

West Vancouver, B.C.

Called to the Bar: May 15, 1974

Discipline hearing panel: July 5, 1996 and June 16, 1997

G.J. Lecovin, as a one-Bencher panel

W. Nesmith, for the Law Society

Mr. Gerbrandt, on his own behalf

Summary

Between September, 1989 and June, 1990, Mr. Gerbrandt received settlement money on behalf of several clients, which he disbursed to a securities firm on a written direction from those clients. In complying with that direction, the securities firm then paid Mr. Gerbrandt directly for the legal fees he was owed by the clients. Mr. Gerbrandt did not deposit these fees, totalling almost \$300,000, to any of his law firm accounts. He prepared the written direction in this manner, and he failed to maintain proper accounting records, in order to evade paying income tax on these fees. When a Law Society audit revealed that \$228,000 had not been reported to Revenue Canada for 1990-91, Mr. Gerbrandt took immediate steps to pay the tax owing.

About the same time as these events, Mr. Gerbrandt offered his employees an incentive scheme to pay them a percentage of fees received from clients whom the employees referred to the firm; this referral scheme was not permitted under the *Professional Conduct Handbook*.

Facts

Breaching accounting rules in attempt to evade income tax

Between September, 1989 and June, 1990, Mr. Gerbrandt received on behalf of several clients four payments totalling almost \$1.2 million from settlements or judgments. He obtained from the clients a written direction to pay the money to a securities firm and a further direction that the securities firm then pay him directly for his legal fees, which totalled almost \$300,000. Mr. Gerbrandt did not deposit to any of his law firm's accounts the money he received from the securities firm for his fees.

Mr. Gerbrandt did not render a proper bill to his clients, contrary to Law Society Rule 825(2), and he failed to record the receipt of fees in the firm's general account records, contrary to Rule 843(1)(a). In obtaining directions from clients to receive his fees directly from the securities firm and in failing to prepare and maintain proper accounting records on these matters, Mr. Gerbrandt attempted to evade paying income tax on the money he earned.

In a Law Society review of Mr. Gerbrandt's accounting records, completed at the end of 1991, the auditor noted that \$228,000 of income to the law firm had not been reported for 1990-91. Mr. Gerbrandt took immediate steps to have his accountant advise Revenue Canada and to pay the tax owing. Revenue Canada took no action against Mr. Gerbrandt.

Retaining money received for costs without reducing fees

Between July, 1988 and April, 1990, Mr. Gerbrandt received payments totalling \$8,500 as costs in the settlement of three litigation files that he handled on a contingent fee basis. He retained this money without reducing his fees, which was contrary to section 78(7) (now section 87(13)) of the *Legal Profession Act*, which came into effect June 1, 1988.

In one of these cases, Mr. Gerbrandt tried to "contract out" of the provisions of the *Act* by including a provision in his contingent fee agreement that he could retain costs in lieu of charging the client interest on disbursements financed by his law firm. He was not entitled to do this.

Offering employees referral fees

Between 1989 and 1990, Mr. Gerbrandt breached former Rulings 4(a) and 5(a) of the *Professional Conduct Handbook* then in effect by offering his employees referral fees, being 10% of fees collected from a client who was referred to the firm by an employee.

Decision

The hearing panel found that Mr. Gerbrandt's conduct constitutes professional misconduct.

Penalty

The panel found that Mr. Gerbrandt's failure to prepare and maintain appropriate accounting records was the most serious of his misconduct since his motive for not disclosing the receipt of fees was to avoid paying income tax on them.

As Mr. Gerbrandt was not practising law at the time of the hearing, the panel noted a suspension would be of little effect. Because his motive was financial gain, a fine was more appropriate.

The panel ordered that Mr. Gerbrandt:

1. be reprimanded;
2. pay a \$10,000 fine; and
3. pay costs of the discipline proceedings.

Discipline Case Digest — 1997: No. 8 October (Gerbrandt)