

## **Admission to Discipline Committee**

### **AGREED STATEMENT OF FACTS**

Mishal Abrahams

**Called to Bar:** May 20, 1994

**Ceased membership:** September 26, 2013

**Admission accepted:** September 26, 2013

**Counsel:** Alison Kirby for the Law Society and Ravi Hira, QC for Mr. Abrahams

#### **Member Background**

1. Mishal Abrahams (the “Respondent”) was called and admitted as a member of the Law Society of British Columbia on May 20, 1994.
2. After his call and admission, the Respondent practised law with a law firm in Greater Vancouver from August 2, 1994 to June 30, 2002, primarily in the areas of immigration and criminal law. On July 1, 2002, he started practicing in partnership with Amandeep Singh and MJ (the “Firm”). The Respondent expanded his practice to include plaintiff personal injury matters. MJ left the partnership and the Firm in May 2007. On or about July 2, 2010, Mr. Singh and the Respondent ended their partnership and the Firm dissolved.
3. The Respondent voluntarily ceased practicing law on September 1, 2010 and changed his status to non-practicing, pursuant to an undertaking given to the Law Society. As of the date of execution of this Agreed Statement of Facts, the Respondent remains bound by his undertaking not to engage in the practice of law.

#### **Citation and Service**

4. The citation in this matter was authorized by the Discipline Committee of the Law Society on September 6, 2012 and was issued on October 3, 2012 (the “Citation”).
5. The Respondent admits that on October 9, 2012, he was served with the Citation through his counsel and waived the requirements of Rule 4-15 of the Law Society Rules.

#### **Background Facts**

7. The Respondent and Mr. Singh were partners of the Firm and shared profits equally. At all material times, both of them had signing authority for the Firm’s trust and general bank accounts.
8. Mr. Singh has a history of alcohol dependency and is an alcoholic. In the period between January 2008 and August 2010, Mr. Singh’s health was significantly affected by his consumption of alcohol. In that time period, he was in treatment or hospitalized on several occasions for health problems related to his consumption of alcohol.
9. While practicing in partnership with Mr. Singh and MJ, the Respondent, Mr. Singh, and MJ jointly managed the Firm’s finances including trust accounting. On MJ leaving the partnership in May 2007, both Mr. Singh and the Respondent managed the Firm’s finances. In the spring of 2008, Mr. Singh, without

informing the Respondent, absented himself from the office to seek alcohol treatment. During this unexpected absence, Mr. Singh would not respond to phone calls or emails. As a result, the Respondent was obliged to assume responsibility for the Firm's finances. Upon Mr. Singh's return and through the rest of 2008, both Mr. Singh and the Respondent shared responsibility for the Firm's finances.

10. At all material times, the Firm operated two pooled trust accounts at a Bank : Account No. 07082 1074-041 was used to process credit card payments and Account No. 0782 1069-840 was the "main" account used to hold client trust funds (the "Trust Account"). The Firm also operated a general account held at the Bank.

11. At all material times, the Respondent and Mr. Singh were signatories to the Trust Account.

12. Sometime before June 2009, the Respondent and Mr. Singh set up online electronic banking capacity with the Bank which permitted a person who had knowledge of the client card number for the Firm and the online password to transfer money online between the Firm's trust and general accounts (the "Online Banking System"). Transfers using the Online Banking System could be made from any computer. Only the Respondent and Mr. Singh knew the password for the Online Banking System. The Firm's client card was usually kept in the Firm's safe, where all staff had access to it.

13. The Respondent used the Online Banking System to make transfers from the Trust Account which are described below.

### **Investigation Under Rule 4-43**

14. In June 2010, Mr. Singh reported, through his counsel, that he had concerns that the Respondent had wrongfully converted client trust funds held by the Firm.

15. On June 29, 2010, Mr. Singh removed himself as a signatory on the Firm's general and trust accounts. On the same date, he requested the Respondent also remove himself as signatory and notified him that he had reported the trust withdrawals to the Law Society. In a letter dated June 29, 2010 to the Respondent Mr. Singh's counsel wrote:

We are advising Amandeep Singh with respect to concerns he has concerning the improper use of trust funds at Singh Abrahams. The matter has been reported to the Law Society, who will no doubt conduct their own investigation. In the meantime, we ask that you not engage in any further transactions involving Singh Abrahams' trust or general accounts and immediately remove yourself as signatory on the trust account.

