

Richmond, B.C.

Called to the Bar: December 19, 1975

Resigned membership: May 17, 1996

Discipline hearing panel: November 27, 1996 and February 4, 1997

W.T. Wilson, Q.C., Chair, G.J. Lecovin and R.S. Tretiak

Jean Whittow, for the Law Society

Mr. Caplan did not appear, although notified

Summary

Mr. Caplan failed to honour an undertaking and failed to respond to correspondence from the Law Society and from another lawyer.

Facts

In 1993 Mr. Caplan represented the vendor in a real estate transaction. In late July the purchaser's solicitor (Mr. M) placed Mr. Caplan on his undertaking to pay 1993 property taxes in full, together with interest, arrears and penalties, and to provide proof of payment within a reasonable period of time.

In August, 1995 Mr. M learned that Mr. Caplan had not paid the property taxes, but that the vendor had received and paid the tax bill directly and had since been collecting payments from the purchaser.

Mr. M faxed seven notes and letters to Mr. Caplan between August, 1995 and January, 1996. Mr. Caplan spoke with Mr. M by telephone in August, 1995, but did not respond to any of his subsequent correspondence concerning fulfilment of the undertaking.

Mr. M complained to the Law Society in January, 1996.

The Law Society wrote to Mr. Caplan about the complaint on February 5 and 28, March 15 and April 23 and 30, 1996. Mr. Caplan failed to reply to any of these letters.

In March, Mr. M repaid his client personally and then sued Mr. Caplan in Small Claims Court. In June Mr. Caplan paid to Mr. M \$1,748.91, the balance of the property taxes and court costs.

On May 16, 1996, Mr. Caplan was suspended from membership in the Law Society under section 43(1) (now section 45(1)) of the *Legal Profession Act*, and he resigned his membership immediately, prior to the hearing of this citation.

Decision

Mr. Caplan was guilty of professional misconduct in failing to honour his undertaking, contrary to section 4 of the *Canons of Legal Ethics*, failing to respond reasonably promptly to correspondence from another lawyer, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* and failing to respond promptly to correspondence from the Law Society, contrary to Chapter 13, Rule 3 of the *Handbook*.

Penalty

The discipline hearing panel ordered that Mr. Caplan:

1. be suspended until he satisfies a board of examiners appointed by the Competency Committee that he is competent to practise law;*
2. pay \$4,771.98 as costs of the discipline proceedings.

* **Note:** As a former member, Mr. Caplan would also be required to seek reinstatement in the Law Society before being permitted to resume practice.

Discipline Case Digest — 1997: No. 4 October (Caplan)