with the instructing individuals of [REDACTED] in person. He did meet them by videoconference;
 - (c) As a result of the non-face-to face financial transaction, [REDACTED] was required to retain an agent and enter into an agency agreement with that agent who would comply with the client identification and verification Rule 3-104.
 - (d) [REDACTED] did not view any government issued photo identification from either [REDACTED] or [REDACTED], such as a government issued driver's licence or passport during the video conferences; and
 - (e) [REDACTED] also failed to obtain the name and addresses of all persons who own directly or indirectly 25% or more of the shares [REDACTED].

Submission

3. [REDACTED] has filed a dispute under Rule 4-60 for a review of the administrative penalty. He submits that no monetary penalty is warranted or, in the alternative, he seeks a reduction in the amount of the penalty. [REDACTED] has made the following points in his submissions, which can be summarized as follows:
 - (a) the client, [REDACTED], was referred to [REDACTED] by a British Columbia lawyer and [REDACTED], as a boating enthusiast, was well acquainted with [REDACTED]

- ████████ reputation in the North American boating world as being a long-standing, well-known, well-respected luxury pleasure boating brokerage firm;
- (b) in September 2020, when ██████ was retained, we were in the midst of the COVID-19 Pandemic and the Law Society had adopted a “reasonable approach in its compliance activity”;
 - (c) ██████ spoke with ██████, the president, over the telephone on September 24, 2020;
 - (d) ██████ viewed ██████ website which contained a photograph of ██████. ██████ then met with ██████, all parties to the litigation and their counsel, via videoconference on October 30, 2020 and noted that the photo on the website matched the person purporting to be ██████ on the videoconference;
 - (e) Over the course of the file, ██████ met ██████ and ██████ three more times via videoconference and her photo from the website also matched the person who appeared via videoconference;
 - (f) As a result of the above, ██████ felt satisfied that he knew his client and its instructing individuals and they were who they claimed to be;
 - (g) In the alternative, if a penalty is to be assessed, ██████ submits that the above factors are mitigating circumstances that ought to reduce the penalty from \$5,000.00 to \$3,000.00;
 - (h) In the further alternative, ██████ submits that meeting the instructing individuals via videoconference makes this matter appropriate for a Category A fine with a \$3,000.00 penalty which may be assessed for a first contravention of the Client Identification and Verification Rules where the lawyer met with the client in person. He submits that despite video conferencing not being an in-person meeting, he partly satisfied the Rule by meeting the instructing individuals via video conference.

Discussion and Determination

4. For the reasons outlined in his dispute, [REDACTED] submits his breaches of the Rules do not warrant a monetary fine. In the alternative, [REDACTED] seeks a reduced penalty for the reasons he outlined in his dispute and summarized above.
5. I do not accept those submissions and the facts of the breaches have been established by the Law Society and admitted by [REDACTED].
6. I have given all of his submissions due consideration and I do not doubt them.
7. In this review, I do have the discretion to assess a different amount for the Administrative Penalty, however, such discretion should be exercised with care. I find that the penalty is not inappropriate or unfair in the circumstances of this matter and the factors that [REDACTED] submits as mitigating factors do not mitigate a monetary fine of \$5,000.00 being issued.
8. [REDACTED] submits that the Law Society had “adopted a reasonable approach in its compliance activity” and states that in light of the COVID-19 Pandemic he could not meet with the instructing individuals. This may be the case and I do not doubt that the COVID-19 Pandemic prevented the parties from meeting in person. However, this does not mean that [REDACTED] may not have been able to comply with Rule 3-104 and retain an agent in Portland, Maine to meet the requirements of the Rule. Rule 3-104 is meant to address the very situation that occurred here i.e. his inability to meet the client in person and obtain identification in person, whatever the reason. Rule 3-104 intentionally provides an alternative method by which lawyers can properly ensure that they identify their clients, when they can’t meet in person. It may have been possible to retain an agent willing to meet with the instructing individuals in person and obtain their identification despite the COVID-19 Pandemic or meet at some point prior to the settlement of the file and payout of the settlement monies by July 2021. [REDACTED] does not advise that he made any attempt to retain an agent who may have been willing at the time he was retained or at any time prior to the settlement being paid out 10 months later.

