

2011 : No. 3 Fall

Leonard Thomas Denovan Hill

,Delta BC

Called to the bar: July 13, 1982

Discipline hearing : January 20 and June 2, 2011

Panel : Bruce LeRose, QC, Chair, Leon Getz, QC and Benjimen Meisner

Report issued : March 3 (2011 LSBC 08) and June 29, 2011 (2011 LSBC 16)

Oral reasons : June 2, 2011

Counsel : Maureen Boyd for the Law Society and Leonard Thomas Denovan Hill appearing on his own behalf

Facts

In March 2009, Leonard Thomas Denovan Hill commenced a builder's lien claim on behalf of a client.

Opposing counsel advised Hill in July 2009 that a cheque would be delivered to him on undertakings.

On October 19, 2009, Hill received a trust cheque for \$11,500 and a cover letter that explained that it was being sent on his undertaking not to release any part of those funds from trust until he had filed the discharges of the claim of lien, the certificate of pending litigation and the consent dismissal order, and forwarded copies to opposing counsel.

On October 22, Hill deposited the cheque into his trust account. The next day he withdrew \$840 to pay his account and paid the balance of \$10,660 to his client, without complying with any of the conditions in the letter of undertaking.

On January 15, 2010, opposing counsel enquired on three occasions whether Hill still held the funds in trust. On January 18, Hill responded that the funds had been disbursed and the related documents *were all ready to be filed*.

Opposing counsel reported the matter to the Law Society.

Determination

Hill admitted that the cheque and the undertaking letter were received in his office and that he disbursed the funds on October 23, 2009 when none of the terms of the undertaking imposed upon him had been fulfilled. His agreement to these facts seemed to make the conclusion inescapable that he committed a breach of his undertaking, however, he denied this.

Hill said that when he disbursed the funds he was unaware of the undertaking letter as it had been misplaced. His contention was that he could not be found to have committed a breach of an undertaking of which he was unaware.

In the panel's view, Hill's contention that he was unaware of the existence of the undertaking or that its terms were unfulfilled, seemed implausible. He had been advised by opposing counsel in advance that a cheque would be delivered to him on undertakings. In giving evidence before the panel, Hill agreed that it is quite common in builder's lien practice for documents or funds to be exchanged on undertakings, and he

testified that he had an active practice in this field. Yet, he paid the funds out within a day of receiving them, and did so without making any enquiries as to the terms upon which they had been delivered to him.

The panel concluded that Hill's conduct constituted professional misconduct. It was irrelevant to that question whether Hill committed his admitted breach of undertaking intentionally or, as he claimed, unintentionally because he was unaware of it.

Disciplinary Action

The panel considered two aggravating factors. First, Hill was somewhat evasive in responding to enquiries from the other lawyer about the status of matters. Second, Hill had committed another breach of undertaking in 2007 and was fined \$2,500 for professional misconduct.

The panel determined there was a need for a sharper reminder to Hill about the importance of meticulous compliance with undertakings. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings are an essential ingredient in maintaining credibility and the public's trust in lawyers.

The panel ordered that Hill:

1. be suspended from the practice of law for one month; and
2. pay \$4,000 in costs.