

Duncan, B.C.

Called to the Bar: June 28, 1973

Ceased membership: December 31, 1992

Discipline hearing panel: December 16, 1993, March 2 and 10, 1994 and April, 1994 (written submissions on penalty)

K.F. Nordlinger, Q.C., Chair, C.O.D. Branson, Q.C. and T.L. Brown, Q.C.

R.A. Ross, for the Law Society

The member did not appear, though duly notified, but he made written submissions on penalty.

Summary

While acting as the executor-solicitor for two estates, and while acting as the solicitor on a conveyance, Mr. Hogan wrongfully converted trust funds to his own benefit without his clients' authorization, consent or knowledge. He professionally misconducted himself in certain matters by failing to respond to the Law Society and other lawyers, by unduly delaying in complying with an undertaking, by delaying in complying with a court order, by delaying in paying estate debts, by failing to realize on estate assets, by failing to make interim distribution to estate beneficiaries and by grossly overstating to an American lawyer the customary fees charged by B.C. lawyers for estate work. Mr. Hogan also breached several Law Society accounting rules. The hearing panel ordered that he be disbarred.

Facts

The G estate

In the fall of 1987 the beneficiaries of the estate of G arranged for Mr. Hogan to be appointed as executor and to serve as solicitor for the estate. Mr. Hogan said that he would bill the estate according to his time and effort, and he did not mention charging a percentage of the value of the estate. Mr. Hogan never confirmed instructions or fee arrangements with the beneficiaries. Between 1988 and 1991 he wrongfully converted to his own benefit a total of \$99,000 as fees and \$938.52 as disbursements from the estate's trust account without the beneficiaries' authorization, consent or knowledge, and without fixing remuneration or rendering accounts, as follows:

- On March 15, 1988 Mr. Hogan issued a trust cheque for \$11,000 payable to himself, which he endorsed over to a bank that held a demand loan against him. He also issued a cheque for \$2,938.52 as fees and disbursements for deposit to his general account. When Mr. Hogan reported to one of the beneficiaries on money paid from the estate, he did not report these withdrawals.
- On June 8, 1988 Mr. Hogan cancelled a \$20,000 term deposit held for the estate and paid it out to his own benefit, as follows: \$16,000 to an auto leasing company, \$1,000 in cash and \$3,000 to his general account as fees. Mr. Hogan's trust ledger sheets for the estate inaccurately reflect these transactions.
- On July 8, 1988 Mr. Hogan prepared a \$35,000 interim account with no details of services rendered, which he placed on the file. He made the trust cheque payable to himself and a construction company, and he endorsed the cheque over for deposit to the construction company. He did not record the transaction in the estate ledger until September.
- On October 19, 1988 Mr. Hogan prepared a \$3,000 interim account with no details of services rendered, and placed it on the file. He recorded the transaction in the pooled trust ledger and the estate expense ledger.
- On February 20, 1989 Mr. Hogan prepared a \$15,000 interim statement without details, and issued two cheques on the estate trust account. One cheque, for \$14,200, was deposited to the bank account of T, a purchaser in a real transaction who was represented by Mr. Hogan, and who later became his wife. Mr.

Hogan deposited the other cheque for \$800 to the Land Title Office. The statement of adjustments on T's real estate transaction reflects that Mr. Hogan made a contribution of \$25,000 toward the purchase.

- On June 14, 1989 Mr. Hogan prepared a \$3,000 interim account without details of services rendered, and withdrew the funds from trust.
- On January 22, 1991 Mr. Hogan withdrew \$10,000 from the estate trust account through two trust cheques. The first was a \$5,000 cheque payable to himself, and endorsed over to an insurance company as a contribution to his RRSP. The second was a \$5,000 cheque deposited to his general account. Mr. Hogan did not prepare interim accounts, though he did record the withdrawals on the estate trust ledger.

Mr. Hogan delayed in paying a tax reassessment for G estate, which resulted in the estate owing interest arrears to Revenue Canada. His delay in cashing Canada Savings Bonds as they matured resulted in lost interest to the estate.

