

*Resignation: Breach of fiduciary obligations to investors*

**EDWARD FREDERICK KENNY**

Vernon, B.C.

Called to the Bar May 15, 1972

Undertook to cease practising and consented to custodianship: January 14, 1998

Ceased membership: January 1, 1999

In October, 1997 Mr. Kenny entered into an agreement with A Ltd. to perform services for A Ltd. in relation to an investment program. Mr. Kenny was to act as trustee for investor funds and, as trustee, was to hold bonds as security for investors' capital and profits.

The investment program was to secure capital and pay profits to investors as follows:

- for each \$100,000 U.S. investment, \$200,000 U.S., plus return of capital, was to be paid to an investor by way of 11 payments over the course of 13 months. Security for the \$100,000 U.S. capital was to consist of \$300,000 U.S. in United States Treasury bonds; or
- for an investment of \$100,000 U.S. for one year, an investor was to receive \$500,000 U.S., including the return of capital one year after investment. The \$100,000 U.S. was to be secured by \$500,000 U.S. in United States Treasury bonds.

Mr. Kenny admitted that he had breached his fiduciary obligations to a number of investors (B, C, D, E and F) in handling their investment funds. He further breached his fiduciary obligations in misleading B, C, E and F about their investments. The circumstances are set out below:

**Investor B**

Mr. Kenny received \$100,000 U.S. (less a bank charge) from B for investment in November, 1997. Mr. Kenny breached his fiduciary obligations under his agreements with B by:

- not investing the funds but rather disbursing them to other people;
- not retaining the capital in his trust account until he had received and authenticated a fully verifiable receipt for the issuance of Treasury bonds in his name as required;
- upon non-payment of the profits, not liquidating Treasury bonds to pay profits as required.

In addition, Mr. Kenny wrote to B and misled B in relation to the investment, which amounted to a further breach of his fiduciary obligations to B.

### **Investors C and D**

On January 5, 1998, Mr. Kenny received \$100,000 U.S. in trust for D and on January 14, 1998 received \$100,000 in trust for C. Both C and D provided the funds for investment.

Under agreements with these investors, Mr. Kenny was to keep direct control of the funds unless exchanged for U.S. Treasury bonds. By agreements made in December, 1997, the value of these bonds was to be 500% of capital; by later agreements made in January, 1998, the value of these bonds was to be 300% of capital.

Mr. Kenny was to receive and authenticate a fully verifiable receipt for the issuance of the bonds prior to releasing the capital and was to confirm he held the bonds as security for payment of profits. The investors' capital was to be exchanged for the bonds within 10 "international banking days" or returned to them. The duration of the agreement was 13 months and there was provision for the payment of profits to the investors, failing which Mr. Kenny was to have the bonds sold and the funds paid to C and D, less agency fees.

Between February 3 and 6, 1998 Mr. Kenny used the combined investment sum of \$200,000 received from C and D and disbursed it by cheque or wire transfer to various people: to other investors, to two persons for "management fees" and to himself in "payment of account." None of the funds were invested.

Mr. Kenny breached his fiduciary obligations under investment agreements with C and D by:

- not investing their funds, but rather disbursing them to other people, as noted;
- not returning the funds to C or D as required when the funds were not exchanged for Treasury bonds within 10 "international banking days" as provided in their agreements;
- not retaining the capital in his trust account until he had received and authenticated a fully verifiable receipt for the issuance of the Treasury bonds in his name as required;
- upon non-payment of the profits, failing to liquidate security, if any was held, in order to pay profits as required.

Mr. Kenny wrote to C and misled C with respect to the investment, which amounted to a further breach of fiduciary obligations.

Mr. Kenny sent \$50,000 U.S. to D from trust on April 9, 1998. Mr. Kenny in fact received this money in trust for investment by two other investors (E and F): *see below*. No other funds were returned or paid to D.

## **Investors E and F**

On April 8, 1998 Mr. Kenny received \$200,000 U.S. from investor E and \$100,000 U.S. from investor F. Mr. Kenny deposited these funds to his trust account. He then disbursed the combined funds to various people: to two people as “management fees,” to previous investors (including C and D) as “investment proceeds” and to himself in “payment of account.”

Mr. Kenny did not invest the funds of E or F, or return any of the funds to them.

Mr. Kenny received these funds for a specific investment project. He breached his fiduciary obligation to E by releasing E’s funds without receipt of a bank guarantee for capital or bank obligations securing profits as required under an agreement he had with E and by not investing the funds into a specific project or at all. Mr. Kenny also wrote to E, misleading E in relation to the investment. This amounted to a further breach of his fiduciary obligations.

Mr. Kenny breached his fiduciary obligations to F by disbursing F’s funds rather than applying them to a specific investment project. In addition, he wrote to F and misled F in relation to the investment.

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Pursuant to Rule 4-21, Mr. Kenny admitted to the Discipline Committee that his conduct constituted professional misconduct, and he undertook:

1. not to apply for reinstatement to the Law Society for seven years;
2. not to apply for membership in any other law society without first advising the Law Society in writing;
3. not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society; and
4. to obtain the written consent of the Law Society before working for any other lawyer or law firm in B.C.

The facts agreed to by Mr. Kenny in making his admission are not exhaustive regarding these purported investment programs and are not exhaustive regarding his conduct concerning the programs or investors. Mr. Kenny agreed that the rescission of the citation against him as part of his admission under Rule 4-21 was without prejudice to the right of the Law Society to raise all matters connected with the citation and any conduct issues in any application for reinstatement that Mr. Kenny might make in the future.

The Discipline Committee accepted Mr. Kenny’s admission and undertakings on November 4, 1999, rescinded the outstanding citation against him and ordered that the admission be endorsed on his professional conduct record.

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