

Admission to Discipline Committee

AGREED STATEMENT OF FACTS

James Hu

Called to Bar: May 19, 2000

Ceased membership: January 31, 2013

Admission accepted: January 24, 2013

Counsel: Maureen Boyd for the Law Society and Henry Wood, QC on behalf of Mr. Hu

Member Background

1. James Hu (the “Respondent”) was admitted to the bar of the Province of British Columbia on May 19, 2000.
2. After the Respondent was called, he practised with Remedios & Company for eleven months. From April 1, 2001 until March 31, 2011, the Respondent practised as a sole practitioner in Richmond, British Columbia.
3. From September 8, 2011 to the present, the Respondent has practised with Stewart Aulinger & Company, with the permission of the Discipline Committee and subject to certain conditions and undertakings.
4. The Respondent’s practice is primarily residential real estate conveyancing.

Citation and Service

5. The citation in this matter was authorized by the Discipline Committee of the Law Society on March 3, 2011 and was issued on March 22, 2011. The Respondent admits that on March 22, 2012, he was served through his counsel with the citation issued March 22, 2011 and waived the requirements of Rule 4-15 of the Law Society Rules.
6. The citation was amended on May 3, 2011 under Rule 4-16.1(a). The Respondent admits that on May 11, 2011, he was served through his counsel with the amended citation and waived the requirements of Rule 4-15 of the Law Society Rules.
7. On May 10, 2012, the Discipline Committee authorized the addition of further allegations under Rule 4-13(1.1) and on May 15, 2012, the citation was further amended under Rule 4-16.1(1)(a). The Respondent admits that on May 22, 2012, he was served through his counsel with the further amended citation and waived the requirements of Rule 4-15 of the Law Society Rules.
8. On July 31, 2012, the citation was further amended under Rule 4-16.1(1)(a). The Respondent admits that he was duly served through his counsel with this further amended citation and waived the requirements of Rule 4-15 of the Law Society Rules.

Attachments

10. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that it:
- a. is a true copy of the original document,
 - b. was written or created on the date on the face of the document,
 - c. where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,
 - d. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
 - e. where the document purports on its face to have been received on a particular date or time, that it was so received, and
 - f. is admitted into evidence for the proof of the truth of the matters recorded in it.

Background Facts

11. On April 14, 2008, a compliance audit under Rule 3-79 was conducted of the Respondent's practice. The auditor reviewed the books and records of the Respondent's practice from October 1, 2006 to February 29, 2008 and determined that they were not maintained in compliance with Part 3, Division 7 of the Law Society Rules. A preliminary report was sent to the Respondent advising of these observations. Follow-up audits took place on June 25 and 26, 2008 and on October 6, 2008, during which improvements to his books and records were observed.
12. The Respondent completed his 2007 and 2008 trust reports and gave inaccurate answers by which he represented that the books and records of his practice complied with the requirements of the Law Society Rules. On October 1, 2009, a citation was issued against the Respondent. This citation was resolved on March 31, 2010 by a conditional admission and consent to a specified disciplinary action under Rule 4-22. .
13. By letter dated August 3, 2010, Felicia Ciolfitto, employed by the Law Society as the Manager of Trust Assurance, advised the Respondent that a compliance audit of his practice carried on through James Hu Law Corporation was scheduled for September 13, 2010 (the "Compliance Audit"). On August 13, 2010, the Respondent acknowledged that he had been informed of the Compliance Audit.
14. On September 13, 2010, Adrienne Fairburn, a Trust Assurance Auditor employed by the Law Society, attended the office of James Hu at [address] No. 3 Road, Richmond, British Columbia for the purpose of conducting the Compliance Audit for the period from March 1, 2009 to September 13, 2010. Ms. Fairburn did not complete the Compliance Audit because the Respondent did not produce all the required records to her.
15. On September 24, 2010, Felicia Ciolfitto, Manager of the Trust Assurance Department, wrote to the Respondent advising that his inability to produce required documents and provide requested explanations was not in compliance with Rule 3-79. She further advised the Respondent that he would be suspended under Rule 3-79.1 on October 1, 2010 if he did not produce the required documents and explanations.

16. On September 30, 2010, the Respondent wrote to Ms. Ciolfitto to provide his explanations. In this letter, the Respondent explained the withdrawal of a total of \$7,802.86 from his trust account in a series of 19 withdrawals on February 1, 2009, April 23, 2009 and July 22, 2009 as follows:

For the funds removed from trust account for clients #1015, 1014, 1057, 1161, 1090, 1157, 1082, 1716, 1516, 1572, 1472, 1099, 1509, 1441, 1383, 1498, 1680 and 1342. These files were all from the period 2008 and earlier. As you are aware from my previous audits in 2008 my record keeping at that time was substandard and very confusing. Therefore I was left with many small balances in my trust account. On February 1, 2009 and again on April 23, 2009 I attempted to go through these files and identify any funds that were owing to me. In many cases during the 2008 and earlier period, I underpaid myself for various reasons: because I was not sure if I had sufficient funds in the account or simply by mistake or when I covered some disbursements through my own funds. In many instances I quickly and easily identified when I had legal fees or disbursements owing to me. These I satisfactorily explained to Ms. Fairburn during the days she attended at my office. The files cited in your letter I could not find any simple reason for my removal of the funds. The only explanation I can give is that in each of these files I could not figure out why there was a balance in the account as I could not find anybody to whom any money was owing to. Therefore I thought it must money [sic] that was owing to me. I realize that this was a poor decision as any funds that I remove must be backed up by a statement of account even in cases where I am certain the funds are mine. As I told Ms. Fairburn I will pay all of these funds to the Law Society.