Despite the fact that there was a large amount of money in trust for the estate, Mr. Hogan failed to make an interim distribution, other than property transfers and a yearly payment to help the beneficiaries off-set their increased tax liability. In May, 1988 Mr. Hogan offered to make an interim distribution of \$120,000 to each beneficiary, provided the beneficiaries sign releases of all claims against him. On independent legal advice, the beneficiaries refused to sign.

In October, 1988 Mr. Hogan wrote to the beneficiaries and enclosed his interim accounts, one of which inaccurately reflected a June withdrawal of \$3,000, rather than \$20,000. One of the beneficiaries thought that the interim accounts reflected money reserved in trust for fees still to be calculated.

In meeting with that beneficiary in 1989, Mr. Hogan told her that he had taken fees, but he did not say how he had calculated them or how much he had taken, and he refused to discuss the issue further. He later wrote to her in February, 1990 to state that he had issued interim accounts totalling \$74,958.52.

The beneficiary retained another lawyer to look into the administration of the estate. In April, 1991 Mr. Hogan provided to this lawyer interim accounts to February, 1991.

Both the 1988 and 1991 interim executor accounts provided by Mr. Hogan were inaccurate, as determined in a Law Society audit. The February, 1991 accounts reflected an incorrect balance of assets available for distribution, and amalgamated funds in trust, U.S. assets and unliquidated assets. Mr. Hogan did not reflect his stewardship of cash realized, misstated unliquidated assets and failed to disclose asset transfers to the beneficiaries.

In March, 1990 Mr. Hogan sent to a Washington State lawyer who was dealing with the U.S. assets of G estate a declaration that it was customary in B.C. for executor-solicitor fees to be 10% of the gross value of the estate. This was grossly overstated, as would be known to any reasonable lawyer.

In June, 1993 one of the beneficiaries replaced Mr. Hogan as executor. In October the court accepted a registrar's recommendation and ordered that Mr. Hogan repay the estate \$34,400 in solicitor's fees and \$64,700 in executor/trustee fees, and that he have no further claim for solicitor's fees since he had witnessed the will, and the charging clause was void.

The L estate

Mr. Hogan began serving as executor and solicitor for the estate of L in June, 1986. In August Mr. Hogan rendered to himself as executor an account of \$2,158.42 for his legal fees and disbursements, and he withdrew this amount from the estate's trust funds. In July 1988 Mr. Hogan wrongfully converted \$3,000 of estate funds to his own benefit, without rendering a bill or fixing remuneration and without the authorization, consent or knowledge of the beneficiaries. He rendered an executor's interim account for \$3,000 and recorded the withdrawal in the estate trust ledgers in August.

In early 1989 a solicitor acting for the mother of the infant beneficiaries of the estate wrote to Mr. Hogan to ask for a full accounting. Receiving no response to his letter or follow-up telephone call, the solicitor applied for an accounting. The accounts that Mr. Hogan submitted were inaccurate, as determined by a Law Society auditor. Mr. Hogan had not reconciled trust ledger sheets and schedules to the accounts. Further, the accounts did not accurately record estate transactions such as the transfer of one car and the sale of another.

They did not record interest income earned by the estate or ascribe values to the assets at the date of death, and some are ignored completely on the reconciliation schedule.

The solicitor for the infant beneficiaries wrote to Mr. Hogan in August, 1989, and again in September and October to obtain more material and to arrange an appointment to review the accounts. Mr. Hogan provided the requested documents in October. A registrar's hearing began in December, 1989, but was adjourned and did not conclude until October, 1990. The registrar passed Mr. Hogan's amended executor's accounts submitted in 1989 and 1990 and fixed remuneration.

The amended executor's accounts were inaccurate, as determined by a Law Society auditor. In particular, Mr. Hogan did not reconcile the trust ledger sheets (which contained errors) and the schedules to the accounts. He did not record estate assets and transactions accurately, and misstated interest earned on the estate.

The registrar ordered Mr. Hogan to reimburse the estate the \$3,000 that he had withdrawn from trust as executor's interim accounts without first passing accounts or fixing remuneration. Mr. Hogan wrote a cheque to the estate's trust account in July, 1990, but did not deposit it until September. The solicitor for the beneficiaries wrote to Mr. Hogan in July and September demanding that interest be paid to the estate, which Mr. Hogan did in October.

