

Courtenay, B.C.

Called to the Bar: May 14, 1969

Discipline hearing panel: January 19, 1999

Gerald Kambeitz, Q.C., Chair, Marjorie Martin and Robert McDiarmid, Q.C.

James Doyle, for the Law Society

Raymond Drabik, for Mr. Finklestein

Summary

Mr. Finkelstein failed to meet professional financial obligations assumed in the course of his practice relating to the services of a title search company. He did not satisfy a judgment obtained by the title search company and he failed to notify the Law Society of the judgment, contrary to Rule 510(2) (now Rule 3-44). The Discipline Committee and discipline hearing panel accepted Mr. Finkelstein's admission of professional misconduct and his proposed disciplinary action, and ordered that he pay a \$7,500 fine and \$2,500 in costs.

Facts

In 1989 Mr. Finkelstein entered into an agreement with Mr. M, a lawyer in Winnipeg, to open and operate several law offices in British Columbia under the name M Law Offices. To this end, Mr. Finkelstein and Mr. M set up an interprovincial partnership. Mr. Finkelstein was a managing partner of M Law Offices and took an active role in administering several of the offices that were opened in the Vancouver lower mainland.

From time to time, M Law Offices used the services of a title search company, mainly in connection with M Law Offices' conveyancing practice.

Initially, payments were made to the title search company from general cash flow. When that cash flow became inadequate around May, 1992, most funds used to pay the title search company's accounts came from the Winnipeg office. Mr. M and Mr. Finkelstein met with a representative of the title search company to arrange a payment plan for outstanding accounts. It was the intention of Mr. M and Mr. Finkelstein that the funds for the scheduled payments would come from Mr. M in Winnipeg. However, Mr. M did not adhere to the payment schedule.

In 1993 the title search company commenced an action against Mr. Finkelstein and others relating to approximately 275 unpaid invoices, and claimed \$20,675.27. Only a small

number of the unpaid invoices related to work performed by Mr. Finkelstein himself. However, Mr. Finkelstein had taken responsibility for dealing with the title search company in relation to the unpaid invoices.

Following the introduction of no-fault insurance in Manitoba, money stopped coming from Mr. M in Winnipeg to fund the B.C. offices. Lacking operating capital, Mr. Finkelstein attempted to wind down those offices in as orderly a manner as he could.

In September, 1994, Mr. Finkelstein withdrew from the partnership with Mr. M. Also in 1994, Mr. Finkelstein anticipated receiving approximately \$20,000 on a contingency fee matter at one of the lower mainland offices. Mr. Finkelstein and Mr. M agreed that this fee would be used to settle the title search company's accounts.

When these funds were realized in June, 1995, they were sent to Winnipeg. Mr. M was out of the country at the time, and his Winnipeg partners allocated the money otherwise and did not pay any of the funds to the title search company. This occurred without Mr. Finkelstein's knowledge or control.

In January, 1995, the title search company obtained judgment for approximately \$19,400 against Mr. Finkelstein and Mr. M. The judgment was never paid. Following financial reverses attendant on the failure of the M Law Offices partnership, Mr. Finkelstein made an assignment in bankruptcy in 1996 and was discharged in 1997.

When he became aware of the judgment against him, Mr. Finkelstein sought legal advice. In June, 1995, he left a message with the Law Society's Director of Practice Management. Mr. Finkelstein did not receive a response to the message and he did not follow up or otherwise report the judgment to the Law Society until after he was notified by the Society that the title search company had complained about the unsatisfied judgment.

Decision

Mr. Finkelstein admitted to professional misconduct in:

- failing to meet his professional financial obligations incurred or assumed in the course of his practice, contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*;
- failing to satisfy the judgment obtained against him by the title search company and failing to give written notification of the judgment to the Law Society, contrary to Law Society Rule 510(2) (now Rule 3-44).

Penalty

The hearing panel accepted Mr. Finkelstein's admissions pursuant to Law Society Rule 469 (now Rule 4-22) and ordered that he:

1. pay a \$7,500 fine within one year of the hearing date; and

2. pay \$2,500 as costs of the discipline proceedings within one year of the hearing date.

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