

SUMMARY: The member permitted his friend K to deposit money with the member's management company so that K could work on behalf of the company locating investment opportunities without others detecting the source of the money. In February and May 1981, the member advanced \$40,000 and \$20,000 respectively to K from the estate of M, for which the member was committee and solicitor. The loans were made without adequate or any security and were never repaid by K. Although the member made partial restitution, the estate of M suffered a loss. In January and April 1982 the member entered into an agreement whereby investor C made loans of \$25,000 U.S. and \$20,000 to K through the member's management company at criminal rates of interest. Inadequate security was given for these loans. Although the member knew that the terms of the second loan agreement varied considerably from those drafted by C's solicitor, he at no time advised C that security for the loan was inadequate and did not ensure that C obtained independent legal advice. K did not repay these loans and C sued K and the member for his loss. The member's conduct constituted professional misconduct.

VICTOR ALBERT GEORGE SIMPSON

88/3

Victoria, B.C.

Called to the Bar July 10, 1978

Discipline Hearing Committee: July 2 and 3, 1986, February 23, 1988

D.A. Silversides, Q.C., Chairman, T.A. Davies and M.R.V. Storrow, Q.C.

FACTS:

Background

The member had been friends with K since childhood and followed with interest K's career with the R.C.M.P. until his discharge in 1979.

In February 1980 K granted to the member his power of attorney. Between March and September, 1980 the member received a total of \$65,000 from K to be placed in K & V Enterprises, a company controlled by the member and his wife. K wanted to invest this money through K & V Enterprises and to be hired by the company to seek out investment opportunities. In this way, K's wife would believe that K had steady employment and others involved in the investments would not know the true source of the funds. The member agreed to this arrangement, purporting to deposit funds with K & V Enterprises as a shareholder loan from himself.

K & V Enterprises subsequently purchased \$10,000 worth of shares in A Gold Ltd., a company which the member controlled. K also arranged a loan to J.D., a restaurant proprietor; \$22,500 of this loan was to be paid out of K's funds in K & V Enterprises and \$15,000 out of the member's

own money. K & V Enterprises also paid a monthly salary and expenses to K, beginning in August, 1980.

In exchange for allowing K to invest through K & V Enterprises, the member anticipated profits from some of the investments, as well as substantial legal fees, living and travelling expenses.

The M Estate

Since 1978 the member had been committee and solicitor for the estate of M, an incompetent elderly woman. The estate consisted of a \$50,000 term deposit, a bond, and a small bank account. The member regularly reinvested the term deposit at the highest prevailing interest rate offered by the bank.

In February, 1981 K arranged with the member to borrow \$40,000 of M's funds at 1% above the bank rate. K proposed that an equitable second mortgage on his condominium in Ontario stand as security for the loan. The member advanced the money on the belief that K had \$64,000 of equity in the condominium and that a mortgage on the property was about to be discharged, thereby leaving M with a first mortgage security. He never documented the loan, the terms of its repayment or the security being granted. No fixed mortgage security was in fact ever given for the loan.

A month after the \$40,000 was advanced, K murdered his wife by pushing her from the balcony of the couple's 17th floor condominium. It was not until 1983 that K was tried and convicted of first degree murder.

In April 1981, shortly after his wife's death, K travelled to Victoria and began working out of the member's law office as a representative of K & V Enterprises. In May K asked the member to advance a further \$20,000 from the estate of M to finance an investment in a Florida cruise vessel. The member made the advance without documenting that it was a loan and without discussing interest or the terms of repayment.

The \$40,000 loan from M to K was due on June 25, 1981. Contrary to K's representations, he had never made monthly interest payments on the loan. The member did not raise K's failure to make interest payments before advancing the second loan of \$20,000.

In September, 1981 K received \$310,000 from life insurance policies on his wife, and \$60,000 from her real estate interests and other assets. K subsequently opened accounts with two brokerage firms and kept the member apprised of his stock holdings.

In November K wrote to the member stating that he had made a term deposit as security for the loans from M. He enclosed a photocopy of a deposit receipt for \$210,000 issued by a trust company for a term commencing September 18, 1981, and ending October 19, 1981.

The member accepted this photocopied receipt as proof of a security for the loans even though the term deposit had matured two weeks earlier. He made no inquiries with the trust company on the status of the term deposit or on whether it had been validly pledged as security for the loans.

From July, 1982 to September, 1982 the member made numerous attempts to obtain payment of the M estate loans from K. In almost every instance, K promised payment or actually delivered cheques but either the promises were broken or the cheques returned for lack of sufficient funds.

On September 28 the member attempted to realize on K's stock portfolio under his power of attorney but learned that the portfolio had been registered in the name of K's second wife and transferred to Europe. He then discovered that the \$210,000 term deposit had earlier been cancelled and the money withdrawn by K without the member's knowledge.

In April, 1983, after K had been convicted of murder and sentenced to prison, the member sold his residence and paid \$33,422.08 to the credit of M. He also attempted to transfer to M the 24,000 A. Gold Ltd. shares held by K & V Enterprises but the Public Trustee, who had replaced the member as committee, refused the transfer as not being an investment permitted under the *Trustee Act*.

In the end, the M estate suffered a shortfall of between \$55,000 and \$56,000.

