

Milan Matt Uzelac

Vancouver, BC

Called to the Bar: June 26, 1975

Undertook not to practise law: December 2, 2002

Discipline hearing: September 16 and 17, 2003

Panel: Patricia Schmit, QC, Chair, James Vilvang, QC and Gerald Lecovin, QC

Report issued: November 4, 2003; indexed as [2003] LSBC 35

Counsel: Todd Follett, for the Law Society and Peter Leask, QC, for Mr. Uzelac

Summary

Mr. Uzelac breached various Law Society accounting rules for over a year. Among the various breaches, he failed to eliminate immediately a trust fund shortage resulting from a theft of funds by an employee. Pursuant to section 39 of the *Legal Profession Act*, three Benchers ordered that conditions be placed on Mr. Uzelac's practice pending the hearing of a citation against him. Mr. Uzelac brought his books and records up to an acceptable standard as required, but subsequently breached several of the other imposed conditions. Specifically, he failed to implement and operate a proper accounting system, failed to remain in compliance with the rules and failed to provide to the Law Society on a monthly basis his trust account reconciliations and statements and copies of his billings and general account statements. In these circumstances, his conduct in breaching the Law Society accounting rules and breaching the conditions placed on his practice amounted to professional misconduct. He also failed to notify the Law Society of an unsatisfied judgment against him, which was a breach of the Rules. The panel noted that Mr. Uzelac was furthermore duped by the fraud of an unscrupulous client and acted foolishly by writing trust cheques to a cheque-cashing business and by then providing the funds in cash to the client. Although he did not make these trust cheques payable to "cash" or "bearer" and did not breach the Law Society Rules, his actions were contrary to the spirit of the Rules. The panel recommended amending the Rules to prohibit such transactions in the future. Noting that Mr. Uzelac had voluntarily ceased practice for nine months rather than face a probable interim suspension, the panel found that his absence from practice effectively served as a suspension. Taking into account various factors, including Mr. Uzelac's conduct record and his financial circumstances, the panel decided that imposing a fine would be too onerous. The panel ordered that Mr. Uzelac pay \$5,000 in costs and return to practice only under a practice supervision agreement.

Facts

Failing to eliminate a trust shortage and other breaches of accounting rules

In July, 2001 Mr. Uzelac discovered that a former employee had stolen \$30,000 from funds that the firm held in trust for an estate. Mr. Uzelac advised the Law Society of the theft. The Law Society drew his attention to his obligation to immediately eliminate any trust shortage and requested confirmation that this had been done. After a follow-up enquiry from the Law Society, Mr. Uzelac reported in early November, 2001 that he had not replaced the trust funds taken by his former employee as he had not been able to raise the funds as of that time.

Pursuant to Law Society Rule 3-79, the Law Society Executive Director authorized an audit of Mr. Uzelac's books, records and accounts. Mr. Uzelac reported in December, 2001 that he anticipated eliminating the trust shortage within the month. In early January, 2002 he wrote to the Law Society outlining the circumstances of the shortfall, and on January 23 he deposited \$30,000 to make up the shortfall.

The Law Society audit revealed that the \$30,000 theft had occurred on February 22, 2001 and was not eliminated until January 23, 2002. Mr. Uzelac had failed to maintain sufficient funds in his trust account to meet his obligations over this period and failed to eliminate the trust shortage immediately on discovery, contrary to Rule 3-66(1).

Mr. Uzelac had breached other accounting rules by:

- failing to maintain the required books, records and accounts, contrary to Rule 3-59(1);
- failing to maintain trust cash books, client trust ledgers, records showing transfers between clients, trust ledgers and all supporting documents from November 1, 2000 to March 18, 2002, contrary to Rule 3-60;
- failing to maintain a general cash book, accounts receivable ledger or other suitable system, copies of all bank-validated deposit slips and all supporting documents and vouchers, from November 1, 2000 to May 2, 2002, contrary to Rule 3-62;
- failing to keep a billing file from November 1, 2000 to May 2, 2002, contrary to Rule 3-62;
- failing to record trust transactions within seven days from November 1, 2000 to March 18, 2002, contrary to Rule 3-63(1)(a);
- failing to record general transactions within 30 days from November 1, 2000 to May 2, 2002, contrary to Rule 3-63(1)(b); and
- failing to immediately produce pooled trust account cancelled cheques, bank reconciliations, completed ledger cards, general bank account records and trust liability reconciliations to the Law Society auditor, contrary to Rule 3-79(2).

