

Richmond, B.C.

Called to the Bar June 14, 1985

Discipline Hearing Committee: March 10, 1992

R.C.C. Peck, Q.C., Chair, B.B. Trevino, Q.C. and R.S. Tretiak

Summary

The member professionally misconducted himself by altering the terms of a matrimonial property settlement to allow one party to avoid a garnishing order.

Facts

In March, 1990, the member represented Mrs. M. in a matrimonial dispute. Mr. and Mrs. M had not yet settled on a division of \$20,000 held in trust, which were the proceeds from sale of their matrimonial home.

The member told Mr. M's former lawyer (H), who held a \$8,640 judgment against Mr. M for unpaid legal fees, that he would be advised of any settlement in order to allow him to deliver a garnishing order against Mr. M's share.

On March 14 the member called lawyer H to say the parties had agreed that Mr. M would receive \$5,000 from the sale proceeds, and that he would sign a settlement agreement the next day. Early on March 15 lawyer H delivered a garnishing order to the member's office.

When Mr. M arrived to execute the settlement and pick up his cheque for \$5,000, the member told him of the garnishing order.

The member considered Mr. M. to be a volatile and dangerous man on the basis of his own prior experience. When the member told Mr. M. about the garnishing order, Mr. M. became perturbed. Although Mr. M. did not make any threats, the member felt concern for his own safety and that of his staff. The member revised the settlement documents to show that only \$2.00 would be paid to Mr. M from trust. He issued a trust cheque for \$4,998 to Mrs. M and then arranged for her to sign this cheque over to Mr. M in satisfaction of the original settlement. Mr. M used most of this money to pay out another of his creditors.

As a result of the revision to the settlement agreement, it became apparent that there were no funds to which the garnishing order could attach, and the order was thereby avoided. The member wrote to lawyer H about the settlement revision and remitted \$2.00 under the garnishing order.

After lawyer H called to discuss this matter, the member paid him \$5,000, the full amount of the garnishing order.

Admission

The member admitted that he had professionally misconducted himself by enabling Mr. M to enter into a scheme to avoid payment to a judgment creditor.

Penalty

The Hearing Committee accepted the member's proposed disciplinary action and ordered that he:

1. pay a fine of \$2,500, in equal amounts on June 15 and September 15, 1992; and
2. pay costs of the Law Society of \$750, by April 1, 1992.

J. Whittow, for the Law Society

The member appearing on his own behalf

Discipline Case Digest — 1992: No. 7 August (Bacha)