

North Vancouver, B.C.

Called to the Bar: May 14, 1976

Discipline hearing panel: June 23, 1999

Gerald Lecovin, as a one-Bencher panel

Todd Follett, for the Law Society

Partick Lewis, for Mr. Martin

Hearing report indexed as [1999] LSBC 34

Summary

While representing Mr. D in a matrimonial proceeding, Mr. Martin breached his undertaking to another lawyer to place certain trust funds in an interest-bearing account or Canadian government securities. He instead held the funds in his pooled trust account between November, 1994 and March, 1997, and there was no interest earned for the benefit of either party during this time. Mr. Martin admitted, and the hearing panel found, that his breach of undertaking constituted professional misconduct. He was reprimanded and ordered to pay a \$1,000 fine and \$1,000 as costs of the proceeding. He also undertook to pay Mrs. D \$3,200 to compensate her for lost interest.

Facts

In September, 1994, while representing Mr. D in a matrimonial proceeding, Mr. Martin discussed with Mrs. D's lawyer the sale of a business, which was one of the matters to be resolved between the parties.

Mrs. D's lawyer advised Mr. Martin that Mrs. D would agree to the sale of the business on specified conditions. It was agreed that Mr. Martin would hold the sale proceeds in trust on certain undertakings until further agreement or order of the court.

On September 13 Mr. Martin sent a letter to Mrs. D's lawyer, and he provided the following undertaking:

Pursuant to your request, I undertake to place the proceeds of sale in either an interest bearing trust account (which would be easier), or in Canadian Government securities which mature in less than 90 days.

Mr. Martin received \$123,177, representing the proceeds of sale, on November 2, 1994. Contrary to his undertaking, he left these funds in his pooled trust account rather than

depositing them into either an interest-bearing account or Canadian government securities.

Between November, 1994 and March, 1997, with the consent of his client and the opposing side, Mr. Martin properly withdrew from the funds held in trust to make certain expenditures.

On March 9, 1997 Mrs. D's lawyer requested an accounting of interest earned since November, 1994. As the funds had been in Mr. Martin's pooled trust account, and interest was remitted to the Law Foundation, there was in fact no interest for the benefit of either Mr. D or Mrs. D.

Decision

Mr. Martin admitted, and the hearing panel found, that Mr. Martin's conduct constituted professional misconduct.

Penalty

The hearing panel accepted Mr. Martin's proposed disciplinary action, and ordered that he:

1. be reprimanded;
2. pay a \$1,000 fine within six months; and
3. pay \$1,000 as costs of the discipline proceeding within six months.

Mr. Martin also undertook to pay Mrs. D \$3,200, on or before July 31, 1999, to compensate her for lost interest.