

Vancouver, B.C.

Called to the Bar May 15, 1961

Discipline hearing panel: February 19 and 20 and April 22, 1996

H.R. Berge, Chair, R.C. Gibbs and K.P. Jensen

M. Baird, for the Law Society

Mr. Hart, on his own behalf

Summary

While representing a client in a matrimonial proceeding, Mr. Hart received a series of post-dated cheques from the client's former spouse, which the former spouse provided "in trust" as loan repayments owed to the client's father, who was then deceased. Mr. Hart deposited these cheques to his trust account. Mr. Hart's client was a beneficiary under the estate, and she was seeking to be named an administrator. Although Mr. Hart did not represent his client in the estate matter, he applied the money held in trust for the estate towards the client's outstanding legal accounts in the matrimonial proceeding, without her authorization. His conduct constituted professional misconduct.

Facts

In April 1991 Ms. M retained Mr. Hart to represent her in matrimonial proceedings, including the reappportionment of family assets.

Ms. M's father had assisted Ms. M and her husband, Mr. K, in purchasing their home through a \$35,000 loan; Ms. M and Mr. K made bi-monthly payments on the loan. After his separation from Ms. M, Mr. K continued to make loan payments, without prejudice to his position that the loan was in fact a gift.

After the death of Ms. M's father in 1992, Ms. M and one of her sisters sought letters of administration with will annexed. Mr. K became reluctant to make loan payments directly to Ms. M until she formally became an administrator.

On June 23, 1992, Mr. K gave Mr. Hart "in trust" five post-dated cheques totalling \$1,500, representing loan payments to the estate, even though Mr. Hart did not represent Ms. M on the estate matter. Mr. Hart did not immediately advise Ms. M of the cheques. When she faxed him on July 10 to express concern that Mr. K had not made any recent loan payments, Mr. Hart told her that he had in fact received cheques from Mr. K. Ms. M objected to these payments being made to Mr. Hart "in trust" and asked that future payments be payable to her late father for deposit into the estate bank account.

On August 7 Mr. Hart wrote to Mr. K to pass on his client's instructions about future loan payments. Shortly thereafter, he received two further cheques that Mr. K had mailed on August 6. He deposited these to trust.

On August 31, 1992 and September 29, 1992, Mr. Hart issued accounts to Ms. M that indicated he had transferred a total of \$2,100 from trust in payment of Ms. M's outstanding account on the matrimonial matter. Ms. M was concerned that Mr. Hart might have transferred some of the funds held for the estate. After talking to Mr. Hart's secretary, she concluded that, since \$1,500 of the account was shown as a "payment or adjustment," Mr. Hart must have adjusted his account downward.

In May, 1993 Ms. M realized that Mr. Hart had in fact used the estate funds to reduce her outstanding account. She confronted him by letter on May 5, 1993 and delivered a copy of the letter to the Law Society.

After conclusion of her divorce trial in June, Ms. M told the Law Society she did not wish to pursue the complaint. By September, 1993 Ms. M was again concerned with mounting legal fees. Mr. Hart agreed to accept \$10,000 as full and final payment on his account, but he later billed Ms. M \$1,300 for agency fees that he had omitted from the previous bill. Ms. M renewed her complaint in December, 1993.

Mr. Hart wrote to Ms. M on March 10, 1994. In addressing the use of the trust cheques to pay down the outstanding legal account, he stated:

... The transfer was made on the basis that you were entitled to all of the funds in your capacity as a substantial beneficiary of your father's estate, although at that point you had not taken out Letters of Administration with Will Annexed but had assumed control of the estate and were living in his former home.

Decision

The hearing panel found that Mr. Hart was not representing the estate and he was not entitled to apply the estate funds to Ms. M's outstanding legal accounts without her authorization. His conduct constituted professional misconduct.

Penalty

The hearing panel found that Mr. Hart had not acted dishonestly, but had failed to segregate estate trust funds from client trust funds and had shown an unacceptable degree of inattention.

After considering Mr. Hart's professional conduct record, submissions by counsel and by Mr. Hart, precedents and the circumstances of the case, the panel ordered that Mr. Hart:

1. be reprimanded;
2. pay a \$1,000 fine, within three months; and
3. pay \$2,000 towards the cost of the discipline proceedings, within three months.

Discipline Case Digest — 1996: No. 11 November (Hart)