16. Also on June 29, 2010, the Chair of the Discipline Committee ordered an investigation under Rule 4-43 of the books, records and accounts of the Respondent, Mr. Singh, and the Firm (the "Investigation"). It was served on the Respondent on June 30, 2010.

17. Daniel S. Barbour, a Chartered Accountant and CA-designated specialist in Investigative and Forensic Accounting, was designated by the Executive Director to conduct the Investigation. He 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.

18. As a result of Mr. Singh's report to the Law Society and Mr. Barbour's preliminary findings that approximately \$146,000 was improperly removed from trust, the Law Society sought information and explanations from the Respondent. The Respondent cooperated with the Law Society and made admissions of misconduct. A letter from his counsel dated August 20, 2010 contained the following admission by the Respondent:

Mr. Abrahams has misconducted himself. Between June 2009 and June 2010, Mr. Abrahams made improper withdrawals from the firm trust account. Generally, the withdrawals were made to cover ongoing firm or business expenses, taxes and draws. Fortunately, the trust account has been restored and there is no shortfall. In addition, Mr. Abrahams is no longer a signatory to any trust account.

The letter enclosed a listing of the improper withdrawals from trust prepared by the Respondent and copies of bank documents. The listing provided by the Respondent was consistent with Mr. Barbour's ultimate findings with a few exceptions.

19. On September 1, 2010, the Respondent voluntarily provided a written undertaking to the Law Society to cease practice until January 31, 2011 (the "Undertaking"). In accordance with the Undertaking, the Respondent changed his status to non-practicing effective September 4, 2010. He subsequently extended his Undertaking a number of times and the Undertaking is currently in full force and effect until the Respondent is released from it by the Discipline Committee or final resolution of the Citation, whichever occurs first.

20. On October 5, 2010, the Respondent was interviewed by Law Society staff.

21. On April 29, 2011, Mr. Barbour issued a report of his findings, which he subsequently amended on June 20, 2011 (the "Investigation Report").

22. Mr. Barbour's findings contained in the Investigation Report are admitted and include the following:

- a. On 86 occasions between June 8, 2009 to June 16, 2010, a total of \$144,662 of client trust funds were improperly withdrawn (\$143,662 from the main Trust Account and \$1,000 from the second trust account) using the Online Banking System and the funds deposited to the Firm's general account (the "Online Transfers").
- b. The Online Transfers were made remotely by computer using the account number from the Firm's bank client card and a password.
- c. The dollar amounts of these Online Transfers ranged from \$100 to \$5,000.
- d. None of these Online Transfers were properly made for the payment of fees and none was authorized by a client. None of the Online Transfers was recorded as required by Division 7 of Part 3 of the Law Society Rules. No documentation was printed or maintained in respect of these Online Transfers as required by the Rules.
- e. There was a continual trust shortage of a varying amount of the Firm's trust obligations from June 30, 2009 to February 28, 2010, which means that at all times during that period the Firm did not have sufficient funds in the Trust Account to meet its obligations with respect to funds held in trust for its clients. In the months November 2009, December 2009 and January 2010, the Trust Account was also in an actual overdraft position and trust cheques were issued when there were insufficient funds in the Trust Account to honour the cheques.
- f. There was a pattern of Online Transfers being made when the overdraft of the Firm's general account neared its limit of \$150,000.
- g. Of the funds obtained from the Online Transfers, \$91,309 was used to pay operating expenses of the Firm, \$50,266 was paid to the Respondent as a draw or expenses, and \$3,087 was paid to the Mr. Singh as a draw or expenses.

h. The trust shortages resulting from the Online Transfers were not repaid in full until July 2, 2010 . The first repayment was on February 26, 2010.

23. After Mr. Barbour issued the Investigation Report, the Law Society wrote to Respondent's counsel on September 22, 2011 requesting responses to a series of questions related to the Report. The Respondent provided responses in a letter dated November 8, 2011. The letters are at Tabs 9 and 10, respectively, and admitted to prove what statements were made by the Respondent.

### **Allegation #1: Misappropriation of Client Trust Funds**

24. In June 2009, the Respondent started a pattern of improperly withdrawing client trust funds from trust using the Online Banking System which he continued for approximately one year.

25. From June 8, 2009 to June 16, 2010, the Respondent withdrew a total of \$137,100 by making the Online Transfers identified in Tab 6 of the Investigation Report (except the three transfers made from trust #840 on March 1, 2010, March 3, 2010 and April 26, 2010 and the one transfer made from trust #041).

