

2009 : No. 3 Fall

Donald Wayne Skogstad

Nelson, BC

Called to the bar: July 10, 1979

Discipline hearing : October 23 to 26 and November 1 and 2, 2006, December 18 to 21, 2007 and March 13, 2008 (facts and verdict); May 20, 2009 (penalty)

Panel : Robert McDiarmid, QC, Chair, Thelma O'Grady and Ralston Alexander, QC

Report issued : October 24 (2006 LSBC 40) and November 9, 2006 (2006 LSBC 43), July 3, 2008 (2008 LSBC 19) and May 22, 2009 (2009 LSBC 16)

Appeal hearing on interlocutory application : May 11, 2007

Appeal decision : June 5, 2007 (*Skogstad v. Law Society of BC*, 2007 BCCA 310)

Counsel : Jean Whittow, QC and Efrem Swartz for the Law Society and Bryan Baynham, QC and Jay Havelaar for Donald Wayne Skogstad

Facts

On February 15, 2005 a citation was issued against Donald Wayne Skogstad alleging seven counts of professional misconduct.

The facts giving rise to this citation took place from January 1997 to December 1998 when Skogstad acted for client V, an offshore company that was owned and operated by F, another client. On the instructions of F, Skogstad directed the establishment of offshore company V in the Turks & Caicos Islands with the assistance of a law firm there. The purpose of the business was to identify and participate in high-risk, high-yield investments with the expectation that any returns on the investments would be sheltered from Canadian income tax. F found prospective investors and persuaded them to invest in the company.

V gave instructions, always through F, with respect to the "investments" Skogstad was to make for V. Skogstad permitted his trust account to be used to pool monies for persons who were not his clients for use in various investments. Between January 1997 and April 1999 about \$2 million was deposited in Skogstad's trust account. A significant portion of this money was invested in programs that turned out to be scams.

Skogstad became aware of the potentially fraudulent nature of the programs and advised F of these concerns, but he did not advise individual investors and, in fact, did not know who many of them were.

In his response to the complaint of an individual investor, Skogstad provided false information to the Law Society stating he had no involvement with Investors International, an organization that held seminars promoting the schemes, and that he did not run, manage or have any involvement in any kind of investment pool.

Preliminary Matters

At the start of the hearing, counsel for Skogstad moved to have the citation quashed, or alternatively for a stay of proceedings, on the basis of unreasonable delay causing prejudice to him. The panel rejected the motion on the basis that the delay was not unreasonable or inordinate, two years of the delay was caused by the Respondent, the public interest required a hearing on the citation and any unfairness to the Respondent could be overcome.

During the hearing, the counsel for Law Society attempted to question the respondent on matters that were protected by solicitor-client privilege. The panel determined that the questioning could occur, provided that

steps were taken to maintain the privilege, by closing the hearing to the public when privileged matters were the subject of testimony, and by anonymizing all client references. The panel's decision was appealed to the Court of Appeal, which upheld the panel.

Verdict

On the first count of the citation, that Skogstad knowingly assisted his clients in perpetrating a fraudulent investment scheme, the panel found that the evidence did not support an allegation that he assisted V and persons associated with V in the perpetration of an investment scheme that he knew or ought to have known was a deception or betrayal of the public.

On the second count, the panel found that it did not have the authority to find a breach of the *Securities Act* and therefore dismissed the allegation Skogstad engaged or assisted others to engage in trades in securities.

On the third count, the panel found Skogstad guilty of professional misconduct for failing to advise investors that he was not representing their interests, contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook*.

On the fourth count, the panel found that Skogstad did not owe a duty as protector of a trust and, therefore, there was no conflict between the interests of his client and the interests of the beneficiaries of the trust.

On the fifth count, the panel found that, as Skogstad did not act for the Client Investors and was not protecting their interests, the evidence does not support an allegation that Skogstad was in conflict with regard to acting for Client Investors while acting for V.

On the sixth count, the panel found there were many instances where deposits were made to the V trust account without the source of the deposit being known and recorded. Without the ability to verify the expectations of the depositor, it is not possible for the lawyer to know a proposed payment from the trust account meets the requirements for a withdrawal. The panel found repeated violations of Rule 3-60 and as such found Skogstad guilty of professional misconduct.

Finally, the panel dismissed the allegation that Skogstad failed to provide all books and records promptly contrary to Rule 4-43.

Penalty

In reaching its decision on penalty, the panel noted that the most serious allegations against Skogstad were dismissed during the proceedings. The panel also noted that, while Skogstad had committed professional misconduct, he was not a participant in the fraudulent schemes and did not personally profit from the investors' money. Accordingly, the panel ordered that Skogstad:

1. be suspended for three months; and
2. pay a contribution of \$20,000 to the costs of the proceedings (actual costs were approximately \$200,000).