The registrar also ordered that Mr. Hogan have jewellery in the estate appraised and put up for sale. In April 1991 one of the beneficiaries wrote to enquire about this matter, and Mr. Hogan responded in October to say that he had not completed the liquidation.

The mother of the infant beneficiaries successfully applied to replace Mr. Hogan as executor and trustee in October, 1991. Her solicitor wrote in October and December to tell Mr. Hogan to turn over all the estate assets under the court order, but Mr. Hogan delayed in complying with the court order until December.

The K conveyance

On May 1, 1991, while representing the vendor K in a conveyancing transaction, Mr. Hogan received from the purchaser's solicitor \$17,885, as the proceeds of sale, on Mr. Hogan's undertaking to discharge the mortgage on title. On May 10, 1991 Mr. Hogan wrongfully converted to his own benefit \$2,500 from funds held in trust for K, without having fixed remuneration or rendered an account, and without his client's authorization, consent or knowledge. Mr. Hogan deposited this money to his own bank account. Without this transfer, Mr. Hogan would not have had enough money to pay for office equipment he had purchased. Mr. Hogan did not record this transfer in the K trust account ledger until May 24, and when he prepared an account of \$2,995.37 for fees and disbursements, he did not refer to having withdrawn \$2,500 on May 10. Mr. Hogan did not pay out the mortgage, as required by his undertaking, until September 19, 1991. Between May and September, the purchaser's solicitor wrote and telephoned Mr. Hogan to enquire about the discharge and satisfaction of the undertaking. Mr. Hogan failed to respond until September 19.

The C conveyance

While acting for the vendor in a real estate transaction in late 1987, Mr. Hogan paid Revenue Canada \$3,255, but failed to subtract that amount from the ledger's trust account balance. As a result, his payment of the sale proceeds to the vendor resulted in a \$3,255 overpayment to the vendor, and a deficiency in Mr. Hogan's trust account. Mr. Hogan took steps to recover the money from the vendor, but he failed to advise the Law Society of the trust deficiency until August, 1988 and to eliminate the trust shortage by depositing funds to his trust account until September 1, 1988, contrary to Rule 861.

* * *

During the Law Society investigation in 1992, Mr. Hogan failed to respond to correspondence from the Society concerning an audit of his practice. Mr. Hogan ceased membership at the end of 1992; he was cited in February, 1993.

Decision

Mr. Hogan wrongfully converted trust funds, professionally misconducted himself and breached Law Society accounting rules, specifically Rules 861, 835, 836(2), 842 and 860.

Penalty

The panel considered that Mr. Hogan was under great stress during these events because of his marriage breakdown and divorce proceedings, which proved difficult for him mentally and financially.

In filing a written submission on penalty, Mr. Hogan ascribed much blame for his circumstances on the lawyer of his ex-wife for making his divorce proceedings acrimonious. He argued that, because the lawyer was a former partner of Ms. Brown (a member of the hearing panel), the panel should not proceed as constituted. The hearing panel rejected Mr. Hogan's argument. The panel noted that the connection between Ms. Brown's former partner acting against Mr. Hogan in divorce proceedings and Ms. Brown acting as a member of the panel was so remote that no reasonable person would be suspicious that her ability to act as a decision-maker might be influenced.

The panel expressed sympathy for Mr. Hogan's personal difficulties, but stated that his stress could not excuse the fundamental breach of trust demonstrated by his conversion of trust funds to his own use.

The panel ordered that Mr. Hogan be disbarred immediately.

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The September-October, 1994 *Benchers' Bulletin* reported the disbarment of Sean Michael Hogan and specified that he was not to be confused with Sean Roy Hogan, who is a member in good standing who practises in Delta.

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The beneficiaries of G estate made application to the Special Compensation Fund to be compensated for Mr. Hogan's wrongful conversion. In October, 1994 the Benchers approved payment from the Fund of \$159,338.65, comprising \$99,938.52 — the principal amount taken by Mr. Hogan — plus interest of \$59,400.13, at the recommendation of the Special Compensation Fund Committee.

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