

2008 : No. 3 - July

Michael Curt Scholz

West Vancouver, BC

Called to the bar: May 14, 1979

Discipline hearing : April 24, 25 and May 4, 2007 (Facts and Verdict), May 5, 2008 (Penalty)

Panel : G. Glen Ridgeway, QC, Chair, Richard Stewart, QC, Dirk Sigalet, QC

Report issued : January 17 (2008 LSBC 02) and June 2, 2008 (2008 LSBC 16)

Counsel : Maureen Boyd for the Law Society and George Gregory for Michael Scholz

Facts

Michael Scholz worked for a Vancouver law firm from 1979 to June 30, 2001 when he accepted an offer to become the President, legal advisor and Vice-Chair of the Board of Directors of G. Corp., one of his clients. Scholz and his firm agreed to a six month transition period commencing July 1, 2001 to wind up his practice.

Scholz was also a solicitor for client W. Ltd. In 1997, as a result of the failure of the Enron Mortgage Corporation, the Registrar of Mortgage Brokers froze W. Ltd.'s bank account. The bank that held the account commenced proceedings to have the funds paid into court for determination of the rightful owner or owners. DC, an investor in W. Ltd., also commenced an action to recover \$100,000 he had loaned to W. Ltd. Appearances were filed by the bank, the Province of British Columbia, the Registrar of Mortgage Brokers, and investor LM.

Scholz obtained a court order to transfer the frozen funds to his law firm on the condition that they be held in trust, unless otherwise ordered by the court or agreed to by all parties. In May 2001, Scholz informed W. Ltd. that his firm would no longer represent them until arrangements were made for the payment of his account, which was \$106,000 in arrears. Scholz shared this information with other claimants who had loaned funds to W. Ltd and therefore had an interest in the trust fund.

In July 2001, Scholz told DC, now President of W. Ltd., that there was an opportunity to earn a greater return for the funds being held in trust. The investment opportunity was with G. Inc, a subsidiary of Scholz's company, G. Corp. Scholz signed a trust cheque for the funds and delivered it to G. Corp. on July 20, 2001. The funds were ultimately repaid to the law firm, with a portion of them applied to the accounts owing.

The law firm was unaware that the transaction had taken place and had not authorized Scholz to sign trust cheques. Subsequent to Scholz's departure, the law firm investigated the matter, returned the funds and referred the matter to the Law Society.

Verdict

The panel noted that all members of the Law Society are officers of the court, who have a duty to maintain the integrity of our legal system and honour court orders. The panel noted that while there was ultimately no financial loss for the parties involved, that does not mitigate the seriousness of the breach. The panel found that Scholz failed to follow through on the conditions set out in the court order governing the trust funds, finding him in breach of the order. In doing so, Scholz was in contravention of Rule 3-51 of the Law Society Rules.

The panel also found that Scholz was acting in circumstances that gave rise to the potential for divided

loyalties and in a conflict of interest.

Penalty

The hearing panel ordered that Scholz:

1. be suspended from the practice of law for a period of one month commencing June 2, 2008; and
2. pay costs in the amount of \$26,437.50.