

2013 : No. 3

John Edward Roberts

Langley, BC

Called to the bar: November 10, 1995

Discipline hearing : September 21, 2012 and May 8, 2013

Panel : David Mossop, QC, Chair, Shona Moore, QC and Thelma Siglos

Report issued : December 17, 2012 (2012 LSBC 31) and May 31, 2013 (2013 LSBC 14)

Counsel : Jaia Rai for the Law Society; Albert Roos, QC on behalf of John Edward Roberts

Facts

John Edward Roberts acted for the plaintiff in an action for damages for breach of contract and negligent misrepresentation. On June 1, 2010, the defendant filed an appearance and gave notice requesting that the dispute be referred to arbitration.

On June 8, a notice of motion was filed on behalf of the defendant seeking an order referring the dispute for arbitration and a stay of proceedings. The next day, the stay application was served on Roberts, who subsequently informed the defendant's lawyer that his client opposed the relief set out in the stay application.

On July 7, Roberts notified the defendant's lawyer that the week of November 1 was the first available week for the hearing according to the court registry. On July 8, the defendant's lawyer wrote a letter proposing that the stay application proceeding be transferred to the New Westminster registry as there was a greater likelihood of an early hearing date.

Roberts saw this letter on July 9 when he was briefly in his office. He instructed his assistant to file for default judgment and to let the defendant's lawyer know that an application for default would be made. The assistant also advised the defendant's lawyer that Roberts would be away from the office until the next week.

Roberts' assistant filed an application for default judgment on July 9. By letter of the same date, the defendant's lawyer notified Roberts that no application for default judgment could be made against her client without 14 days' notice and leave of the court. The defendant's lawyer, therefore, did not file a statement of defence. She proceeded on the assumption that the parties would prepare materials for the stay application and the plaintiff's application for leave to apply for default judgment.

On July 16, the defendant's lawyer delivered to Roberts a notice of hearing that the stay application was scheduled for the week of July 26. She asked Roberts to confirm his availability and further requested his application materials so that a joint chambers record could be prepared and filed.

On July 19, Roberts emailed his assistant and instructed her to advise the defendant's lawyer that he was out of the country until July 28 and would be available for a hearing on July 29.

On July 19, default judgment was entered against the defendant.

On July 22, the defendant's lawyer notified Roberts' assistant that the stay application hearing would be scheduled for August 3 or 4 since a judge was not available on July 29. She also inquired whether Roberts intended to pursue the motion for default judgment as indicated on July 9.

After not receiving a response or Robert's outline in connection with the stay application, the defendant's lawyer wrote to Roberts' assistant stating that she assumed Roberts had abandoned his intention to seek default judgment.

On July 29, Roberts returned to his office and reviewed the letters from the defendant's lawyer. Roberts wrote to her enclosing a copy of the entered default judgment and requested her available dates for a hearing to assess damages.

Determination

For most of the time between July 7 and August 3, 2010, Roberts was away from his office due to volunteer commitments.

The panel concluded that Roberts did not engage in sharp practice. The panel further concluded that Roberts did not engage in professional misconduct when he failed to withdraw the application for default judgment after receiving a letter from counsel for the defendants.

However, the panel did find that Roberts committed professional misconduct when he proceeded by default and obtained default judgment against the defendant when he knew the defendant was represented by another lawyer, without providing reasonable notice of his intention to do so. This was contrary to Law Society rules and his duties as an officer of the court. He also failed to reply reasonably promptly and substantively to communications from another lawyer, in circumstances that required a response.

The panel found that Roberts was not motivated by any intention to gain an advantage for his client or to deceive opposing counsel. Nor did he personally benefit from his misconduct. Rather, the misconduct occurred over a four-week period during which Roberts was absent from his office and failed to ensure adequate coverage for his practice.

Roberts had no prior disciplinary record and has practised without further incident since the events of July 2010. The panel was satisfied that his misconduct arose from a unique series of events rather than from lack of knowledge about the standard of practice expected of him or his ability to maintain the orderly supervision of his practice.

Disciplinary Action

The panel ordered that Roberts pay:

1. a \$3,000 fine; and
2. \$2,000 in costs.