

Vancouver, B.C.

Called to the Bar May 10, 1978

**Discipline hearing panel:** November 29, 1994

W.T. Wilson, Q.C., Chair, J.M. MacIntyre, Q.C. and K.F. Warner

J.P. Whittow, for the Law Society

F.G. Potts, for the member

### **Summary**

While attempting to recover property for a client, the member wrote a letter referring to a court order for vacant possession, partition and sale of the client's condominium. The letter implied that the order restricted a moving company from releasing personal property to another party. In fact, the court order referred to realty, not personalty, and the member was reckless in characterizing the order in a manner inconsistent with its terms. The member also swore in an affidavit that he had spoken to the lawyer who had been acting for the other party on an appeal of the court order and that the lawyer did not know of the other party's whereabouts. At the time, the member knew that the party had retained several subsequent lawyers, but he failed to mention this in his affidavit. The member admitted, and the discipline hearing panel found, that he had acted recklessly and that his conduct constituted professional misconduct.

### **Facts**

In March, 1991 the member was contacted by Mr. H, a senior citizen and one of the member's clients, to assist in recovering property from Ms. N, a woman with whom Mr. H had been in a relationship for the previous seven months. Mr. H alleged that Ms. N had convinced him to change his will, had used his credit and a number of his assets and had persuaded him to provide a \$50,000 down payment to purchase a condominium in joint tenancy.

Mr. H revoked a power of attorney he had given to Ms. N and gave it instead to the member to assist in the recovery of his assets.

To recover the condominium, the member commenced an action against Ms. N seeking a declaration of trust. During discoveries, Ms. N provided the member with a written agreement that she and Mr. H had executed on October 29, 1990 covering their respective rights in the co-purchase and the sale of the condominium. On a subsequent petition on July 10, 1991, the court ordered partition and sale of the property and ordered that Ms. N vacate the premises by July 31. Ms. N retained a lawyer to appeal this decision, but that lawyer ceased acting on July 30 and advised the member. The appeal was neither advanced nor abandoned.

Ms. N did not vacate the premises. The member sought another order for vacant possession. He was contacted on August 13 by a new lawyer for Ms. N who obtained an adjournment. A few days later, Ms. N again retained a different law firm.

On August 22 the member learned from the condominium manager that Ms. N had moved a number of items that day, including kitchen appliances and cabinets from the condominium. These were stored with a moving company, along with her personal possessions. On August 23 the member wrote to the moving company. The letter implied that the court order of July 10, 1991 for vacant possession, partition and sale restricted the release of personal property then held by the moving company. In fact, the court order referred only to realty, not to personalty, and the member was reckless in characterizing the order in a manner inconsistent with its terms.

Ms. N vacated the condominium on August 28. She did not leave a forwarding address and, except for having her most recent lawyer say he was no longer acting for her, made no contact with the member. On

August 30 the member obtained a desk order for vacant possession and a writ of possession authorizing Mr. H to list and sell the condominium. He paid the moving company's storage costs on Mr. H's behalf.

On October 7 a new lawyer for Ms. N (T.H.) contacted the member. He asked how the member found authority in the July 10 court order to instruct the moving company to hold Ms. N's personal property. The member said he interpreted the court order broadly, though he later agreed that the moving company should release the personal property.

The member was at this time acting for Mr. H in the sale of the condominium. The purchaser's solicitor was not satisfied that the July 10 order and the August 30 desk order were sufficient for Mr. H to transfer title without Ms. N's signature and wished to obtain a vesting order instead. The solicitor prepared an application and an affidavit in support of an ex parte vesting order, and revised the affidavit several times based on information received from the member. The member then swore the affidavit, which said that he had spoken with Ms. N's previous lawyer who had handled her appeal but that lawyer did not know her whereabouts. The member failed to mention that Ms. N had since retained several other lawyers, most recently T.H.

On the day of the application, the solicitor for the purchaser met T.H. who was at the courthouse on another application. They agreed to adjourn the application for the vesting order so that T.H. could obtain instructions, and it later proceeded unopposed by Ms. N.

In his representation of Mr. H, the member handled legal issues relating to property, which fell outside his area of practice. He believed that Ms. N had treated his client poorly and had abused the court process; he was further frustrated by Ms. N's attacks on his honesty and integrity and complaints she had made to the police against him.

In characterizing the July 10 court order in a manner inconsistent with its terms and in failing to mention Ms. N's new lawyer in an affidavit, the member acted recklessly, but not dishonestly, and he neither sought nor derived personal benefit.

### **Decision**

The member admitted, and the hearing panel found, that the member's conduct constitutes professional misconduct.

### **Penalty**

The Discipline Committee and the discipline hearing panel accepted the member's admission of professional misconduct and his proposed disciplinary action. The panel accordingly ordered that he:

1. pay a fine of \$2,000; and
2. pay \$3,574 toward costs of the discipline proceedings within 60 days.