

**SUMMARY:** The member was solicitor for and executor in a will drawn by M. Although he had received no instructions from M to sell her property, the member introduced another client to the property and eventually drew up an option to purchase. The option was grossly unfair to M and was later set aside. In a separate matter the member acted for several parties with conflicting interests in a conveyancing transaction, and when his secretary made a \$6,000 error in calculating the amount owing by the purchaser he successfully negotiated to buy the property from the purchaser, handling the transaction himself. The member's conduct in both transactions constitutes professional misconduct.

**JOSEPH MICHAEL PRODOR**

**84/9**

Langley; Called to the Bar January 11, 1977

*Discipline Hearing Committee:* January 7, 1984

J. Wood, Chairman, T.J. Melnick, G.J. Harris

**FACTS:**

1. In January 1978 M moved from her Langley acreage to a nursing home, leaving the land vacant. Through her bank manager she instructed the member to draw her will, showing both the member and bank manager as executors.

In the summer of 1978 a businessman, R, told the member that he wished to purchase some land for retirement. The member introduced R to M's property, and indicated that it might be for sale.

The member prepared an option agreement, which was executed by M and R on August 9, 1978. The agreement was a 5 year option bearing no interest with a down payment of 10%. The member told M that her bank manager had concluded that the price was "not unfair", but at the hearing the member testified that he had not conveyed to M the bank manager's position that the "price was up to M".

In late 1979 M had a new will drawn by different solicitors, at which time action was commenced to rescind the option agreement. The action was successful and an appeal by R was dismissed.

2. Ms. T owned a parcel of land. Her father T attended at the member's office and was successful in having the member's conveyancing secretary partially complete an Interim Agreement on Ms. T's property. The secretary did not consult with the member at this time. T then got prospective purchaser G to sign the Interim Agreement, and she gave T one cheque payable to the mortgagee which had commenced foreclosure proceedings,

and another cheque with the payee left blank. T later made the second cheque payable to himself, and absconded.

When the member learned of these events he referred G to the RCMP, and the funds paid to the mortgagee were returned to the member's office.

The member was subsequently instructed by G to handle the conveyance from Ms. T to G. The new Interim Agreement took into consideration as part payment the monies received by T when he absconded. The member's secretary erroneously calculated that G owed \$6,007 on completion; in fact no monies were due.

Because of the calculation error, G told the member that she was not prepared to complete the transaction, whereupon the member offered to purchase the property from her himself. He successfully negotiated a value on G's renovations, and eventually prepared the necessary documents transferring the property from G to himself.

The member has now placed a sum equal to the calculation error in trust for its rightful owner.

#### **DECISION:**

The member's conduct in each transaction constitutes professional misconduct.

#### **REASONS:**

1. The member had no instructions from M that the property would be offered for sale, and it was entirely improper for him to suggest to R that the property "might be for sale". He improperly disclosed confidential information which he had obtained in his capacity as solicitor and executor. The option agreement was grossly unfair to M, and the member failed to appreciate the conflict present in attempting to act for both parties in this real estate transaction.

His disclosure of confidential information and his purporting to act on behalf of both parties in the preparation and execution of the option agreement constitute professional misconduct.

2. It is almost inconceivable that the member could not see the impropriety of acting at various times for T, Ms. T, G and himself. The Hearing Committee is unable to conclude that the member perpetrated fraud in his transaction, but there was incompetence and conflict of interest present to such a degree that even the most junior solicitor ought to have been knowledgeable enough not to act.

**PENALTY:**

The Hearing Committee ordered that:

1. On the first matter the member:
  - (a) be suspended for 45 days, effective February 15, 1984;
  - (b) be required to take and pass the PLTC course in Professional Responsibility;
  - (c) for the 12 months following reinstatement, meet not less than once a month with a senior practitioner designated by the Secretary for the purpose of receiving professional counselling and advice; and
  - (d) pay costs of these proceedings, to be paid by December 31, 1984.
  
2. On the second matter the member pay a fine of \$10,000. This transaction was consummated to enhance the commercial wealth of the member, and the profession must be made aware that the Law Society will move to eliminate the expectation of profit which has motivated the member's delict and clouded his judgment.

Kathryn E. Neilson, for the Law Society

D.D. Owen-Flood, for the member