

Called to the Bar May 17, 1971  
Vancouver, B.C.

**Discipline Hearing Committee:** September 17, 1990  
J.M. MacIntyre, Q.C., Chair, H.J. Grey, Q.C., and W.M. Trotter

### **Summary**

The member acted in a conflict of interest as a director, shareholder and solicitor for a company and drafted agreements for the company that were inadequate for their purpose. He admitted to the Hearing Committee that he had professionally misconducted himself and acknowledged that his preparation of the agreements raised concern about his competency in legal drafting.

### **Facts**

In the Fall of 1983 the member entered into an arrangement with a client (PY), a business contact (PZ), and a business acquaintance of PY (DS), for the development and marketing of a game that would make purchasers eligible to win a prize of \$1 million in gemstones. To develop this game, the member and the others formed a company, WW Inc. Shares were given to DS, PY, and PZ, as well as to the member for administrative work and possibly legal services.

### **Trust Agreement**

At the first directors meeting of WW Inc. on September 26, 1983, the member drafted minutes relating to the deposit of gemstones by PY with the member in trust and the terms of PY's repayment.

On May 7 and June 24, 1984 the member released the gemstones to PY in two lots. There later arose a difference of opinion between DS, who maintained the gems were held in trust for the company and the member, who maintained they were in trust for PY.

### **Conflict of Interest**

In early March, 1984 the member informed all shareholders that he had a conflict of interest in remaining as both a participant in WW Inc. and its solicitor. He noted he would continue with one role or the other, and he recommended shareholders obtain independent legal advice.

On October 23 the directors determined that the member should remain as a director of the company and that legal work be referred out. The member nonetheless resigned as a director on December 11. The board resolved that he be paid \$15,000 for legal services to date and be retained to provide future legal services to the company.

### **Marketing Agreement**

On October 15, 1984 WW Inc. entered into a contract, drafted by the member, with another company, T Inc., to market the game in the United States. In November, 1985 WW Inc. and T Inc. terminated their contract. T Inc. subsequently marketed another game which DS alleged was substantially the same as the game he had created.

An action by WW Inc. against T Inc. was dismissed. The trial judge observed that the marketing contract drawn by the member between WW Inc. and T Inc. was "less than adequate for its purposes."

### **Admissions**

On September 17, 1990, the member admitted to the Hearing Committee that he had professionally misconducted himself in continuing to act for WW Inc. while aware of his conflict of interest. He also acknowledged that his preparation of agreements raised concern about his competency in legal drafting.

The Hearing Committee accepted these admissions pursuant to Rule 469, and relied on the findings of a conduct review committee in this case.

The conduct review committee had determined that the member had both a real and apparent conflict in acting as a lawyer, director, officer and shareholder for WW Inc. Even after his belated discovery of this conflict, he continued to act for the company. His conduct was not excused by the apparent agreement of the other shareholders that he should continue.

Compounding this conflict, the member's previous and continuing relations with PY and PZ, his drafting of a contract that was not in the best interests of WW Inc., and his release of gemstones to PY led to suspicions by DS that he was not being treated fairly.

In accepting the gemstones from PY, the member had a duty to draw a trust agreement that left no doubt as to the rights and duties of all parties. His drafting of this agreement in the directors' minutes was completely inadequate. The conduct review committee also agreed that the marketing agreement between WW Inc. and T Inc. drafted by the member was less than adequate for its purpose.

### **Disciplinary Action**

Accepting the member's proposed disciplinary action, the Hearing Committee ordered that the member:

1. be reprimanded;
2. pay a fine of \$2,500;
3. undertake a remedial studies program to the satisfaction of the Law Society, to be paid by the member up to a cost of \$5,000;
4. pay costs of the inquiry totalling \$1,500.

J.D. Ziskrout, for the Law Society

J. Hall, Q.C., for the member

*Discipline Case Digest — 1990: No. 6 December (Taberner)*