

2011 : No. 2 Summer

Mark Ronald Epstein

Vancouver, BC

Called to the bar: May 17, 1991

**Discipline hearing** : March 2, 2011

**Panel** : David Renwick, QC, Chair, Leon Getz, QC and Kenneth Walker

**Report issued** : April 15, 2011 (2011 LSBC 12)

**Counsel** : Maureen Boyd and Carolyn Gulabsingh for the Law Society and Leonard Doust, QC for Mark Ronald Epstein

## Facts

In November 2006, Mark Ronald Epstein was retained by a California resident who was the executrix of her deceased partner's estate. The client believed that her partner's principal asset was an interest as one of three tenants in common in valuable property in Whistler. There had been a disagreement with the two co-owners, and she wished to transfer her partner's interest in the property to his estate.

During the initial conversation, Epstein did an online title search and advised the client that the deceased partner was registered as an owner of the property. He failed to notice, however, that the search revealed that the title had been cancelled in July 2006.

In January 2007, Epstein sent a formal retainer letter to his client. The letter was signed and returned with a \$1,000 retainer.

In February 2007, Epstein did another online search and, once again, failed to notice that the title had been cancelled and ownership of the property had been transferred to the other two co-owners. He did not do a proper or complete property search.

In March 2007 Epstein notified his client that he was in the process of filing a Caveat on the property. He did not, however, file the Caveat or take any other steps to probate the estate. He did not think there was any urgency in proceeding with the probate of the estate or the filing of a Caveat because he did not know of the transfer of title in 2006.

The client contacted Epstein in June 2007, after numerous attempts, and was informed that a title search had been conducted and that a Caveat was being placed on the property.

In September 2007, the client consulted another lawyer. She learned that the property had been sold pursuant to an Order of the Supreme Court and that title to the property had been transferred in July 2006. The Court then ordered payment to the client of \$43,200 that had been paid into Court. She paid additional legal fees to resolve matters related to the estate's interest in the property and the proceeds from its sale.

Epstein subsequently left the client a voicemail message apologizing for his delay and his oversight in not reading the title search properly. He also refunded the \$1,000 retainer.

## admissions and Disciplinary Action

The panel noted that Epstein was the subject of conduct reviews in October 2000 and September 2006 related to inattentiveness and lack of care in performing fairly basic procedures. Also in 2006, there was

evidence of disorganization in the conduct of his practice which resulted in a practice review and some detailed recommendations.

In this case, Epstein's misconduct consisted of failing to perform accurately the fairly elementary task of reading carefully the results of a title search, failing in a timely way to advance his client's objectives and carry out her instructions, and failing to respond in a timely way to his client's enquiries. Although, to his credit, he apologized to his client and refunded her retainer, the panel was concerned about a recurring pattern of carelessness and inattention that has continued despite prior remedial and disciplinary intervention by the Law Society.

Epstein admitted that he did not serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer. He admitted that his conduct constituted professional misconduct.

The panel accepted his admission and ordered that he pay:

1. a \$4,500 fine; and
2. \$2,000 in costs.