

Victoria, B.C.

Called to the Bar September 13, 1977

Suspended January 17, 1991

Resigned membership October 12, 1994

Discipline hearing panel: October 22, 1992 and February 25, 1994

D.A. Silversides, Q.C., Chair, P.D. Warner and R.E.C. Apps, Q.C.

Benchers: April 12, 1996

W.M. Trotter, Q.C., Chair, H.R. Berge, R.D. Diebolt, Q.C., R. Gibbs, P.J. Keighley, G.J. Lecovin, N. MacDonald, Q.C., E.M. Reid, Q.C., G.R. Toews, K. Warner and W.T. Wilson, Q.C.

G.A. Cuttler, for the Law Society

Mr. Reuben, on his own behalf, (findings of fact, verdict and non-publication application); J.W. Williams for Mr. Reuben (penalty)

Summary

Mr. Reuben received as legal fees from a client \$3,000 in cash, which he concealed to avoid the payment of income tax. In representing this client, he breached his undertaking to a credit union to satisfy his client's indebtedness to the credit union from the proceeds of a settlement. Mr. Reuben breached several Law Society accounting rules.

Facts

In November, 1988 Mr. Reuben began acting for Mr. J in a claim against the estate of Mr. J's father. They entered into a contingent fee agreement under which Mr. Reuben would receive 30% of any settlement, provided Mr. J received at least \$10,000.

Mr. J was indebted to a credit union for over \$1,400 and his payments were in arrears. On February 6, 1989 he applied to the credit union for an additional \$1,000 loan. Because Mr. J was not a good credit risk, the credit union refused a further loan without security.

Mr. J told the credit union he expected to recover a sizeable sum from his father's estate from which he could repay his loan. He asked the credit union representative, Ms. H, to confirm this with Mr. Reuben.

Ms. H called Mr. Reuben to explain Mr. J's loan application and his offer to provide the proceeds of the estate claim as security for the loan. She said that she would not approve the loan unless she received from Mr. Reuben an "irrevocable letter of payment." Mr. Reuben said he would discuss this with his client.

Mr. Reuben subsequently wrote the credit union a letter, consented to by Mr. J, which stated:

Re: Mr. J

I confirm that I act for the above. This letter constitutes an irrevocable assignment to pay out the outstanding loan of approximately \$1,441 and as security for a further loan of \$1,000 payable forthwith out of proceeds of the funds received in my office in trust for the above.

I confirm that Mr. J has signed a settlement of his claim in his father's estate and is therefore entitled to receive funds well in excess of the above loan amounts.

Mr. Reuben's letter was a representation by him that he would receive sufficient funds from the settlement of Mr. J's claim to fully repay Mr. J's indebtedness to the credit union. In the circumstances, this letter constituted an undertaking by Mr. Reuben to pay not less than \$2,141 to the credit union upon receipt of the settlement funds.

The credit union made the \$1,000 loan to Mr. J on the strength of Mr. Reuben's letter.

In May 11, 1989 Mr. Reuben received settlement proceeds of \$15,000 and deposited the money in his trust account. The next day he wrote a \$350 trust cheque to pay a disbursement. At the same time he wrote a cheque, payable to Mr. J, for \$13,750. A balance of \$900 remained in his trust account.

Immediately after writing the \$13,750 cheque, Mr. Reuben went to the bank, accompanied by Mr. J. Mr. Reuben had Mr. J endorse the cheque. He then arranged for a bank representative to negotiate the cheque and provide, in return, a \$9,750 bank draft payable to Mr. J and \$4,000 in cash. There was conflicting testimony given by Mr. Reuben and Mr. J as to who would pay the disbursement. The panel made no finding as to whether there were discussions in this regard.

