

2019 LSBC 14
Decision issued: May 1, 2019
Citation issued: June 18, 2018

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

ANGIOLA-PATRIZIA MARIA DE STEFANIS

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: March 12, 2019

Panel: Pinder Cheema, QC, Chair
Robert Smith, Public representative
Sandra Weafer, Lawyer

Discipline Counsel: Alison Kirby
Appearing on her own behalf: Ms. De Stefanis

INTRODUCTION

- [1] A citation was issued to the Respondent pursuant to the *Legal Profession Act* and the Rules of the Law Society on June 18, 2018. The Respondent admits service of the citation.
- [2] This matter came on for hearing under Rule 4-30 [*Conditional admission and consent to disciplinary action*]. This Panel received a joint application to conduct a hearing on the written record. The Panel considered this application and determined that this was an appropriate case to proceed on written materials only, without the need for an oral hearing, in accordance with the Law Society’s new procedure for a “Hearing in Writing” pursuant to a Practice Direction issued April 6, 2018. Under this new procedure, this hearing in writing constitutes a hearing within the meaning of Rule 4-30.

- [3] The Respondent has admitted that she intentionally misappropriated \$40,000 that she had received in trust on behalf of an estate that she was representing and also misled the beneficiaries of the estate about the funds that she received and disbursed on behalf of the estate by preparing and delivering false accountings of her estate administration.
- [4] The Respondent further admits that this conduct constitutes professional misconduct and consents to an order that she be disbarred.
- [5] Rule 4-30 requires that a hearing panel consider the conditional admission and proposal and, if the panel finds them acceptable, impose the proposed disciplinary action.
- [6] The Panel has reviewed all of the written material, including the Notice to Admit, and attached exhibits, the conditional admission in which the facts set out in the Notice to Admit were admitted, and the submissions of the Law Society. For the following reasons we accept the conditional admission and find that the Respondent's conduct as admitted constitutes professional misconduct and that the appropriate penalty is disbarment.

FACTS

- [7] In or about July 2010 the Respondent was retained by the executors of the estate of EH to act in connection with the administration of the estate. The will provided that the estate of EH be divided equally among nine beneficiaries. Neither the proposed executors nor any of the beneficiaries lived in Canada. All were resident in Europe.
- [8] On February 19, 2012 the executors each signed a Notice of Renunciation thereby granting administration of the estate to the Respondent. She continued to represent the estate in her capacity as a lawyer.
- [9] The total value of the estate was \$757,621.54. From this amount, the Respondent withdrew \$33,573.62 from trust to pay her legal fees and disbursements. In addition, she withdrew a total of \$80,000 for administratrix/executrix fees.
- [10] Pursuant to the *Trustee Act*, RSBC 1996, c.464, the fees of an administrator cannot exceed five per cent of the value of the estate, or, in this case, about \$38,000. The Respondent admits that she overdrew in excess of \$42,000 beyond the stipulated amount. She further admits that the withdrawal of the \$80,000 was not in compliance with the *Trustee Act*.

- [11] The Respondent admits that this act constitutes an intentional misappropriation of funds and, further, that it constitutes professional misconduct.
- [12] On or about December 20, 2013 the Respondent provided a final account to each of the beneficiaries of the estate. In that summary account, she falsified the accounts to conceal the fact that she had taken an additional \$40,000 in fees as administratrix. Specifically, she falsely reported that she:
- (a) received \$727,653.44 from the Public Guardian and Trustee – in fact she received \$10,000 more – \$737,653.44;
 - (b) disbursed \$28,625.32 to the Receiver General for income tax owing – in fact she paid \$26,000 less – \$2,625.32;
 - (c) disbursed \$4,976.50 for accounting services – in fact she paid \$4,000 less – \$976.50; and
 - (d) disbursed \$40,000 as administratrix’s fees – in fact she disbursed \$80,000, or \$40,000.00 more.
- [13] The Respondent has admitted that she prepared and delivered false accountings of the estate administration and misled the beneficiaries as to the amounts of funds she received and disbursed on behalf of the estate.

