

Vancouver, B.C.

Called to the Bar: June 6, 1971

Discipline Hearing Panel: September 30, October 2 and 5, December 11, 1991

Brian J. Wallace, Q.C., as a one-Bencher panel

Discipline Committee: February 26, 1992

J. Whittow, for the Law Society

The member, on his own behalf

Summary

The member professionally misconducted himself by representing parties to real estate transactions in breach of Law Society conflict rulings, and by breaching Law Society rules on contingent fee agreements. The member acted incompetently as a solicitor on substantive matters and in the management of his practice. He was suspended after failing to find an approved supervised setting in which to continue the practice of law.

Facts

In 1988 a Competency Review Panel found that the member had breached Law Society conflicts of interest rulings and Law Society rules on trust accounting and contingent fee contracts, and that he had been practising law incompetently through his failure or refusal to adopt adequate office systems and procedures.

The Competency Review Panel recommended that the member complete remedial programs in several practice areas. In May, 1989 a Conduct Review Panel also recommended a remedial program on professional responsibility. The member delayed in taking these remedial programs and did not complete all components.

A subsequent review of the member's practice in March, 1991 revealed that his office systems remained inadequate and that he did not properly maintain files or prepare retainer or reporting letters to clients. The review showed inadequate will preparation by the member, and that, in real estate transactions, the member failed to obtain routine searches, provide initial or interim reporting letters to clients, advise non-resident vendors of income tax obligations or provide tax clearance certificates to those vendors.

The member failed to have a contingency fee agreement signed until after conclusion of the matter and, on another file, failed to execute the agreement at all.

He acted in conflicts of interest by sometimes acting for the purchaser or vendor of real estate holdings relating to N Inc., sometimes acting for that company in the transactions, and sometimes obtaining waivers of independent legal advice from the parties and purporting to represent no one. He remained the company's corporate solicitor throughout.

Decision

The member professionally misconducted himself by acting in conflicts of interest, contrary to Rulings B/2 and B/3 of the *Professional Conduct Handbook* and by failing to execute contingency fee agreements in a timely fashion, contrary to Law Society Rule 1060(1).

The Hearing Panel found that the member demonstrated a disturbing attitude to real estate practice, that he was unable to recognize conflicts of interest, and that he did not see himself as the protector of anyone's legal interests, but simply the mechanical facilitator of transactions.

In failing to maintain proper office systems, the member acted incompetently. His level of knowledge and practice on substantive matters also fell below the acceptable minimum standard, and he carried out these duties incompetently.

Penalty

The Hearing Panel found it would be contrary to the public interest to allow the member to continue to practise alone and unsupervised, though disbarment was not necessary for public protection. The Panel ordered that the member:

1. practise in a supervised setting to be approved by the Discipline Committee and be subject to periodic inspections as ordered by the Competency Committee;
2. not practise real estate law;
3. be permitted to apply to the Discipline Committee after one year to vary or be relieved of the conditions of practice;
4. pay the costs of supervision, inspection and any application to have the conditions varied or rescinded;
5. pay the costs of the proceeding not exceeding \$5,000;
6. be suspended if the supervised setting is not established and approved by the Discipline Committee or if the costs of the discipline proceedings are not paid.

On request of the member, the Panel extended to February 26, 1992 the time permitted for the member to find a supervised practice setting. He did not find a setting within that time and was consequently suspended from practice.

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