26. The Respondent used the funds improperly withdrawn from trust to pay draws to himself and to Mr. Singh and to pay some of the Firm's operating expenses but he did not pay all of his staff the compensation that they were entitled to during this time period.

27. The Respondent began repaying funds improperly taken from trust on February 26, 2010 and repaid all of the funds by July 2, 2010. The repayments are detailed in Tab 10 of the Investigation Report.

28. The Respondent withdrew client trust funds by making the Online Transfers when he knew that:

- a. neither he nor the Firm was entitled to the funds,
- b. he was not authorized to remove funds from trust,
- c. his conduct was contrary to Law Society Rules respecting trust accounting, and
- d. his conduct was contrary to his ethical obligations as a member of the Law Society.

29. The Respondent admits that on the following 85 occasions from June 24, 2009 to June 16, 2010, he misappropriated a total of \$135,100 from funds held in trust for clients of the Firm by improperly withdrawing the funds using the Online Banking System then using those trust funds to pay practice debts of the firm and for his own benefit, and that his conduct constitutes professional misconduct:

- 1.1. [not admitted],
- 1.2. \$2,100 on June 24, 2009,
- 1.3. \$2,300 on June 29, 2009,
- 1.4. \$2,000 on June 30, 2009,
- 1.5. \$2,400 on July 2, 2009,
- 1.6. \$700 on July 15, 2009,
- 1.7. \$1,300 on July 17, 2009,
- 1.8. \$800 on July 29, 2009,
- 1.9. \$2,400 on August 5, 2009,

- 1.10. \$1,200 on August 6, 2009,
- 1.11. \$2,000 on August 11, 2009,
- 1.12. \$1,500 on August 18, 2009,
- 1.13. \$400 on August 19, 2009,
- 1.14. \$1,500 on August 27, 2009,
- 1.15. \$2,000 on August 31, 2009,
- 1.16. \$1,500 on September 2, 2009,
- 1.17. \$1,500 on September 4, 2009,
- 1.18. \$1,000 on September 11, 2009,
- 1.19. \$500 on September 11, 2009,
- 1.20. \$1,100 on September 14, 2009,
- 1.21. \$2,000 on September 15, 2009,
- 1.22. \$2,000 on September 16, 2009,
- 1.23. \$1,800 on September 17, 2009,
- 1.24. \$2,000 on September 18, 2009,
- 1.25. \$1,000 on September 21, 2009,
- 1.26. \$2,200 on September 22, 2009,
- 1.27. \$2,000 on September 28, 2009,
- 1.28. \$1,000 on September 29, 2009,
- 1.29. \$2,000 on September 30, 2009,
- 1.30. \$2,300 on October 1, 2009,
- 1.31. \$500 on October 2, 2009,
- 1.32. \$3,500 on October 5, 2009,
- 1.33. \$2,000 on October 6, 2009,
- 1.34. \$1,600 on October 13, 2009,
- 1.35. \$2,200 on October 14, 2009,
- 1.36. \$2,200 on October 14, 2009,
- 1.37. \$2,100 on October 15, 2009,
- 1.38. \$1,000 on October 16, 2009,
- 1.39. \$2,000 on October 23, 2009,
- 1.40. \$500 on October 29, 2009,

- 1.41. \$800 on November 9, 2009,
- 1.42. \$1,000 on November 10, 2009,
- 1.43. \$2,400 on November 16, 2009,
- 1.44. \$2,000 on November 23, 2009,
- 1.45. \$1,500 on November 23, 2009,
- 1.46. \$3,200 on November 24, 2009,
- 1.47. \$2,400 on November 27, 2009,
- 1.48. \$2,400 on November 30, 2009,
- 1.49. \$1,300 on November 30, 2009,
- 1.50. \$3,300 on December 1, 2009,
- 1.51. \$1,000 on December 2, 2009,
- 1.52. \$1,500 on December 3, 2009,
- 1.53. \$1,000 on December 8, 2009,
- 1.54. \$2,200 on December 15, 2009,
- 1.55. \$2,400 on December 15, 2009,
- 1.56. \$1,500 on December 16, 2009,
- 1.57. \$500 on December 18, 2009,
- 1.58. \$1,000 on December 21, 2009,
- 1.59. \$1,500 on January 12, 2010,
- 1.60. \$1,800 on January 14, 2010,
- 1.61. \$1,500 on January 15, 2010,
- 1.62. \$1,600 on January 18, 2010,
- 1.63. \$1,800 on January 19, 2010,
- 1.64. \$100 on January 20, 2010,
- 1.65. \$2,000 on January 29, 2010,
- 1.66. \$1,500 on February 1, 2010,
- 1.67. \$500 on February 1, 2010,
- 1.68. \$3,500 on February 2, 2010,
- 1.69. \$3,700 on February 3, 2010,
- 1.70. \$500 on March 15, 2010,
- 1.71. \$1,000 on March 19, 2010,