PROFESSIONAL MISCONDUCT

- [14] The Respondent has admitted that her actions constitute professional misconduct. The Panel accepts this admission. Misappropriating trust funds and misrepresenting information to clients to cover up misappropriation are actions that disclose a “marked departure” from the conduct that the Law Society expects of lawyers, and therefore meets the test for professional misconduct set out in *Law Society of BC v. Martin*, 2015 LSBC 16 at paragraph 154.

DISCIPLINARY ACTION

- [15] The Respondent has consented to an order that she be disbarred. This Panel must determine whether the proposed disciplinary action is a fair and reasonable disciplinary action in all the circumstances” (*Law Society of BC v. Rai*, 2011 LSBC 2 at para. 7) before accepting the conditional admission and proposed penalty.
- [16] In this case, disbarment is fair and reasonable and the appropriate penalty. In *McGuire v. Law Society of BC*, 2007 BCCA 442, the Court of Appeal upheld the

determination of the hearing panel that “wrongly taking a client’s money is the plainest form of betrayal of the client’s trust. In our view the public is entitled to expect that the severity of the consequences reflect the gravity of the wrong.” In this case before the Hearing Panel, there are no mitigating circumstances that could justify anything other than disbarment for the Respondent’s actions.

- [17] The Panel finds no mitigating circumstances, and further, the Respondent’s Professional Conduct Record is an aggravating factor. The Respondent’s Professional Conduct Record includes a 1997 conduct review, an undertaking in 2016 not to operate a trust account during the course of the Law Society investigation into this matter, and a 2017 citation for similar conduct.
- [18] On June 19, 2018 a hearing panel dealing with that citation ordered that the Respondent be disbarred. As in this case, she had provided a conditional admission and a consent to an order that she be disbarred. The conduct alleged in that citation included allegations that she misappropriated monies while acting as executrix by taking fees to which she was not entitled, and misleading the beneficiaries of the estate by preparing false accountings of the estate.
- [19] The hearing panel, in accepting the conditional admission stated:

After considering all of the evidence and the submissions of the parties, we are satisfied that the sanction of disbarment is appropriate to maintain public confidence in the integrity of the legal profession. Members of the legal profession must understand that intentional misappropriation, save extraordinary mitigating circumstances, which are absent in the instant case, will result in disbarment.” (*Law Society of BC v. De Stefanis*, 2018 LSBC 16 at para. 41)

- [20] While it may seem unnecessary to order disbarment in this case, given that the Respondent has previously been ordered disbarred, section 38 of the *Legal Profession Act* provides that a hearing panel has jurisdiction to make a finding of professional misconduct against a former member. Upon an adverse determination, the hearing panel must impose a sanction. As the hearing panel stated in *Law Society of BC v. Power*, 2009 LSBC 23 at paras. 45 and 46:

Although it may appear odd that a Panel may suspend or disbar a non-member, the Act requires that it be done if that is the appropriate penalty.

When imposing a penalty appropriate to the circumstances, a panel sends an important message to lawyers as well as to the public that such conduct is deserving of that kind of penalty.

[21] While not necessary to protect the public from the Respondent in this matter, given that she can no longer practise law, disbarment is necessary to protect the public confidence in the legal profession and to protect the public's confidence in the ability of the profession to regulate itself. Misappropriation of funds and falsifying accounts to clients cannot be condoned and is deserving of an order of disbarment whether the individual is a practising lawyer, a former member or a disbarred former member.

NON-DISCLOSURE ORDER

[22] The Law Society seeks an order under Rule 5-8(2) that the portions of exhibits in this matter that contain confidential client information or privileged information not be disclosed to members of the public. We agree that the order is appropriate in these circumstances.

COSTS

[23] The Respondent has agreed to pay the Law Society costs of \$1,000 payable within one month of the date of the Hearing Panel's decision.

ORDER

[24] For the reasons set out in this decision, the Hearing Panel accepts the conditional admission under Rule 4-30 and orders that:

- (a) the Respondent is disbarred pursuant to section 38(5)(e) of the *Legal Profession Act*;
- (b) if any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information and any information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person;
- (c) the Respondent pay the Law Society \$1,000 in costs on or before June 10, 2019; and
- (d) the Executive Director record the Respondent's admissions on her Professional Conduct Record.