I can assure you that with the accounting system I have in place now this type of situation will not happen again.

17. Also on September 30, 2010, the Respondent delivered documents to the Law Society, which were returned to him on October 13, 2010 under cover of a letter dated October 12, 2010 from Ms. Ciolfitto.

18. On October 19, 2010, Ms. Fairburn by memo set out concerns arising from the Compliance Audit and referred this matter to the Professional Conduct Department.

19. On October 21, 2010, an investigation (the "Investigation") of the books, records and accounts of the practice of the Respondent and James Hu Law Corporation was commenced by an order made by Art Vertlieb, QC, then Chair of the Discipline Committee of the Law Society. .

20. Andrea Chan, a Certified General Accountant employed by the Law Society, was designated by the Executive Director to conduct the Investigation. She is qualified to give expert opinion evidence with respect to forensic accounting in general and compliance with Part 3, Division 7 of the Law Society Rules in particular.

21. In the course of the Investigation, Ms. Chan asked the Respondent how he tracked the holdbacks held in trust. The Respondent replied that he did not have a system to diarize the obligations arising from his undertakings and that he dealt with them and with holdbacks upon receiving a request from the lawyer or notary representing the other party in the real estate transactions.

22. On February 9, 2011, Ms. Chan issued an interim report (the "Interim Report") of her findings in the Investigation. Amongst other findings, Ms. Chan found that the dollar amounts of mortgage payout figures, property taxes, strata fees and other amounts were not recorded accurately in records and documents prepared by the Respondent's practice, including statements of adjustments and authorities to pay.

23. On March 3, 2011, the Discipline Committee resolved to refer the Respondent to a proceeding

before three Benchers under s. 39 of the *Legal Profession Act*. On March 7, 2011, the Respondent gave an undertaking to the Discipline Committee not to engage in the practice of law, whether with or without the expectation of a fee, gain or reward, from and after April 1, 2011. The Respondent ceased practice on April 1, 2011 and the Law Society was appointed custodian of his practice under s. 50 of the *Legal Profession Act*.

24. On July 14, 2011, the Discipline Committee granted the Respondent's application to vary his undertaking and permit him to return to practice as an employee of Stewart Aulinger, subject to certain agreements and undertakings. The Respondent returned to practise as an employee of Stewart Aulinger on September 8, 2011.

25. On October 28, 2011, Ms. Chan issued a final report (the "Final Investigation Report"). The Final Investigation Report was based on an examination of matters selected from the Respondent's trust ledgers for the period from April 1, 2008 to October 231, 2010 that included over 1,400 files opened and closed in that time period.

26. As of the date of this Agreed Statement of Facts, the Respondent had paid to the Law Society sufficient funds to rectify all client trust shortages.

Allegation #1 – Failure to Maintain Books, Records and Accounts

27. Between April 2008 and October 2010, the Respondent failed to maintain his books, records and accounts in accordance with Division 7 of Part 3 of the Law Society Rules, as follows:

- a) He did not retain all supporting documents for both his trust and general accounts contrary to Rule 3-59, including the following documents:
 - i. several cancelled cheques in respect of the Bank of Nova Scotia pooled trust account for the following months: February 2009, March 2009, August 2009, June 2010, July 2010,
 - ii. the bank statement in respect of the Bank of Nova Scotia pooled trust account for the month of August 2009,
 - iii. cancelled cheques in respect of the HSBC Bank Canada pooled trust account for the month of September 2010.
- b) He did not have an accounts receivable ledger or other suitable system to record, for each client, all transactions including transfers from a trust account, other receipts from or on behalf of the client, and the balance owed by the client, contrary to Rule 3-61.
- c) He did not record each trust or general transaction promptly, and in any event not more than seven days after a trust transaction or 30 days after a general transaction, contrary to Rule 3-63.
- d) He did not keep all the required records of his practice at his chief place of practice in British Columbia for at least three years, contrary to Rule 3-68.

28. The Respondent admits Allegation #1, except allegation 1(a)(iv), that between April 2008 and October 2010 he failed to maintain his books, records and accounts in accordance with Division 7 of Part 3 of the Law Society Rules. The Respondent further admits that his conduct constitutes professional misconduct.

Allegation #2 – Failure to Supervise Staff

29. At all material times between 2007 and March 2011, the Respondent employed his brother, EH, as his legal assistant. The Respondent was aware his brother had no qualifications as a legal assistant and no training, other than the training which the Respondent provided.

30. EH prepared much of the documentation for each conveyance, including the statements of adjustments and authorities to pay. The Respondent did not properly review this documentation. In the Investigation, Andrea Chan found that mortgage payout figures, property taxes, strata fees and other amounts were not recorded accurately in some of these documents, and these errors were not corrected prior to the issuance of the net proceeds.

31. The Respondent admits Allegation #2 that he employed his brother as his legal assistant without ensuring he was adequately trained and that he failed to properly supervise the tasks and functions assigned to his brother that required the direct supervision of a lawyer, contrary to Chapter 12 of the *Professional Conduct Handbook* and Rule 3-48 of the Law Society Rules. The Respondent admits that his conduct is professional misconduct.

Allegation #3 – Safeguarding of Client Confidentiality

32. In 2010, the Respondent shared office space with GL, a non-lawyer. The Respondent's client files, fax machine, and books and records were not reasonably secured from unauthorized access, use or disclosure by GL or other people associated with GL's business. During the Compliance Audit, Ms. Fairburn asked the Respondent how he ensured confidentiality of client information, to which the Respondent replied words to the effect that he had never thought about it.

