

Admission to Discipline Committee

AGREED STATEMENT OF FACTS

William Ralph Southward

Called to Bar: September 13, 1973

Ceased membership: January 1, 2013

Admission accepted: May 9, 2013

Counsel: Carolyn Gulabsingh for the Law Society and Henry Wood, QC for Mr. Southward

Member Background

1. William Ralph Southward (the "Respondent") was admitted to the bar of the Province of British Columbia on September 13, 1973.
2. The Respondent practised continuously until December 31, 2011, when he retired. He maintained retired status until December 31, 2012, when he resigned membership in the Law Society effective January 1, 2013.

Citation and Service

3. The citation in this matter was authorized by the Discipline Committee on October 18, 2012 and was issued on November 8, 2011 (the "Citation").
4. The Respondent admits that on November 9, 2012 he was served with the Citation in accordance with the requirements of Rule 4-15 of the Law Society Rules.

Attachments

5. 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

6. On December 17, 2010 the Respondent was retained by TE to obtain a Committeeship of the person of his mother, DE.
7. RE is the daughter of DE and the sister of TE. RE and DE owned a condominium together in joint tenancy, located at [address], Victoria, (the "Condo").
8. On January 6, 2011, the Respondent wrote to RE and advised he had been retained by TE to make an application for Committeeship of DE, and asked if she consented to the application.
9. On March 11, 2011, the Respondent filed a Petition in the Victory Registry of the Supreme Court of British Columbia which sought an Order appointing TE as the Committee of the person and the estate of DE (the "Petition").
10. On April 4, 2011, TE telephoned the Respondent's office and spoke with the Respondent's assistant. TE advised the assistant that he was not particularly interested in obtaining a committeeship of the person of his mother, but he understood he needed to obtain this to sell the Condo. TE told the assistant that he anticipated it would be expensive to get the Condo sold, as his sister was not cooperating. The assistant made notes of this conversation.
11. The Respondent then spoke with TE by phone. The Respondent asserts that TE's instructions varied from time to time, but he continually asserted that he was the only sibling willing and able to take charge of his mother's care. After their discussion, TE accepted the need to pursue the application by committeeship of the person.
12. RE was served with the Petition and the material in support of it on April 20, 2011.
13. On May 24, 2011, Andrew Stewart wrote to the Respondent, as he had been retained by RE. In this letter, Mr. Stewart informed the Respondent the terms that RE would consent to regarding the committeeship application.
14. TE did not accept the terms proposed by RE.
15. On June 1, 2011, the Respondent wrote to Mr. Stewart and the Public Guardian and Trustee and advised that because DE had been admitted to hospital and her health was deteriorating, he would proceed with an application to have TE appointed as the committee of the person only. The Respondent also served a Notice of Hearing with this letter.
16. RE was opposed to TE being appointed as committee of the estate of DE, but was not opposed to TE being appointed as committee of the person of DE. The Respondent stated in his June 1, 2011 letter to Mr. Stewart that he was applying for an order for committee of the person only. In the result, RE instructed Mr. Stewart not to attend the hearing, in order to conserve legal fees.
17. On June 9, 2011, the Respondent appeared before the Honourable Master Bouck. He asked the court to make an order for committee of the person only of DE. Master Bouck made an order for TE to be appointed as committee of the person of DE (the "Order").
18. The Clerk's notes regarding the Order reflect that the court adjourned generally the portion of the petition dealing with the appointment of committee over the estate.
19. The Respondent drafted and submitted the Order for entry. The Order included the following two clauses:

4. TE, as Committee, shall have all the rights, privileges and powers with regard to the Estate of DE, as she would have if of sound and disposing mind, and as well the custody of the person of DE.

5 The Petitioner's applications for appointment as Committee of the Estate of DE, without bond, and special costs be adjourned generally.

20. On June 28, 2011, the Respondent instructed his legal assistant to make an application to sever the joint tenancy of the Condo and to submit a copy of the Order with the application. The assistant spoke to the Respondent and expressed her concern in using the Order to sever the joint tenancy because the Order was for committee "of the person" and not for committee "of the estate". The Respondent instructed his assistant to proceed with the application, despite her concern.

21. Subsequently, the Respondent apologized to his assistant and told her he had a "valid reason" to proceed with the application to sever the joint tenancy.

22. On June 30, 2011, the Respondent wrote to Mr. Stewart in response to a settlement proposal offered by RE. In this letter, the Respondent stated:

At this time, there is no agreement in regard to the disposition of the contents of the condo and the sale of the condo, with the result that our client, pursuant to the Court Order, has been appointed committee of the person of DE.

The Respondent did not mention in the letter or otherwise advise Mr. Stewart that the joint tenancy of the condo had been severed.

23. On July 4, 2011, the joint tenancy of the Condo was severed.

24. On July 21, 2011, while Mr. Stewart was on holidays, another lawyer from his firm, Kerry Simmons, spoke with the Respondent and raised concerns about the ambiguity of the terms of the committee ship in the Order. The Respondent assured Ms. Simmons and told her that the issue of committee ship of the estate had been adjourned, and further, that he had no instructions from TE to dispose of any assets. The Respondent did not mention to Ms. Simmons that the joint tenancy of the Condo had already been severed.

25. On September 8, 2011, DE passed away.

26. On September 13, 2011, RE applied to the Land Title Office to have the Condo transferred to herself as sole owner and discovered that the joint tenancy had been severed.

27. During November 2011, the Respondent attempted to rectify the situation. The Land Title Office refused to reverse the severance of the joint tenancy.

28. On December 30, 2011, the Respondent filed an application to the court to have the Condo transferred into RE's name. In support of the application, the Respondent swore an Affidavit stating that he had applied to sever the joint tenancy in error.

29. On January 5, 2012, the Honourable Mr. Justice G.R.J. Gaul granted an order transferring DE's interest in the Condo to RE by consent.

The Complaint

30. On October 24, 2011, RE made a complaint (the "Complaint") to the Law Society.

31. In the course of investigating the Complaint, the Law Society received the following written responses

from the Respondent, which are admitted as proof that the statements were made by the Respondent:

- a. letter dated February 14, 2012, in reply to a letter dated November 8, 2011 from the Law Society.
- b. letter dated August 27, 2012, in reply to a letter dated August 17, 2012 from the Law Society.

Admission of Misconduct

33. The Respondent admits that in or about June and July 2011, in the course of representing his client TE regarding the committee of DE, he engaged in questionable conduct that casts doubt on his professional integrity, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook*, when he did the following:

- a) represented to counsel for RE and to the Public Guardian and Trustee that he would seek and obtain an order only for committee of the person of DE, not the estate of DE;
- b) prepared and entered an order dated June 9, 2011, that included a term regarding committee of the estate of DE that he ought to have known had not been ordered by the court;
- c) used the order dated June 9, 2011 to sever the joint tenancy of an asset of the estate of DE when he ought to have known that doing so was either or both of:
 - (i) contrary to the representations he had given to the parties,
 - (ii) inconsistent with the terms of the order granted by the court; and
- d) represented to counsel for RE that his client would not and could not assume conduct of the estate of DE, without disclosing that he had filed documents in the Land Title Office to sever the joint tenancy of an asset of the estate of DE.

34. The Respondent admits that his conduct in doing so constitutes professional misconduct.