

North Vancouver, B.C.

Called to the Bar: May 10, 1977

**Discipline hearing panel:** November 23, 1998

Robert McDiarmid, Q.C., Chair, William Sullivan and William Trotter, Q.C.

Kimberly Campbell, for the Law Society

David Lunny, for Mr. Taschuk

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### **Summary**

While representing Mr. and Mrs. B in negotiating the payment of a judgment against them, Mr. Taschuk breached his undertaking to another law firm. Mr. Taschuk had undertaken to pay the plaintiffs' law firm \$6,000 on behalf of Mrs. B upon receiving this amount in his trust account. On new instructions from Mr. B, Mr. Taschuk instead paid only \$2,000 to the plaintiffs' law firm, which was contrary to the terms of the settlement and his undertaking. He admitted that his conduct in breaching his undertaking constituted professional misconduct. The hearing panel accepted Mr. Taschuk's admission and his proposed disciplinary action, and ordered that he be reprimanded, pay a \$7,000 fine and pay costs of the discipline proceedings.

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### **Facts**

In 1995 Mr. Taschuk represented Mr. and Mrs. B, defendants in a litigation. Mr. and Mrs. B were shareholders in a family company, for which Mr. Taschuk was also the solicitor.

The family company held certain logging rights and received revenues from the exploitation of those rights.

In July, 1995, the plaintiffs in the litigation took default judgment against Mr. and Mrs. B. The plaintiffs' lawyer and Mr. Taschuk worked out an agreement for Mrs. B to pay the judgment against her from funds received from logging sales. Mrs. B approved the settlement proposal and Mr. B directed that logging sale proceeds be paid to Mr. Taschuk in trust.

Mr. Taschuk, under the proposed settlement, wrote to the plaintiffs' lawyer as follows:

[T]he writer confirms that Mrs. B is prepared to increase the amount of the first payment to your client to \$6,000 and has instructed the writer to disburse the funds from the first payment of the sale of logs and the writer hereby undertakes to do so provided that sufficient funds are received by the writer. Thereafter, Mrs.

B will reduce the amount owing to your client by \$3,000 on each tranche or load until the full amount of the judgment is satisfied.

In September Mr. Taschuk received in trust logging sale proceeds in excess of \$6,000, but Mr. B then instructed him to pay only \$2,000 of this money to the plaintiffs' lawyer. Mr. Taschuk followed these instructions and issued a trust cheque for \$2,000.

The plaintiffs' lawyer accepted the money, but took the position that the payment was neither in accordance with the terms of settlement nor with Mr. Taschuk's undertaking.

The plaintiffs sought a receiving order in bankruptcy against Mr. B, but that proceeding settled and the bankruptcy petition was withdrawn. Mr. B paid out the full amount of the plaintiffs' judgment.

## **Decision**

Mr. Taschuk admitted, and the hearing panel found, that his conduct in breaching his undertaking constituted professional misconduct.

## **Penalty**

The hearing panel ordered that Mr. Taschuk:

1. be reprimanded;
2. pay a \$7,000 fine by June 30, 1999; and
3. pay \$5,172.03 as costs of the discipline proceedings by June 30, 1999.

Mr. Taschuk has filed an appeal to the Benchers, which is scheduled for hearing on July 9, 1999.

*Discipline Case Digest — 1999: No. 05 April (Taschuk)*