

[2003] LSBC 35

Report issued: November 4, 2003

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February 4, 2003

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Milan Matt Uzelac

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: September 16 and 17, 2003

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

Counsel for the Law Society: Todd Follett

Counsel for the Respondent: Peter Leask, QC

[1] Having found that the Respondent's conduct constituted professional misconduct, the Panel was directed to examples of cases where similar behavior resulted in fines and/or suspensions. While we agree that such conduct warrants these penalties, we have determined, on the facts before us, not to visit them upon the Respondent.

[2] The Respondent has practised for twenty-eight years. The Respondent's Professional Conduct Record has been made an Exhibit in these proceedings. It discloses that a Hearing Panel sitting pursuant to s. 39 of the *Legal Profession Act* ordered on May 13, 2002, among other things, that a Practice Review of the Respondent's practice be undertaken. This was done, and a portion of the report of that Practice Review is before us.

[3] This Panel notes that the Respondent's Professional Conduct Record is sparse, which indicates that the Respondent has had, until very recently, little contact with the Law Society. He is entitled to have this Record considered. The s. 39 hearing was triggered by a trust deficiency created by the theft by a former employee. Subsequent to the s. 39 hearing, he was defrauded by a client. He has been financially punished because of his misplaced trust in a previously trustworthy employee, and by reason of having been defrauded by a client. He is entitled to have this record considered.

[4] The first fraud cost him \$30,000 which he may be able to recover in the future. The second fraud costs him \$22,000 and judgments in the amount of \$170,000 against him. His ability to recover from this is more problematic. His practice is not a lucrative one.

[5] Given the above facts, the Panel has determined that to levy a fine would be too onerous.

[6] The Respondent voluntarily ceases practice nine months ago. While this is not "a punishment", it is apparent that had he not done so a Panel would have, in all probability, suspended him. Whether voluntary

or not, the effect is the same. Namely, he has not earned income as a lawyer for the past nine months. His counsel points out correctly that this is a longer period of suspension than a Panel would likely have given him in punishment for his professional misconduct. Under these circumstances, the Panel feels that the warranted suspension has already been served.

[7] Counsel agree that the costs of the within proceeding would approximate \$10,000. While it is proper that the Law Society receive its costs in this case, the Panel is mindful of the effect of a further monetary judgment against the Respondent. Nevertheless, the Panel finds that some order for costs against the Respondent is appropriate and affixes those costs at \$5,000, to be paid within two years from the date of the Verdict in this matter, with liberty to apply for an extension.

[8] Finally, the Law Society has suggested that the Respondent enter into a Practice Supervision Agreement as a term of the Respondent being allowed to practice law. The Respondent has shown that he is unwilling or unable to make the necessary practice changes voluntarily.

[9] The public must be protected. The Panel orders that prior to the Respondent being allowed to return to practice, he must enter into a Practice Supervision Agreement with a member, in a form acceptable to the Practice Standards Committee, including the following terms:

- (a) list and close all finished files and place them in storage;
- (b) review all active and ongoing files to determine the work to be done, setting out a plan of action in a "bring forward" system;
- (c) complete all remaining files, report to client and bill same;
- (d) update the file opening book to include all files not yet listed there and create an active file list;
- (e) document files appropriately by developing and using the following:
 - i) retainer letters;
 - ii) information and procedural check lists;
 - iii) dated notes of conversations;
 - iv) correspondence to confirm instructions and advice
- (f) generally report to clients in a timely fashion;
- (g) report to the Practice Standards Committee as required by that Committee;
- (h) make available to the Law Society all documentation and information requested by them in a timely manner;
- (i) retain the services of a bookkeeper acceptable to the Law Society;
- (j) forward to the Law Society a monthly trust reconciliation within the time required by the Rules;
- (k) maintain GST and PST payments up to date;
- (l) maintain financial accounting books up to date; and
- (m) arrange with the bank that all cheques written on the trust account are signed by two signatories. These two signatories shall be the Respondent and a lawyer acceptable to the Law Society.

[10] While it is understood that such a Practice Agreement might entail paying a lawyer to assist in the operation of the practice, this additional expense was contemplated by the Panel when considering matters of costs and fines.

[11] This Practice Supervision Agreement shall be effective for a period of one year or such lesser time as the Practice Standards Committee of the Benchers directs.