33. The Respondent admits Allegation #3, that he shared office space with a non-lawyer, without taking all reasonable steps to ensure the privacy and safekeeping of client confidential information in his practice, contrary to Chapter 5, Rules 1 and 2 of the *Professional Conduct Handbook* and Rule 3-68 of the Law Society Rules. The Respondent admits that his conduct is professional misconduct.

Allegation #4 – Withdrawal from Trust to Pay Bill without First Issuing a Bill

34. On various occasions between 2008 and 2010, the Respondent withdrew funds from trust in payment of his fees without first preparing a bill for those fees and delivering it to the client, and in particular in respect of the following clients:

- a) CF on December 8, 2008,
- b) MK and CK on December 10, 2008,
- c) MJ on December 10, 2008,
- d) JL and CM on December 18, 2008,
- e) JL on December 18, 2008,
- f) KM and SK on February 1, 2009,
- g) HT on February 1, 2009,
- h) ZT and JT on February 1, 2009,
- i) QW on February 1, 2009,
- j) XW on April 29, 2009,

- k) QW on April 29, 2009,
- l) QW on April 29, 2009,
- m) PN on April 29, 2009,
- n) JS on April 29, 2009,
- o) RY and YH on April 29, 2009,
- p) YM and JC on April 29, 2009,
- q) YX and HY on April 29, 2009,
- r) LZ on or about April 29, 2009,
- s) XZ on April 29, 2009, and
- t) DL on April 29, 2009.

35. The Respondent admits Allegation #4 that on 20 occasions between December 2008 and October 2010 he withdrew funds from trust in payment of his fees without first preparing a bill for those fees and delivering it to his client, contrary to Rules 3-56(1) and 3-57(2). The Respondent admits his conduct is professional misconduct.

Allegation #5 – Transfer of Funds Without a Bill on February 1, 2008

36. The Respondent represented YC, the vendor in a real estate transaction that completed on January 31, 2008. The Respondent also represented the wife of YC, KS, in a purchase transaction which completed on January 31, 2008. However, he did not prepare a separate client trust ledger in respect of the purchase transaction.

37. The Respondent caused a statement of account to be prepared for the sale dated January 31, 2008, for total fees, disbursements and taxes of \$450. The Respondent also caused an authority to pay to be prepared, which authorized payment of \$450 from the sale proceeds to him for his legal fees, disbursements and taxes. On February 1, 2008, the Respondent withdrew from trust \$450 in payment of his account.

38. After payment of his account, a balance of \$800 remained in the Respondent's trust account. These funds were intended to be used to pay the Respondent's fees and disbursements in accordance with the purchaser's statement of adjustments.

39. On February 1, 2008, the Respondent transferred the balance of \$800 from his trust account to his general account in payment of his fees of \$800 on the purchase transaction without first preparing a bill for those fees and delivering it to the client.

40. In respect of Allegation #5, the Respondent admits that on February 1, 2008, he improperly withdrew \$800 from trust in payment for fees and disbursements contrary to Rule 3-56(1), when he had not prepared and delivered a bill for such fees contrary to Rules 3-56(1) and 3-57(2) and that his conduct is professional misconduct.

Allegation #6 – Misappropriation on February 17, 2007

41. The Respondent represented KS and WW, the purchasers in a real estate transaction that

completed on November 20, 2006.

42. The Respondent caused a statement of account to be prepared dated November 20, 2006 for total fees, disbursements and taxes of \$700. The Respondent also caused an authority to pay to be prepared, that was signed by his clients on November 17, 2006, which authorized payment of \$700 to him for his legal fees and disbursements.

43. On November 20, 2006, the Respondent withdrew from trust funds of:

- a) \$35 to pay a disbursement owing to B Inc. in respect of the purchasers' insurance binder;
- b) \$95.40 to pay a disbursement owing to D Realty for the Form F and a "rush fee"; and
- c) \$4,165.20 to pay a disbursement owing to the Land Title and Survey Authority for the Property Purchase Tax of \$4,100 and registration fees of \$65.20.

The statement of account included in the total of \$700, disbursements of \$35 for the insurance binder, \$130.40 for the Land Title fees and \$15.90 for the Form F (but no amount for the "rush fee").

44. On February 13, 2007, the Respondent transferred \$618.90 from his trust account to his general account purportedly in payment of the account of \$700. However, the total amount withdrawn from trust in respect of the Respondent's fees, disbursements and taxes was \$814.50, which included payment for disbursements which he had previously paid from trust: \$35 for the insurance binder, \$65.20 for the Land Title Office registration fee and \$15.90 for the Form F. The Respondent transferred \$114.50 from his trust account to his general account, and then used those funds for his own benefit when he was not entitled to do so.

45. After this withdrawal on February 13, 2007, a balance of \$75.63 remained in trust. The manner in which the Respondent handled this balance is set out below under Allegation #8.

46. The Respondent admits Allegation #6 that on February 13, 2007 he misappropriated client funds of \$114.50 and that his conduct is professional misconduct.

Allegation #7 – 5 Instances of Misappropriation in December 2008

47. In December 2008, the Respondent transferred a total of \$3,141.49 from his trust account to his general account in respect of five different client matters, and then used those funds for his own benefit when he had no entitlement to them.

