

Nanaimo, B.C.

Called to the Bar: July 13, 1982

Discipline hearing panel: January 22, 1993

B.B. Trevino, Q.C., as a one-Bencher panel

Counsel for the Law Society: G.J. Nash

Counsel for the member: M.P. Carroll

Summary

The member failed to reply promptly to Law Society correspondence, failed to pay an accountant's bill and later a default judgment for the bill, and failed to deliver to the Law Society an accountant's report (Form 47) within the prescribed time limits. He also misled the Law Society through his wilful blindness to the actions of his secretary to whom he gave responsibility for preparing responses to the Society on his behalf.

Facts

In 1990 the member retained a chartered accountant to prepare two Form 47 accountant's reports on his trust account. On September 30 the accountant rendered a bill for \$1,300 for the 1990 report.

The accountant sent monthly statements showing the outstanding balance, but the member made no payment. On October 30, 1991 the accountant began a small claims action. The member failed to appear and the court granted default judgment for \$1,447.50 on January 16, 1992.

On January 17 the accountant sent to the member the application for default order, but the member did not respond. The accountant subsequently filed a garnishing order and unsuccessfully attempted to garnishee the member's bank account. After taking these steps and making numerous telephone calls to the member's office that were not returned, the accountant reported the member's conduct to the Law Society on February 27, 1992.

On March 10, 1992 a Law Society staff lawyer wrote to the member for an explanation and requested a response within two weeks. The member did not respond. The Law Society wrote again on March 25 asking for a response within 10 days. The member did not reply.

When the Society left a telephone message for the member on April 7, the member's wife, Ms. J, who was employed as his secretary, called the next day to say that she would type a letter dictated by the member and send it to the Society as soon as possible.

On May 12 the member faxed the Law Society a letter dated April 13. In that letter the member said that on January 31, 1992 he had forwarded three cheques to the accountant in payment of the bill: one cheque for \$350 dated January 31, one for \$500 post-dated February 28 and one for \$500 post-dated March 31. He explained that he assumed the accountant had received these cheques and said he only learned that the accountant had taken default judgment when the Law Society wrote on March 10.

The member also stated in the April 13 letter that he had already sent a new cheque to the accountant's office in payment of the bill. In fact, it was not until May 15 that the member sent the accountant payment of \$1,387, by cheque dated April 30.

Throughout these events, the member left responsibility with his secretary, Ms. J, for paying the accountant's bill and for responding to the Law Society. Ms. J did not follow through or bring correspondence to the member's attention, and the member was wilfully blind to her actions.

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On another matter, the Law Society wrote to the member on November 14, 1991 seeking his explanation on a complaint. The Society sent a follow-up letter on December 31. The member advised the Society on

January 13 that he would need a report from another lawyer to whom he had referred the file. The Society wrote to the member on January 16 asking for a progress report by February 13 and then sent follow-up letters on February 20, March 5, March 20 and March 31. On April 1 the member said he would shortly receive documents from the other lawyer and hoped to send these to the Society by April 3, but he then failed to do so. The Law Society wrote on April 28 advising the member that his failure to respond would be referred to the Discipline Committee. The member received documents to support his explanation on April 6, which he submitted to the Society on May 5.

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On another matter, the member failed to deliver a Form 47 accountant's report due June 30, 1992. The Law Society wrote to him on July 10 and again on July 30, 1992 respecting his failure to file. The Discipline Committee authorized a citation on September 16. The member did not submit the report until November 9, 1992 and he paid a late filing penalty of \$1,400.

Decision

The member professionally misconducted himself by:

- failing to respond promptly to Law Society correspondence in respect of two complaints;
- failing to pay a bill, which later resulted in a default judgment, for the professional services of his accountant;
- failing to file a Form 47 accountant's report within the prescribed time limits; and
- misleading the Law Society on payment of the accountant's bill through his wilful blindness to the actions of his secretary who was preparing responses to correspondence from the Society on his behalf.

The panel noted that the member did not intentionally mislead the Society respecting his payment of the accountant's bill. The member, however, was responsible for correspondence emanating from his office and he did not dispute that the *effect* of his April 13 letter was to mislead the Society.

The member knew that Ms. J had a long history of protecting him from correspondence that she believed would upset him. On a previous occasion in 1990 the member failed to respond to Law Society correspondence because Ms. J did not bring that correspondence to his attention. Given his prior knowledge, the member exhibited avoidance and denial behaviour by turning over to Ms. J, without follow-up or supervision, responsibility to pay the accountant's bill and to prepare a response to the Law Society.

Penalty

The panel stated that it is in the best interests of the public and the profession that the Law Society promptly respond to and investigate complaints about lawyers' conduct.

The panel ordered that the member:

1. be reprimanded;
2. pay a \$2,000 fine by April 30, 1994;
3. pay costs of the discipline proceedings not exceeding \$4,000 by April 30, 1994;
4. not employ Ms. J in any capacity touching on his professional practice after March 31, 1994;
5. undergo an assessment and remediation program acceptable to the Law Society to assist the member to overcome his avoidance, denial and procrastination problems, with the cost of such program to be at his own expense; and
6. authorize a report to the Society on the diagnosis, prognosis and recommendations arising out of this program.

The panel further ordered that the member arrange for completion of the assessment and initial report and recommendations by April 30, 1994, failing which the member will be suspended from practice for the period of the default.

The panel also ordered that, if the member applies for an extension of time to complete payment of the fine and costs, such an application must be made and granted prior to April 30, 1994; otherwise, the member will be suspended from practice for any default in payment, for the period of the default.

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