

No. 03/19

John Motiuk

Delta, BC

Called to the Bar: May 12, 1967

Undertook not to practise law: November 25, 1999

Became non-practising member: January 1, 2001

Discipline hearing: August 29, 2003

Panel: Robert W. Gourlay, QC, Chair, Margaret Ostrowski, QC and Grant C. Taylor

Report issued: September 25, 2003; indexed as [2003] LSBC 33

Counsel: Jessica S. Gossen, for the Law Society; Christopher Hinkson, QC, for Mr. Motiuk

Summary

While acting for the second mortgagee in a foreclosure proceeding, Mr. Motiuk negotiated a sale with a third mortgagee and paid out money that he held in trust, contrary to the terms of a court order. While acting as executor for several estates, Mr. Motiuk charged legal fees to the estates when he was not entitled to do so, charged both legal and executor's fees for the same services, inadequately advised the beneficiaries as to his entitlement to executor's fees, failed to recommend the beneficiaries obtain independent legal advice respecting executor's fees and appropriated fees prior to obtaining approval of the beneficiaries. On two of the estates, Mr. Motiuk also billed excessively. On another estate, he rendered an account that did not comply with the Law Society Rules. While acting for a client in a matrimonial matter, Mr. Motiuk failed to follow instructions and attempted to have the client withdraw a complaint to the Law Society as a condition of releasing trust funds to the client. In the conduct of his practice, Mr. Motiuk failed to remit deductions from the salary of an employee to the appropriate authorities. At the time of these matters, Mr. Motiuk suffered from bipolar disorder and diabetes, which had a deleterious effect on his competency according to the medical evidence. Under Rule 4-22, the Discipline Committee and hearing panel accepted Mr. Motiuk's admission of professional misconduct and his proposed penalty. The panel ordered that Mr. Motiuk, who had undertaken to cease practice in 1999, be required to appear before a board of examiners appointed by the Practice Standards Committee and satisfy the board that he is competent to practise law should he ever apply to be relieved of his undertaking.

Facts

Paying funds from trust, contrary to the terms of a court order

While representing the second mortgagee in a foreclosure proceeding, Mr. Motiuk negotiated settlement of the third mortgagee's claim.

Mr. Motiuk then paid \$4,000 to the third mortgagee in settlement of that claim from money he held in trust. He did so knowing this payment was contrary to the terms of a court order in the foreclosure proceeding.

Charging inappropriate fees on estate files

While acting as the executor for several estates, Mr. Motiuk:

- charged legal fees to the estates when he knew or ought to have known he was not entitled to do so;
- charged both legal and executor's fees for the same services when he knew he was not entitled to do so;
- inadequately advised the beneficiaries as to his entitlement to charge for executor's fees;

- failed to advise the beneficiaries to obtain independent legal advice before agreeing to payment of executor's fees; and
- appropriated executor's fees prior to obtaining approval of the beneficiaries, which approval was not properly obtained, if at all.

On two of the estates, Mr. Motiuk also billed excessively by:

- billing executor's fees based on an inflated gross value of the estate;
- billing executor's fees at a higher percentage than could be justified, given the simplicity of the estate; and
- billing legal fees based on a percentage of the gross value of the estate, which amount was unjustified given the simplicity of the estate.

On yet another estate, he charged legal fees based on a gross value of the estate, which amount was excessive, given the simplicity of the estate, and charged both legal and executor's fees for the same services when knew he was not entitled to do so.

Failing to follow client instructions and improperly withholding funds

While representing a client in a matrimonial matter, Mr. Motiuk failed to follow the client's instructions. He also improperly withheld trust funds owed to the client in an attempt to have the client agree to withdraw a complaint to the Law Society as a condition of releasing the funds.

Failing to remit employee deductions

After taking deductions from the salary of his employee, Mr. Motiuk failed to remit the money to the appropriate authorities.

* * *

On November 25, 1999 a hearing was held to determine whether Mr. Motiuk should be suspended from practice on an interim basis pending the disposition of a citation against him. At that time, Mr. Motiuk gave an undertaking to the Law Society to cease practising law. He became a non-practising member of the Society on January 1, 2001.

Admission and penalty

Pursuant to Law Society Rule 4-22, Mr. Motiuk admitted that his conduct in these matters constituted professional misconduct. The Discipline Committee and hearing panel accepted Mr. Motiuk's admission and his proposed penalty.

The panel accordingly ordered that Mr. Motiuk, who remained subject to his undertaking not to practise law, must appear before a board of examiners appointed by the Practice Standards Committee and satisfy the board that he is competent to practise law should he ever seek to be relieved of his undertaking.