48. The Respondent represented HC, the vendor in a real estate transaction that completed on March 20, 2008.

- a) The Respondent caused a statement of account to be prepared dated March 20, 2008 for total fees, disbursements and taxes of \$450. This statement of account was paid in full by a transfer from the Respondent's trust account to his general account on March 20, 2008.
- b) At the conclusion of the transaction on March 24, 2008, the Respondent held no trust funds for the client.
- c) On April 18, 2008, the Respondent received from the purchaser's notary \$235.49 in respect of a holdback for the 2008 March strata fee, which the Respondent deposited to his trust account. The Respondent did not pay these funds to his client or take any steps to contact or locate the client.
- d) On December 5, 2008, the Respondent transferred these funds of \$235.49 from his trust

account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

49. The Respondent represented JC, the purchaser in a real estate transaction that completed on October 4, 2007.

- a) The Respondent caused a statement of account to be prepared dated October 4, 2007 for total fees, disbursements and taxes of \$800. It was not immediately paid.
- b) On October 5, 2007, the Respondent received a trust cheque in the amount of \$429.41 from the vendor's solicitor in respect of the interest earned on the deposit pending completion, which he deposited to his trust account on October 26, 2008 and incorrectly recorded this deposit on the client trust ledger as receipt of \$429.11. The Respondent did not pay these funds to the client nor did he take any step to contact or locate the client.
- c) The Respondent also held trust funds to pay the October strata fees in the amount of \$103.72. The Respondent did not pay these funds to the strata corporation.
- d) As of October 26, 2007, the Respondent held \$1,327.83 in trust, from which he was entitled to pay his account of \$800.
- e) On December 5, 2008, the Respondent transferred the balance of \$1,327.83 from his trust account to his general account and then used those funds for his own benefit. He was not entitled to \$527.83 of those funds.

50. The Respondent represented RL, the purchaser in a real estate transaction that completed on February 23, 2007.

- a) As part of the completion, the Respondent gave a written undertaking to pay outstanding strata fees of \$974.22 and a special assessment of \$339.12, which is set out in more detail at paragraphs 111 to 118. The Respondent held these funds of \$1,313.34 in trust. The Respondent did not pay this fee and assessment prior to the issuance of the Citation.
- b) The Respondent caused a statement of account to be prepared dated February 23, 2007 for total fees, disbursements and taxes of \$750.00.
- c) On February 23, 2007, the Respondent withdrew from trust \$130.40 to pay registration fees to the Land Title and Survey Authority. This disbursement was included on his account.
- d) On June 19, 2007, the Respondent transferred \$467.70 from his trust account to his general account in partial payment of his account of \$750, leaving a balance owing of \$151.90.
- e) As of June 19, 2007, the Respondent held a balance of \$1,465.24 in his trust account.
- f) On December 18, 2008, the Respondent transferred the balance of \$1,465.24 from his trust account to his general account, and then used those funds for his own benefit. He was not entitled to \$1,313.34 of those funds.

51. The Respondent represented YC, the vendor in a real estate transaction that completed on January 31, 2008, as set out at paragraph 36.

- a) After the withdrawals from trust by the Respondent on February 1, 2008, which are set out at paragraphs 36 to 39, the Respondent held no funds in trust for his client.
- b) On April 21, 2008, the Respondent deposited to trust the amount of \$217.88 he received from

the purchaser's solicitor to refund a maintenance fee that was paid by the Respondent's client. He did not refund this amount to his client nor take any steps to contact or locate his client.

c) On December 5, 2008, the Respondent transferred these funds of \$217.88 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

52. The Respondent represented WC, the purchaser in a real estate transaction that completed on March 20, 2008.

a) The Respondent caused a statement of account to be prepared dated March 20, 2008 for total fees, disbursements and taxes of \$1,850. It was partially paid by a transfer of \$800 from the Respondent's trust account on March 20, 2008.

b) Also on March 20, 2008, the Respondent wrote a trust cheque in the amount of \$1,068.38 made payable to the vendor's solicitors, but this cheque was reversed the same day. There is no documentation in the Respondent's file regarding the reason for writing or reversing this cheque.

c) After payment of his account on March 20, 2008, a balance of \$1,896.95 remained in the Respondent's trust account. Of that amount, he was entitled to withdraw \$1,050 the unpaid balance of his fees.

d) On December 5, 2008, the Respondent transferred these funds of \$1,896.95 from his trust account to his general account, and then used them for his own benefit. He was not entitled to \$846.95 of these funds.

53. The Respondent admits Allegation #7 that in December 2008 he misappropriated funds totalling \$3,141.49 on five different client matters and that his conduct is professional misconduct.

Allegation #8 – 2 Instances of Misappropriation on February 1, 2009

54. On February 1, 2009, the Respondent transferred a total of \$175.04 from his trust account to his general account in respect of two different client matters, and then used those funds for his own benefit when he had no entitlement to them.

55. The Respondent represented KS and WW, the purchasers in a real estate transaction that completed on November 20, 2006. As set out in paragraph 44, after transfer of funds to pay his account in full on February 13, 2007, a balance of \$75.63 remained in the Respondent's trust account. On February 1, 2009, the Respondent transferred the balance of \$75.63 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

56. The Respondent represented JY, the purchaser in a real estate transaction that completed on May 31, 2007.

a) The Respondent caused a statement of account to be prepared dated May 31, 2007, for total fees, disbursements and taxes of \$650.

b) On and after completion, the Respondent withdrew from trust funds of:

i. \$8,563.65 on May 31, 2007 to pay a disbursement owing to the Land Title and Survey Authority for the Property Purchase Tax of \$8,498 and registration fees of \$65.65;

ii. \$30 on July 3, 2007 to pay a disbursement owing to the Land Title and Survey Authority for a defect fee;

iii. \$15.90 on July 6, 2007 to pay a disbursement owing to C Ltd. for a Form F fee; and

iv. \$35 on July 13, 2007 to pay a disbursement owing to B Insurance Services for the insurance binder.

