

Cranbrook, B.C.

Called to the Bar: May 12, 1967

Discipline Hearing Panel: June 8, 1993

K.F. Nordlinger, Q.C., as a one-Bencher panel

J. Whittow, for the Law Society

W.B. Smart, for the member

Summary

While acting for a corporate client, the member deposited to his trust account two cheques payable to another company which was then in litigation with his client. He made the deposit without the authorization or consent of that other company and did not return the funds to the lawyer for the company, despite several requests, for two months.

Facts

The member acted for CM Ltd., a company that had leased business premises to CC Ltd. and had granted CC Ltd. the right to purchase business equipment.

CC Ltd. vacated the premises with 11 months left on the lease and, at the same time, removed a piece of business equipment.

In early 1991 CM Ltd. started a Small Claims action against CC Ltd. for losses on the lease and the equipment removal, and for other losses. In June and July, 1991 the parent company of CC Ltd. sent two cheques for \$2,037.36 and \$2,750, payable to CC Ltd, to the leased premises.

The principal of CM Ltd. found the cheques and gave them to the member for deposit in his law firm trust account. The member deposited the cheques to his trust account on August 1, 1991. He did not advise CC Ltd. that he had received the cheques, nor did he obtain that company's authorization or consent to deposit or otherwise deal with the funds, nor did he contact the parent company that had issued the cheques.

The lawyer for CC Ltd. learned from the issuer of the cheques that the funds had been deposited to the trust account of the member's firm. The lawyer demanded return of the money on February 19, 1992 and followed up with the member by telephone on March 4. The member said he would deliver the funds only on the undertaking of CC Ltd.'s lawyer to hold the funds in trust until the dispute between the two companies was resolved. The lawyer refused to give this undertaking.

After a complaint to the Law Society by the lawyer for CC Ltd., the member returned the funds on April 21, 1992. He was later cited by the Discipline Committee.

At the time he proposed a discipline admission, the member paid to CC Ltd. a sum representing interest on the funds for the period during which he had improperly held them.

Admissions

The member admitted that he had professionally misconducted himself by depositing to his trust account on behalf of a corporate client cheques payable to another company without the authorization or consent of that company. The member further admitted that his refusal over two months to return the money to the lawyer for CC Ltd., except on a specified condition, constituted professional misconduct.

The member said his misconduct resulted from his belief that he could hold the funds as a form of set-off for money CC Ltd. owed his client. The funds remained in his trust account since their receipt.

Penalty

The Discipline Committee resolved that the member's admissions be referred to a discipline hearing panel for consideration. The hearing panel accepted the admissions and proposed disciplinary action on June 8, 1993, and ordered that the member:

1. pay a fine of \$1,500; and
2. pay costs of the hearing, not exceeding \$750; and
3. undergo a practice review and follow any remedial program recommended as a result of the review, at his own expense.

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