A citation was authorized against Mr. Uzelac and he subsequently appeared before three Benchers to determine whether he should be suspended or have conditions imposed on his practice pending the outcome of the hearing of the citation. The Benchers determined that it was unnecessary to suspend Mr. Uzelac, but ordered that he comply with several practice conditions. Contrary to those practice conditions, Mr. Uzelac failed to implement and operate a proper accounting system, failed to remain in compliance with the rules and failed to provide to the Law Society on a monthly basis his trust account reconciliations and statements and copies of his billings and general account statements.

Writing trust cheques to a cheque-cashing business

In 2002 Mr. Uzelac represented a financial company that told him he would receive in trust the proceeds of a completed financial project. Mr. Uzelac entered into an agreement with the client whereby Mr. Uzelac would receive a \$20,000 fee for preparing a business proposal. Mr. Uzelac delivered a business proposal to the client.

On May 3, 2002 Mr. Uzelac was advised by his bank that \$5.3 million had been deposited to his trust account via an internal bank transfer. That same day Mr. Uzelac disbursed \$70,900 in trust cheques to

various payees, at the request of his client, including a \$27,500 cheque payable to his client's principal, Mr. R, and a \$20,000 cheque payable to Mr. Uzelac's firm for fees and disbursements.

At the request of his client, Mr. Uzelac paid a trust cheque for \$71,500 to a cheque-cashing business in order to receive the sums of \$20,000 and \$30,000 US in cash. He also issued a \$50,000 trust cheque to the cheque-cashing business in order to obtain that amount in cash. He paid the sums he had received in cash to Mr. R.

On May 6, on his client's instructions, Mr. Uzelac purchased four bank money orders totalling just over \$5.1 million that were to be disbursed on the client's further instructions.

On May 7, Mr. Uzelac was advised by his bank that the deposit of \$5.3 million to his trust account was suspected of being fraudulent. This was confirmed the next day by the bank, which demanded a return of its bank drafts. The bank also refused to honour the trust cheques of \$71,500 and \$50,000 that Mr. Uzelac had written to the cheque-cashing business. On May 10 Mr. Uzelac paid the cheque-cashing business \$22,598.86 in partial repayment. The cheque-cashing business, which was a former client of Mr. Uzelac, obtained judgment against him for the balance of the money owed it.

Failing to report unsatisfied judgments

Between July, 2002 and October, 2002 three judgments were entered against Mr. Uzelac. He failed to satisfy these judgments within seven days of entry and did not notify the Law Society of the circumstances of the judgments or his proposal for satisfying them, contrary to Rule 3-44.

Verdict

The hearing panel found and Mr. Uzelac admitted that he had breached various accounting rules. The panel found that his breach of the accounting rules and his breach of the conditions placed on his practice amounted to professional misconduct in these circumstances.

Mr. Uzelac's actions in writing trust cheques to a cheque-cashing business and then providing the funds in cash to his client did not breach the Law Society accounting rules since the trust cheques were not made out to "cash" or "bearer." Such a practice was risky, however, and breached the spirit of the Rules. In other circumstances, such a practice might amount to professional misconduct. The hearing panel accordingly recommended a rule amendment to prohibit such transactions in the future.

Mr. Uzelac's failure to notify the Law Society of three unsatisfied judgments against him amounted to a breach of Law Society Rule 3-44.

Penalty

The hearing panel took into account that Mr. Uzelac had been financially punished as a result of the theft of trust funds by an employee he had trusted and by the fraud of a client. He had to make up the \$30,000 trust shortfall resulting from the employee theft and owed close to \$140,000 in judgments against him. Until these incidents, he had a sparse conduct record and little contact with the Law Society.

In considering a suspension, the panel noted that Mr. Uzelac had ceased practising law since December, 2002. Although he was facing a probable interim suspension at the time, his absence from practice had the same effect as a suspension in that he was unable to earn income as a lawyer for nine months as of the time of the hearing. This was likely for a longer period of suspension than the panel might have imposed.

The panel noted that, given Mr. Uzelac's financial circumstances, levying a fine would be too onerous. He should nevertheless make a contribution to the costs of the discipline proceedings. Moreover, before returning to practice, he must enter into a practice supervision agreement and pay any costs associated with retaining a practice supervisor. Such supervision was needed to protect the public as Mr. Uzelac had shown himself unwilling or unable to make the necessary practice changes voluntarily.

The panel ordered that Mr. Uzelac:

1. pay \$5,000 as costs of the hearing within two years of the panel's oral reasons on facts and verdict; and
2. before returning to practice, enter into a practice supervision agreement, which must include various terms specified by the panel, be in a form acceptable to the Practice Standards Committee and remain in effect for one year or such shorter period as directed by the Practice Standards Committee or the Benchers.