c) The statement of account included in the total of \$650 disbursements of \$130.40 to pay the Land Title Office fees, \$15.90 for the Form F and \$35 for the insurance binder.

d) On August 17, 2007, the Respondent transferred \$538.45 from his trust account to his general account purportedly in payment of the account of \$650.00. However, the Respondent withdrew from trust a total of \$685.00, which included payment for the following disbursements which he had previously paid from trust: \$90.65 to pay fees owing to the Land Title and Survey Authority, \$15.90 for the Form F and \$35.00 for the insurance binder. The Respondent transferred \$35.00 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

e) After the withdrawal on August 17, 2007, a balance of \$99.41 remained in the Respondent's trust account.

f) On February 1, 2009, the Respondent transferred the balance of \$99.41 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

57. The Respondent admits Allegation #8 that he misappropriated client funds totally \$175.04 on February 1, 2009, as well as \$35 on August 17, 2007 and that his conduct is professional misconduct.

Allegation #9 – 3 Instances of Misappropriation on April 29, 2009

58. On April 29, 2009, the Respondent transferred a total of \$6,036.01 from his trust account to his general account in respect of three different client matters, and then used those funds for his own benefit when he had no entitlement to them.

59. The Respondent represented HT, the vendor in a real estate transaction that completed on April 16, 2007.

a) The Respondent caused a statement of account to be prepared dated April 16, 2007, for total fees, disbursements and taxes of \$450.

b) On completion, a balance of \$450 remained in the Respondent's trust account.

c) On June 19, 2007, the Respondent received from the purchasers' solicitor \$205 in respect of a holdback for the strata maintenance fees, which he deposited to his trust account, bringing the balance to \$655.

d) On January 18, 2008, the Respondent transferred \$422.30 from his trust account to his general account in partial payment of his account.

e) After payment of his account, a balance of \$232.70 remained in the Respondent's trust account.

f) On April 29, 2009, the Respondent transferred the balance of \$232.70 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to \$205 of those funds.

60. The Respondent represented NM, the purchaser in a real estate transaction that completed on

November 22, 2007.

- a) The Respondent's statement of adjustments was inaccurately prepared, and as a result the amount required from his client to complete was stated to be \$152,799.06. The amount required was actually \$147,507.06, a difference of \$5,292. Further, the client in error paid to the Respondent an extra \$500. The Respondent therefore received from his client and held in trust a total of \$5,792 more than was required to complete the transaction.
- b) The Respondent caused a statement of account to be prepared dated November 22, 2007, for total fees, disbursements and taxes of \$800.
- c) On February 1, 2008, the Respondent paid \$19,708 to the vendor's solicitor in respect of the builders' lien holdback. After this payment, a balance of \$6,592 remained in the Respondent's trust account.
- d) On April 23, 2009, the Respondent wrote a trust cheque transferring \$6,592 from his trust account to his general account purportedly in payment of his account. He then used those funds for his own benefit, when he had no entitlement to \$5,792 of them.

61. The Respondent represented JZ, the purchaser in a real property transaction that completed on January 10, 2008.

- a) The Respondent caused a statement of account to be prepared dated January 10, 2008, for total fees, disbursements and taxes of \$700. On January 11, 2008, the Respondent withdrew from trust \$700 in full payment of his account.
- b) On January 14, 2008, a balance of \$39.01 remained in the Respondent's trust account, after payment of strata fees of \$350.05.
- c) On January 14, 2008, the Respondent recorded a withdrawal from trust of \$400 in respect of a holdback release, then reversed that withdrawal.
- d) On January 16, 2008, the Respondent recorded a withdrawal from trust of \$700 purportedly in payment of his account dated January 10, 2008, then reversed that withdrawal.
- e) On January 16, 2008, a balance of \$39.01 remained in the Respondent's trust account.
- f) On April 29, 2009, the Respondent transferred the balance of \$39.01 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

62. The Respondent admits Allegation #9 that on April 29, 2009, he misappropriated funds of \$6,036.01 on three different client matters and that his conduct is professional misconduct.

Allegation #10 – 4 Instances of Misappropriation on June 4, 2010

63. On June 4, 2010, the Respondent transferred a total of \$469.14 from his trust account to his general account in respect of four different client matters, and then used those funds for his own benefit when he had no entitlement to them.

64. The Respondent represented R and JL, vendors in a real property transaction that completed on July 18, 2008.

- a) The Respondent mistakenly based the vendors' statement of adjustments on a balance due

from the purchaser of \$510,495.72, when in fact the amount due and paid by the purchaser was \$510,680.12, a difference of \$184.40. The Respondent did not correct this error on the vendors' statement of adjustments nor on the authority to pay, which are both at Tab 39. As a result, on July 18, 2008, when he paid the balance of the sale proceeds to his clients, he paid them \$184.40 less than they were entitled to.

b) The Respondent caused a statement of account to be prepared dated July 18, 2008, for total fees, disbursements and taxes of \$450. On July 22, 2008, the Respondent withdrew from trust \$450 in full payment of his account, creating a trust shortage of \$561.04 because there were insufficient funds held to the credit of this client.

c) On November 28, 2008, the Respondent deposited to his trust account a total of \$735.49, in two deposits of \$500 and \$235.49 of funds from his general account. After this payment, a balance of \$174.45 remained in the Respondent's trust account.

d) On February 16, 2009, the Respondent voided a trust cheque in the amount of \$745.44 written at the time of closing and made payable to the City of Richmond in respect of property taxes. There was no documentation in the Respondent's client file that showed why this cheque was voided. At this time, a balance of \$919.89 remained in the Respondent's trust account.

e) On June 4, 2010, the Respondent transferred the balance of \$919.89 from his trust account to his general account and used those funds for his own benefit. Of that amount, \$184.40 was owed to his clients as part of the net sale proceeds and he had no entitlement to those funds.