Mr. Reuben gave Mr. J the bank draft and \$1,000 cash. Mr. Reuben kept the balance of \$3,000 cash for his fees. Mr. Reuben failed to withdraw funds from trust for payment of fees by cheque payable to his general account as required by Rule 836(2). He furthermore did not record the \$3,000 payment in his books and accounts, as required by Rules 825(1) and 844, and he did not deliver a bill or receipt to Mr. J, as required by Rule 825(2).

At the time, Mr. Reuben did not advise the credit union when he received the settlement funds, and neither he nor Mr. J paid any proceeds of the claim to the credit union.

Mr. Reuben was aware of and considered the letter he had written to the credit union, but he deliberately chose to pay all of the settlement proceeds, except for the \$350 disbursement, to Mr. J or to himself. In doing so, he deliberately and knowingly breached his undertaking to the credit union.

On July 13, 1989 Mr. Reuben created a fictitious bill to Mr. J for \$900, which was the exact balance remaining in trust for his client. He mailed the bill to Mr. J's former address, though he knew that Mr. J no longer lived there. On July 17 Mr. Reuben transferred the \$900 from his trust account to his general account as payment of the fictitious bill, and he falsified his trust and general account records. He did not report on his 1989 income tax return the \$3,000 cash he received from Mr. J, thereby evading the payment of income tax. The panel found that his actions were a deliberate and planned attempt to deceive and mislead Revenue Canada in furtherance of his intent to evade income tax.

In 1992, Mr. J complained to the Law Society about Mr. Reuben's conduct. On being notified of Mr. J's complaint, Mr. Reuben admitted in writing to the Law Society that he had accepted \$3,000 cash from Mr. J. Mr. Reuben also advised that he had contacted Revenue Canada to request that the \$3,000 be included on his 1989 return. After Revenue Canada reassessed the return, Mr. Reuben paid the tax, as well as penalties and interest.

The Discipline Committee authorized a citation against Mr. Reuben on June 17, 1992, and the discipline hearing was held on October 22, 1992 and February 25, 1994.

Decision

Mr. Reuben was guilty of professional misconduct in concealing \$3,000 he received in cash with the intent of evading income tax and in breaching his undertaking. He further breached several Law Society accounting rules.

Penalty

The discipline hearing panel reprimanded Mr. Reuben for breaching accounting rules and for accepting fees in cash in an attempt to evade income tax. The panel noted that it normally would have imposed a more severe penalty for these actions; however, it took into account the fact that Mr. Reuben had earlier been suspended for a lengthy period (and was at the time of the hearing still under suspension) for almost identical conduct that took place in the same time period.

With respect to the breach of undertaking, the panel was prepared to be lenient in light of Mr. Reuben's ongoing suspension. The panel ordered that Mr. Reuben:

1. be suspended for two months, as of February 25, 1994; and

2. not resume the practice of law until he satisfies a board of examiners appointed by the Competency Committee that his competence to practise is not adversely affected by a physical or mental disability.

On March 3, 1994 the Discipline Committee resolved to refer the penalty in this case for review before the Benchers under section 48 of the *Legal Profession Act*. That hearing was to have proceeded on May 5, 1994, but was adjourned at Mr. Reuben's request.

On October 12, the day before the Benchers were to review penalty, Mr. Reuben resigned as a member of the Law Society and undertook not to reapply for membership. This resulted in further adjournment of the section 48 review.

On May 4, 1995 the Discipline Committee decided to withdraw reference of the penalty to the Benchers, in light of Mr. Reuben's resignation, his undertaking not to reapply for admission to the Law Society and the fact that he was not authorized to practise law, pursuant to section 26 of the *Legal Profession Act*.

Mr. Reuben subsequently applied to the Benchers under Law Society Rule 495(2)(a) for a decision that there be no publication to the profession of his discipline case. Following submissions from Mr. Reuben and from Law Society counsel on April 12, 1996, a majority (seven) of the 11 Benchers hearing the matter rejected Mr. Reuben's application and ordered that publication proceed in the usual course.

Discipline Case Digest — 1996: No. 6 July (Reuben)