The C Investment

In January, 1982 C, another close friend of the member, inquired about participating in high yield investments with K. K, C, and the member met shortly thereafter and it was agreed that C should advance \$25,000 U.S. to K through K & V Enterprises for a 90-day term at 25% interest. K's stock portfolio, represented to be worth \$150,000 and purportedly under the member's control as attorney, was to stand as security. The member signed this agreement on behalf of K & V Enterprises, thereby making the company borrow funds at approximately 100% interest per annum, contrary to section 305.1 of the *Criminal Code*.

K subsequently told the member that the proceeds were being loaned to the C.I.A. to finance its clandestine activities throughout the world. He said that the C.I.A. was willing to borrow money for very short periods of time at high rates of interest to avoid the funds being traced back to the United States.

In April, 1982 K and C agreed to extend the term of the \$25,000 U.S. loan and that C should lend a further \$20,000 to avoid loss of the first investment. Interest on the second loan was fixed at 6% per month, a criminal rate of interest.

C delivered to the member a trust agreement drawn by another solicitor under which security would be held in trust against the \$20,000 loan. K rejected this agreement and asked the member to draft another.

The new agreement provided that C should have power of attorney over certain term deposits and that the member should have possession of a term deposit certificate which would stand as security for the loan. The term deposit certificate was in fact never given to the member, but would have been inadequate security in any event since K was not precluded from withdrawing the funds. Although he knew that the terms of the new agreement varied significantly from those drafted by C's solicitor, the member failed to ensure that C was given valid, effective and adequate security, to advise him of the inadequacy of the security, or to ensure that he obtained independent legal advice.

Shortly after execution of the agreement, K himself withdrew all money in the term deposit without the knowledge or consent of C.

On several occasions during 1982, the member travelled abroad to assist K in his business negotiations, including a plan to export gold bullion from Kenya. In August, 1982 K devised a scheme to loan \$100,000,000 U.S. to American investors and to K and C for investment in U.S. treasury bills at a large profit. The member intended to share in the profits of this investment.

In August, 1982, while travelling in Europe, the member learned that C had brought an action against K and himself to recover the \$50,000 in loans. C obtained judgment against the member for negligent misrepresentation in June, 1983.

DECISION:

The member's conduct constitutes professional misconduct.

REASONS:

The member was grossly incompetent in:

- making investments by way of loans of \$40,000 and \$20,000 to K from money held by him in trust for the estate of M, both in his capacity as committee for M and as her solicitor, when the making of such investments was prohibited by the *Patients Property Act* and the *Trustee Act*;
- accepting the assurance of K that a registered first mortgage of land would be granted as security for the \$40,000 loan without taking any steps to confirm that such a mortgage was being prepared or registered or that an existing first mortgage of the property had been or would be released;
- accepting a photocopy of a term deposit which had already matured as security for the investments made by the member on behalf of the estate of M; taking no steps to confirm the continued deposit of the money allegedly pledged as security for the investment made on behalf of M; and taking no steps to validly and effectively cause the pledge of hypothecation of such deposit as security for the investment;

- failing to obtain adequate or any security for the investment of money which the member made on behalf of M;
- entering into an agreement through his management company to borrow the sum of \$25,000 U.S. from C and to repay this money with interest at a criminal rate;
- drawing an agreement among himself, K and C which provided for interest to be paid at a criminal rate on a loan of \$20,000;
- drawing an agreement among himself, K and C which purported to provide security to C for a loan of \$20,000 made to K which agreement, if its terms were fulfilled by the member, would not provide adequate security for repayment of the loan or interest.

The quality of the legal services performed by the member fell so far below the standard required of the most minimally competent solicitor that his acts and omissions constituted professional misconduct.

In addition, the member professionally misconducted himself in:

- assisting K to deceive his first wife, J.D., and others who dealt with K & V Enterprises by giving the false appearance that K was employed by the company and by hiding the true source of the funds spent by the company;
- disclosing to K that he held money in trust for the estate of M and suggesting to K that this money could be borrowed;
- encouraging C to loan money to K to be re-loaned to the C.I.A. when the member knew or ought to have known that K's explanation of the purpose of the loan was incredible;
- allowing K to use the privilege and reputation of the legal profession to further K's purposes in a manner that the member knew or ought to have known was improper.

PENALTY:

The Hearing Committee had great difficulty determining a penalty since the member had contravened the *Barristers and Solicitors Act* and the high standards followed by the profession, but at the same time had unfortunately been duped by his friend K. The member could not rely on this deception as a defence to his behaviour, but the Committee felt that the member's involvement with K was most unusual and would not recur. The Committee therefore stated that disbarment was not an appropriate penalty in this case but that the member should be given another chance.

The Committee ordered that the member:

- be suspended from the practice of law for 30 consecutive days at a time determined by the member, provided that such period of suspension be completed no later than July 1, 1988;
- be fined the sum of \$3,000 to be paid in full on or before March 1, 1989; and
- participate forthwith in a remediation program designed, conducted and supervised by the Law Society pursuant to section 51(2)(e) of the *Barristers and Solicitors Act* and successfully complete this program by March 1, 1989, including any examinations or assessments.

The Committee further recommended to the Credentials Committee and the Benchers that the member not be permitted to act as principal to an articulated student.

C.E. Hanman, for the Law Society

E.D. Strongitharm, Q.C., and R.F. MacIsaac, for the member