65. The Respondent represented A and AT, the purchasers in a real estate transaction that completed on October 27, 2005. At this time, the Respondent did not use a computer software program for his accounting nor did he maintain the required books, records and accounts.

a) On November 5, 2005, the Respondent paid \$132.35 for outstanding utilities owed to the City of Langley from a holdback of \$200 which he held in trust.

b) The Respondent's file did not contain a copy of any statement of account to the clients. It is not apparent based on the Respondent's file documents whether any bill was ever issued or any amount paid to the Respondent for fees.

c) After this payment, a balance of \$67.65 remained in the Respondent's trust account. Those funds belonged to the client as they were the balance of the holdback.

d) On June 4, 2010, the Respondent transferred the balance of \$67.65 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

66. The Respondent represented S and WO, in a mortgage of real property that occurred in June 2008.

a) The Respondent caused a statement of account to be prepared dated June 15, 2008, for total fees, disbursements and taxes of \$600. On August 28, 2008, the Respondent withdrew from trust \$600 in full payment of this account.

b) After payment of his account, a balance of \$177.82 remained in the Respondent's trust account.

c) On June 4, 2010, the Respondent transferred the balance of \$177.82 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

67. The Respondent also represented S and WO as vendors in a real estate transaction that completed on July 18, 2008.

a) The Respondent caused a statement of account to be prepared dated July 18, 2008, for total fees, disbursements and taxes of \$500. On July 22, 2008, the Respondent withdrew from trust \$500 in full payment of his account.

b) On August 7, 2008, the Respondent transferred \$232.06 to another file for these clients in respect of their purchase of real property. A balance of \$39.27 remained in the Respondent's trust account.

c) On June 4, 2010, the Respondent transferred the balance of \$39.27 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

68. The Respondent admits Allegation #10 that on June 4, 2010, he misappropriated funds of \$469.14 on four different client matters and that his conduct is professional misconduct.

Allegation #11 – Misappropriation on June 23, 2010

69. The Respondent represented SL in a mortgage of real property that occurred in June 2010.

70. On June 23, 2010, the Respondent received mortgage proceeds of \$100,000 which he deposited to trust. The same day, he recorded on his client trust ledger a transfer of \$99,058.08 to another file for this client in respect of the purchase of real property. After this transfer, the client ledger showed a balance of \$941.92 in trust on this matter.

71. The Respondent caused a statement of account to be prepared dated June 23, 2010, for total fees, disbursements and taxes of \$450.00.

72. On June 23, 2010, the Respondent transferred the balance of \$941.92 from his trust account to his general account, and then used those funds for his own benefit. He was not entitled to \$491.92 of those funds.

73. The Respondent admits Allegation #11 that on June 23, 2010, he misappropriated client funds of \$491.92 and that his conduct is professional misconduct.

Allegation #12 – Misappropriation on June 24, 2010

74. The Respondent represented ZN and LW, vendors in a real estate transaction that completed on June 24, 2010.

75. The Respondent caused a statement of account to be prepared dated June 24, 2010, for total fees, disbursements and taxes of \$500.

76. On June 24, 2010, the Respondent transferred \$550 from his trust account to his general account in purported payment of the account of \$500, and then used those funds for his own benefit. The Respondent had no entitlement to \$50 of those funds.

77. The Respondent admits Allegation #12 that on June 24, 2010, he misappropriated client funds of \$50 and that his conduct is professional misconduct.

Allegation #13 – Misappropriation on July 9, 2010

78. The Respondent represented JF in a mortgage refinancing of real property that occurred in July 2010.

79. The Respondent prepared an authority to pay which stated that he required \$16,856.64 from the client in order to complete this transaction, based on a payout of the G Corp. mortgage in the amount of \$185,825.42. However, the amount required to pay out this mortgage was \$175.47 less, and the Respondent paid that lesser amount to G Corp. on July 9, 2010. The Respondent therefore obtained from his client \$175.47 more than he required to complete the transaction.

80. After these payments, a balance of \$875.47 remained in the Respondent's trust account.

81. The Respondent caused a statement of account to be prepared dated July 9, 2010, for total fees, disbursements and taxes of \$700.

82. On July 9, 2010, the Respondent transferred the balance of \$875.47 from his trust account to his general account, and then used those funds for his own benefit. He was not entitled to \$175.47 of those funds.

83. The Respondent admits Allegation #13 that on July 9, 2010, he misappropriated client funds of \$175.47 and that his conduct is professional misconduct.

Allegation # 14 – Misappropriation on December 8, 2008

84. The Respondent represented A and NF, purchasers in a real estate transaction that completed on April 4, 2007.

85. The Respondent caused to be prepared a statement of adjustments for the purchasers, which showed a balance required to complete of \$366,779.39, which did not credit to the purchasers the vendor's portion of the 2007 property taxes estimated at \$543.36. The Respondent therefore obtained from his clients \$543.36 more than was required to complete the purchase. The clients paid a total of \$366,991.50 to the Respondent in trust, which was \$212.11 more than the amount the Respondent advised them was required to complete. The Respondent therefore obtained from his clients \$755.47 more than was required to complete the purchase.

