

2003 LSBC 33

Report issued: September 25, 2003

Oral reasons : August 29, 2003

Citations issued: April 29, 1999;

August 30, 2000

THE LAW SOCIETY OF BRITISH COLUMBIA
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

JOHN MOTIUK

Respondent

Decision of the Hearing Panel

Hearing date: August 29, 2003

Panel: Robert Gourlay, Q.C., Chair, Margaret Ostrowski, Q.C.,
Grant Taylor

Counsel for the Law Society: Jessica Gossen

Counsel for the Respondent: Christopher Hinkson, Q.C.

Background

[1] On April 29, 1999, a citation was issued to the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that the Hearing Panel inquire into the Respondent's conduct as follows:

- a. Your conduct in that you paid from money you held in trust the sum of \$4,000.00 to the third mortgagee in settlement of the claim of the third mortgagee, while knowing this to be contrary to the terms of an Order dated November 8, 1996 in the action between your client WWS and BLB et al.
- b. Your conduct in negotiating and settling with the third mortgagee without notice to the second mortgagee in the matter of the action between your client WWS and BLB et al in circumstances where you knew that the second mortgagee was represented by counsel and that the second mortgagee contested the third mortgagee's claim. This conduct constituted sharp practice contrary to Chapter 1, Rule 4(3) of the Professional Conduct Handbook.

[2] On August 30, 2000, a citation was issued to the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that the Hearing Panel inquire into the Respondent's conduct as follows:

- a. Your conduct or competence while acting as Executor for the

Glasspool Estate by:

- i. charging legal fees to the Estate when you knew or ought to have known you were not entitled to do so;
- ii. charging both legal and executor's fees for the same services when you knew you were not entitled to do so;
- iii. inadequately advising the Beneficiaries of the Estate as to your entitlement to charge for Executor's fees;
- iv. failing to advise the said Beneficiaries to obtain independent legal advice before agreeing to payment of Executor's fees;
- v. appropriating Executor's fees prior to obtaining the approval of the Beneficiaries, which approval was not properly, if at all, obtained; and
- vi. billing excessively by:
 - (1) billing Executor's fees based on an inflated values of the gross value of the Estate;
 - (2) billing Executor's fees at a higher percentage rate than could be justified given the simplicity of the Estate; and
 - (3) billing legal fees based on a percentage of the gross value of the Estate which amount was unjustified given the simplicity of the Estate.

b. Your conduct or competence while acting as Executor for the Jaric Estate by:

- i. charging legal fees to the Estate when you knew or ought to have known you were not entitled to do so;
- ii. charging both legal and executor's fees for the same services when you knew you were not entitled to do so;
- iii. inadequately advising the Beneficiaries of the Estate as to your entitlement to charge for Executor's fees;
- iv. failing to advise the said Beneficiaries to obtain independent legal advice before agreeing to payment of Executor's fees;
- v. appropriating Executor's fees prior to obtaining the approval of the Beneficiaries, which approval was not properly, if at all, obtained.

c. Your conduct or competence while acting as Executor for the Weigand Estate:

- i. charging legal fees to the Estate when you knew or ought to have known you were not entitled to do so;
- ii. charging both legal and executor's fees for the same services when you knew you were not entitled to do so;
- iii. inadequately advising the Beneficiaries of the Estate as to your entitlement to charge for Executor's fees;

- iv. failing to advise the said Beneficiaries to obtain independent legal advice before agreeing to payment of Executor's fees;
- v. appropriating Executor's fees prior to obtaining the approval of the Beneficiaries, which approval was not properly, if at all, obtained; and
- vi. billing excessively by:
 - (1) billing Executor's fees based on an inflated values of the gross value of the Estate;
 - (2) billing Executor's fees at a higher percentage rate than could be justified given the simplicity of the Estate; and
 - (3) billing legal fees based on a percentage of the gross value of the Estate which amount was unjustified given the simplicity of the Estate.

d. Your conduct or competence while acting as Executor for the Brown Estate by:

- i. charging legal fees based on a percentage of the gross value of the Estate which amount was excessive given the simplicity of the Estate; and
- ii. charging both legal and executor's fees for the same services when you knew you were not entitled to do so.

e. Your conduct or competence while acting as Executor for the Voykin Estate in that you rendered an account which did not comply with Rule 3-56 and Rule 3-57 of the Law Society Rules.

f. Your conduct or competence in acting for Harmander S. Manhas by:

- i. failing to follow your client's instructions; and
- ii. improperly withholding trust funds owed to your client by attempting to impose an agreement that, as a condition of returning the funds, your client would withdraw his complaint about you to the Law Society.

g. Your conduct or competence in taking deductions from the salary of an employee, namely Christie Friesen, and failing to remit the money deducted to the appropriate authorities.

[3] The Respondent acknowledged proper service of the citations pursuant to Rule 4-15 of the Law Society Rules.

[4] These citations come before this Panel as a conditional admission of a disciplinary violation and consent to specified disciplinary action pursuant to Rule 4-22. The Respondent admits that the allegations contained in the Schedules to the citation are proven and that they constitute professional misconduct. The Respondent has consented to the following disciplinary action:

Upon his application to be relieved of his undertaking not to practise law, he will be required to appear before a Board of Examiners, to be appointed by the Practice Standards Committee, in order that he satisfy the Board of his fitness to practice.

Agreed Statement of Facts

[5] An Agreed Statement of Facts was filed in these proceedings. In this Agreed Statement of Facts, the Respondent made the following, *inter alia*, admissions:

a. that he paid out money from his trust account on a settlement contrary to the terms of a Court Order; and

b. that he charged legal fees and executors'/administrators' fees in several estate files without having obtained court approval or the consent of the beneficiaries.

The Respondent has been diagnosed by his physician and by two psychiatrists as having at the relevant times in these complaints suffered from two medical conditions, firstly, diabetes and, secondly, bi-polar disorder. The Panel accepts the medical opinions that these disorders had a severely deleterious effect on the member's ability to function as a competent lawyer, especially if he did not meticulously abide by medical advice and take his prescription medication.

Decision

[6] The Panel has considered the submissions of counsel and all of the materials filed including the admissions of fact and the psychiatric reports of Doctors Hollander and Semrau.

[7] The Panel accepts the conditional admission of professional misconduct made by the Respondent and the proposed disciplinary action. Accordingly, pursuant to Rule 4-22(5) the Panel firstly, instructs the Executive Director to record the Respondent's admission on his Professional Conduct Record.

[8] Secondly, the Panel imposes the proposed disciplinary action, pursuant to Section 38(5)(f)(iii), that is that the Respondent will appear before a Board of Examiners appointed by the Practice Standards Committee and satisfy the Board that he is competent to practise law if he does wish to be relieved of his undertaking given to the Law Society November 25, 1999.

[9] The complainants, if any, are to be advised by the Law Society of the disposition of this matter.

[10] There will be publication of the results of this hearing in the usual course.

[11] There will no order as to costs.