

2009 : No. 2

Joseph Takayuki Hattori

Kelowna, BC

Called to the bar: May 20, 1975

Discipline hearing : February 17, 2009

Panel : Joost Blom, QC, Chair, David Mossop, QC and June Preston

Report issued : March 19, 2009 (2009 LSBC 09)

Counsel : Eric Wredenhagen for the Law Society and Jerome Ziskrout for Joseph Hattori

Facts

In November 2004 Joseph Takayuki Hattori received an estate litigation file transferred from another lawyer. Hattori accepted the existing joint retainer to represent a group of three clients who were residual beneficiaries under the contested will of VM, as well as a municipality that was to receive certain real property under the will. Under the retainer, Hattori represented both the residual beneficiaries and the municipality in two separate actions involving the VM estate. One action had been brought by JW and KW, residual beneficiaries under a previous will, naming all beneficiaries of the second will as defendants.

In June 2005 JW and KW applied for an order to sell one of the properties from the VM estate with the proceeds to be held in trust pending the outcome of the litigation. The municipality advised Hattori it was not opposed to the sale, however the residual beneficiaries made their opposition known to him. Hattori responded on behalf of all the clients that the sale was unopposed and indicated that a release of a certificate of pending litigation on the property would be registered. He also executed a consent order to sell the property. The property was listed for sale in August 2005 and sold in October 2005.

The residual beneficiaries terminated their retainer with Hattori on May 5, 2006. Hattori continued to act on behalf of the municipality and on November 1, 2007 presented an offer to settle the action brought by JW and KW. The offer provided for the municipality to receive its bequest and for JW and KW to receive the residue of the estate. Hattori's former clients, however, were to receive nothing and bear their own costs.

Admission and Penalty

Hattori admitted that he acted in a conflict of interest by:

1. failing to explain the principle of undivided loyalty to his clients;
2. failing to secure informed consent on how to proceed in light of the conflict that developed between his two clients; and
3. continuing to act for the municipality, and not for the residual beneficiaries, after it was evident there was a conflict between them.

Hattori further admitted that, by disregarding the residual beneficiaries' instructions, he failed to provide service in a conscientious, diligent and efficient manner at least equal to what would be expected of a competent lawyer in a similar situation. He admitted that this conduct constitutes professional misconduct.

Once Hattori realized his breach of duty to the beneficiaries he took steps to make amends, including apologizing to his clients and refunding their fees. He undertook to complete the Law Society's Small Firm Practice Course and to review the *Act*, Rules and *Handbook*.

Pursuant to Law Society Rule 4-22, the hearing panel accepted Hattori's admissions and ordered that he

pay:

1. a \$3,000 fine; and
2. \$1,000 in costs.

The panel emphasized the importance for all lawyers to exercise great caution from the outset in accepting and managing a joint retainer as noted under Chapter 6, Rule 4 of the *Professional Conduct Handbook*.