86. The Respondent caused a statement of account to be prepared dated April 4, 2007, for total fees, disbursements and taxes of \$650.

87. On August 17, 2007, the Respondent withdrew from trust \$584.35 in payment of his account, which left a balance owing of \$0.45, as a disbursements of \$65.20 for Land Title and Survey Authority registration fees had been paid from trust on April 4, 2007.

88. After payment of his account, a balance of \$755.92 remained in the Respondent's trust account.

89. On December 8, 2008, the Respondent transferred the balance of \$755.92 from his trust account to his general account, and then used those funds for his own benefit. He was not entitled to \$755.47 of those funds.

90. The Respondent admits Allegation #14 that on December 8, 2008, he misappropriated client funds of \$755.47 and that his conduct is professional misconduct.

Allegation #15 – Misappropriation from Clients RH and DM

91. The Respondent represented RH and DM, the purchasers in a real estate transaction that

completed on January 22, 2007.

92. The Respondent caused a statement of account to be prepared dated January 22, 2007, for total fees, disbursements and taxes of \$750.

93. On and after completion, the Respondent withdrew from trust:

a) \$130.40 on January 22, 2007 to pay a disbursement owing to the Land Title and Survey Authority for registration fees;

b) \$15.90 on January 22, 2007 to pay a disbursement owing to C Management for a Form F fee; and

c) \$35 on January 23, 2007 to pay a disbursement owing to B Services for the insurance binder.

94. The statement of account included in the total of \$750, disbursements of \$130.40 to pay the Land Title Office fees, \$15.90 for the Form F and \$35 for the insurance binder.

95. On June 1, 2007, the Respondent transferred \$568.70 from his trust account to his general account in full payment of his account of \$750.

96. On September 18, 2007, the Respondent withdrew from trust \$50 purportedly in payment of the fee for the insurance binder, which had previously been paid by a withdrawal from trust on January 23, 2007. After this payment, a balance of \$361.93 remained in the Respondent's trust account.

97. On December 10, 2008, the Respondent transferred the balance of \$361.93 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

98. The Respondent admits Allegation #15 that in two withdrawals on September 18, 2007 and December 10, 2008 he misappropriated client funds totalling \$411.93 and that his conduct is professional misconduct.

Allegation #16 – Misappropriation from Client XL

99. The Respondent represented XL, the vendor in a real estate transaction that completed on January 18, 2007.

100. The Respondent caused a statement of account to be prepared dated January 18, 2007, for total fees, disbursements and taxes of \$450. The statement of account included a disbursement of \$27.30 for registration fees paid to the Land Title and Survey Authority. The Respondent paid this disbursement on March 8, 2007 by a withdrawal of \$27.15.

101. On June 1, 2007, the Respondent withdrew from trust \$422.85 in full payment of his account. After payment of his account, a balance of \$5,358.46 remained in the Respondent's trust account.

102. On March 14, 2008, the Respondent withdrew from trust \$422.85 purportedly to pay his account, and then used those funds for his own benefit when he had no entitlement to them.

103. On April 23, 2009, the Respondent transferred the balance of \$4,935.61 from his trust account to his general account, and then used those funds for his own benefit when he had no entitlement to them.

104. The client trust ledger incorrectly recorded the withdrawal of funds from trust on April 23, 2009 as being in the amount of \$4,953.61, rather than \$4,935.61, which created a trust shortage of \$18. On

November 30, 2009, the Respondent eliminated that shortage by transferring \$18 from his general account to his trust account.

105. These funds of \$4,935.61 were part of the purchase price and belonged to the client, but were not paid to the client because the authority to pay incorrectly calculated the balance payable to the clients as \$40,974.66, rather than \$46,345.34.

106. The Respondent admits Allegation #16 that he misappropriated client funds of \$5,358.46 and that his conduct is professional misconduct.

Allegations #17 and #18 – Trust Shortages

107. In 167 instances at various times between 2007 and 2010, the Respondent failed to maintain sufficient funds on deposit on each pooled trust account to meet his obligations with respect to funds held in trust for his clients, contrary to Rule 3-55.

108. The Respondent admits Allegation #17 and that his conduct is professional misconduct.

109. The Respondent further admits that when he discovered each of the 29 trust shortages over \$2,500:

a) he did not immediately pay enough funds into his trust account to eliminate the shortage; and

b) he did not make any written report to the Executive Director of the Law Society,

contrary to Rule 3-66.

110. The Respondent admits Allegation #18 and that his conduct is professional misconduct.

Allegation #19 – Breach of Undertaking on RL Purchase

111. The Respondent represented RL, the purchaser in a real estate transaction that completed on February 23, 2007. The property purchased by the Respondent's client was a strata property, so a Form F was required for completion of the transaction.

112. On February 20, 2007, the Respondent sent a fax to F Management to request a Form F certificate. F Management was the manager for the strata corporation.

113. On February 22, 2007, the Respondent spoke by telephone with a representative of F Management, following which he sent a fax to F Management, in which he wrote:

As per our telephone conversation, I confirm that I undertake to pay you, upon completion of the purchase, outstanding strata fees of \$942.22. I trust that you will find this satisfactory.

114. The Respondent then sent another fax on the same day to F Management, in which he wrote:

Further to my previous fax, I confirm that I undertake to pay you, upon completion of the purchase, outstanding strata fees of \$974.22 as well as special assessment fo [sic] \$339.12. I trust you will find this satisfactory.