9. The Law Society did advise that in unique circumstances where lawyers were unable to avail themselves of any other verification method, the Law Society would take a reasonable approach in its compliance activity, if the lawyer verified identification of a client located in Canada by using video-conference technology. The Law Society stated that lawyers who verify a client's identification using video conference technology should be able to demonstrate that they:
- (a) are reasonably satisfied that the government issued identification is valid and current;
 - (b) were able to compare the image in the government issued identification with the client to be reasonably satisfied that it is the same person;
 - (c) record (with the applicable date) the method used to verify the client's identification;
 - (d) treat the transaction as a high risk transaction and continue to monitor the business relationship as a high risk transaction; and
 - (e) document the efforts that were made to verify the client's identity in accordance with the existing rules and the reasons why they were unable to verify the client's identity in accordance with the existing rules.
10. The client and the instructing individuals were not located in Canada, but in Portland, Maine USA. Furthermore, [REDACTED] did not obtain any government issued identification from either [REDACTED] or [REDACTED] during any of the videoconferences such as requesting that they show him a driver's license or passport during the videoconference. I do not have to determine if this would have been a mitigating factor because [REDACTED] did not do so. However, obtaining proper identification would have demonstrated that he had turned his mind to his obligation to obtain identification from the instructing individuals and that viewing photos on a website that matched the parties in the videoconference was inadequate. That may have been helpful as a secondary method of confirming the identity of the instructing individuals, but should not have been his primary method of identifying them.

11. Finally, he also failed to obtain the names and addresses of all persons who own directly or indirectly 25% or more of the shares of [REDACTED] [REDACTED] and there are no mitigating circumstances for not complying with Rule 3-103, the requirement to identify directors, shareholders and owners.
12. Administrative penalties and the penalty amount determined by the Law Society must balance fairness against the need to ensure that administrative penalties serve their purpose in protecting the public and represent more than a cost of doing business.
13. The amount of the penalty imposed is not disproportionate when weighed against the breach of Rules 3-102, 3-103 and 3-104, the harm that the anti-money laundering rules are intended to prevent and to ensure protection of the public. This is the overriding consideration when determining the amount of an administrative penalty.
14. Furthermore, the Law Society has made it a priority to educate lawyers in British Columbia about the rules that are intended to prevent potential money laundering and of lawyers' corresponding obligations, especially the client identification and verification rules and the cash rules.
15. Canadian lawyers are exempt from other money laundering prevention programs and, as a result, the Law Society's safeguards and lawyers' compliance with and adherence to these rules have additional significance.
16. The Law Society implemented Rule 3-102, 3-103 and Rule 3-104 as components of a systemic effort to prevent money laundering and to prevent lawyers from being willing or unwilling participants in money laundering schemes. This is for the protection of the public and to maintain the integrity of lawyers' use of their trust accounts.
17. The circumstances surrounding [REDACTED] breach of the Rules are taken into account when determining the appropriate course of action. [REDACTED] has identified several mitigating circumstances that are proper considerations for the Executive Director and for the Chair of the Discipline Committee to consider in deciding to levy an administrative penalty and in deciding the amount of the penalty.

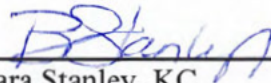
18. The administrative penalty process is discretionary in that, pursuant to Rule 4-59, the Executive Director may choose whether or not to levy such a penalty. If, in other circumstances, a breach of these Rules was considered to be deliberate rather than inadvertent, had done actual harm or had provided a substantial benefit to the lawyer, for example, the Executive Director has the ability to take these and other factors into account and may decide to address the matter through the Law Society's discipline process, rather than through an administrative penalty. In this case, the matter was addressed through the administrative penalty process.
19. As mentioned, the overriding consideration in determining the amount of the administrative penalty is to ensure protection of the public interest. It is open to the Executive Director, in exercising discretion under the Rules, to levy the maximum amount as an administrative penalty to ensure that such penalties are not treated as merely a cost of doing business. It was open to the Executive Director to assess a penalty less than the maximum penalty but it was not required that the Executive Director do so. I conclude that the Executive Director has not exercised discretion in an unfair manner in assessing the Administrative Penalty.
20. The original Notice of Penalty was issued on June 29, 2023 and levied the Administrative Penalty of \$5,000.00 payable by August 7, 2023. The dispute was filed September 11, 2023 after an extension of time was granted.
21. I direct, pursuant to Rule 4-60(2)(c), that [REDACTED] must pay the Administrative Penalty as originally assessed at \$5,000.00 by November 6, 2023.

Order

Therefore, I order that:

The Administrative Penalty is confirmed and must be paid in accordance with the original notice delivered under Rule 4-59, except that the Administrative Penalty is due by November 6, 2023.

Dated: October 13, 2023



Barbara Stanley, KC
Chair of the Discipline Committee