115. The Respondent gave this undertaking to pay a total of \$1,313.34 and was bound by it.

116. On February 22, 2007, F Management delivered a Form F to the Respondent.

117. The Respondent admits that he breached this undertaking by failing to pay any funds to F

Management upon completion or at any time prior to March 31, 2011, when he ceased to practise. The Respondent received funds from his client to pay this amount of \$1,313.34 in or about February 2007. On or about December 18, 2008, he withdrew the funds from trust and used them for his own benefit as set out in paragraph 51.

118. The Respondent admits Allegation #19 and that his conduct in breaching the undertaking is professional misconduct.

Allegation #20 – Breach of Undertaking on KS and WW Purchase

119. The Respondent represented KS and WW, the purchasers in a real estate transaction that completed on November 20, 2006. The property purchased by the Respondent's client was a strata property, so a Form F was required for completion of the transaction.

120. On or about November 7, 2006, the Respondent requested a Form F certificate from D Realty, the manager for the strata corporation.

121. On November 14, 2006, D Realty sent by fax an invoice charging \$15 for the Form F certificate and a \$75 "rush" fee, which, with tax, was a total of \$95.41. This invoice (the "Invoice") contained the following statements:

Undertaking for Payment

Please note: In order to process your documents accordingly, this undertaking needs to be signed and faxed back!

...

Please holdback Nov/06 Strata Fee subject to PAP clearing Nov. 21/06.

Please sign below: as your undertaking to pay the above fees on completed date of November 20, 2006 and fax back to 604-270-8446.

[Emphasis in original]

122. On November 14, 2006, the Respondent accepted this undertaking to pay \$95.40, to holdback \$190.13 and to pay a move in/out fee of \$50 by signing the Invoice and returning it by fax to D Realty and the Respondent was bound by it. T

123. On November 17, 2006, D Realty provided the Form F certificate to the Respondent.

124. The Respondent admits that he breached this undertaking by failing to pay any funds to D Realty upon completion or at any time prior to March 31, 2011, when he ceased to practise. The Respondent received funds from his client in or about November 2006. The Respondent withdrew funds from trust and used them for his own benefit as set out in paragraphs 44 and 55.

125. The Respondent admits Allegation #20 and that his conduct in breaching the undertaking is professional misconduct.

Allegation #21 – Breach of Undertaking on JY Purchase

126. The Respondent represented JY, the purchaser in a real estate transaction that completed on May 31, 2007. The property purchased by the Respondent's client was a strata property managed by C Management. A Form F was required for completion of the transaction.

127. On May 30, 2007, the Respondent sent to C Management an application for a Form F certificate.

128. On May 30, 2007, C Management faxed this application back to the Respondent requesting his undertaking to pay \$146.05 “for release of forms”.

129. On June 13, 2007, the Respondent sent a fax to C Management in which he wrote:

I confirm that I undertake to pay to you, upon completion of the purchase, \$146.05 July strata fees. I trust hat [sic] you will find this satisfactory and thank you for your assistance in this matter.

130. The Respondent gave this undertaking and was bound by it.

131. The Respondent admits that he breached this undertaking by failing to pay any funds to C Management upon completion or at any time prior to March 31, 2011, when he ceased to practise. The Respondent received funds from his client to pay this amount of \$146.05 in or about May 2007. In August 2007 and February 2009 the Respondent withdrew the funds from trust and used them for his own benefit as set out in paragraph 56.

132. The Respondent admits Allegation #21 and that his conduct in breaching the undertaking is professional misconduct.

Allegation #22 – Breach of Undertaking on JS Purchase

133. The Respondent represented JS, the purchaser in a real estate transaction that completed on July 13, 2007.

134. The addendum to the contract of purchase and sale in respect of this transaction stipulated that:

If a special levy has been proposed by way of a notice for an annual, special or general meeting, a portion of the Purchase Price in the amount of \$5,000 will be heldback (“Holdback”) by the lawyer or notary public acting for the Buyer until Dec 31, 2008 (the “End Date”). The lawyer or notary public acting for the Buyer will pay to the Strata Corporation out of the Holdback, any special levies or similar levies charged by the Strata Corporation that are passed before the End Date. On the first business day after the End Date, the lawyer or notary public acting for the Buyer will pay any remaining balance of the Holdback to the Seller.

The Respondent was aware of this undertaking, accepted it by agreeing to represent his client and was bound by it.

135. The property purchased by the Respondent’s client was a strata property managed by S Inc. A Form F was required for completion of the transaction.

136. On June 28, 2007, the Respondent sent by fax to S Inc. a request for a Form F certificate. S Inc. responded in a letter sent by fax requesting an undertaking to hold back the July maintenance fee of \$271.61.

137. On July 4, 2007, the Respondent sent a fax to S Inc. in which he wrote:

I confirm that I undertake to pay to you, upon completion of the purchase:

1. \$271.61 payment of July Strata fee.

I trust that you will find this satisfactory.

138. The Respondent gave this undertaking and was bound by it.

139. The Respondent admits that he breached both of these undertakings by failing to pay any funds:

a) to S Inc. upon completion or at any time prior to March 31, 2011, when he ceased to practise, and

b) to the Strata Corporation or the Seller after December 31, 2008 or at any time prior to March 31, 2011, when he ceased to practice.

The Respondent retained sufficient funds in trust to meet these obligations, but failed to take any step to fulfill his undertakings.

140. The Respondent admits Allegation #22 and that his conduct in breaching these undertakings is professional misconduct.

As a result of these admissions the Respondent undertakes as follows:

1. The Respondent undertakes not to apply for reinstatement to the Law Society of British Columbia;
2. The Respondent undertakes not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society; and
3. Not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.