- 1.72. \$400 on March 19, 2010,
- 1.73. \$1,000 on March 25, 2010,
- 1.74. \$800 on March 31, 2010,
- 1.75. \$700 on April 14, 2010,
- 1.76. \$2,000 on May 7, 2010,
- 1.77. \$1,900 on May 10, 2010,
- 1.78. \$1,500 on May 11, 2010
- 1.79. \$1,400 on May 18, 2010,
- 1.80. \$1,100 on May 19, 2010,
- 1.81. \$1,500 on May 25, 2010,
- 1.82. \$700 on May 28, 2010,
- 1.83. \$1,000 on June 3, 2010,
- 1.84. \$1,800 on June 14, 2010,
- 1.85. \$2,300 on June 15, 2010, and
- 1.86. \$500 on June 16, 2010.

### **Allegations #2 and 3: Conduct related to Loan from clients KB and AB**

30. In the summer of 2009, KB retained Mr. Singh to represent him in connection with the suspension of his driver's licence (the "Matter"). In due course, KB was represented by the Respondent. KB and his wife, AB, had previously retained the Firm in connection with immigration matters.

31. At all material times, the Matter was ongoing and had not been resolved.

32. In or around October or November 2009, the Respondent and Mr. Singh knew that the Bank would no longer permit the Firm's line of credit on the general account to exceed its maximum of \$150,000 and it would "bounce" cheques written on the general account if there were insufficient funds.

33. In or around mid-December 2009, Mr. Singh spoke with KB and told KB that he and the Respondent needed to borrow \$20,000 on a short term basis and he was looking for a private lending arrangement. KB agreed to lend them \$20,000 (the "Loan"). The Respondent was aware of and approved of the Loan agreement.

34. Mr. Singh prepared a promissory note in respect of the Loan. The promissory note was for the principal amount of \$20,000 payable on February 28, 2010 and was signed by the Respondent and Mr. Singh. It made no reference to interest but the Respondent and Mr. Singh agreed to pay interest at the rate of 10% per annum.

35. On December 29, 2009, Mr. Singh was out of town and the Respondent asked Mr. T to go to the home of KB and AB and pick up the cheque for the Loan, which he did. After the loan was made, the Respondent learnt that KB and AB had borrowed the funds for the Loan. The cheque was drawn on their personal line of credit.

36. The Respondent did not advise KB or AB that he was not protecting their interests in December 2009 when they entered into the Loan, or at any time thereafter. Further, he did not recommend at any time that they obtain independent legal advice.
37. The Loan proceeds were deposited to the Firm's general account and used to pay operating expenses.
38. When the Loan was repayable at the end of February 2010, the Respondent, Mr. Singh and the Firm had insufficient funds to repay it. Mr. Singh spoke with KB and told him that they needed the Loan proceeds for another two months and proposed that he pay the accrued interest only and the Loan be extended. KB agreed to an extension of one month to March 28, 2010. The Respondent was aware of and approved of the extension.
39. Mr. Singh prepared and signed another promissory note in respect of the Loan, payable on March 28, 2010 at an interest rate of 10% per annum. The promissory note is dated March 2, 2010. At this time, Mr. Singh also paid interest of \$600 to KB.
40. On or about March 24, 2010, AB by email asked Mr. Singh to repay the Loan in full on March 28, 2010. This email was forwarded to the Respondent.
41. On March 28, 2010, the Respondent, Mr. Singh and the Firm had insufficient funds to repay the Loan.
42. AB called the Firm many times to speak with Mr. Singh or the Respondent about repayment of the Loan, but she was unable to speak with either of them and her phone calls were not returned. She also sent a number of emails to Mr. Singh and the Respondent, including emails between March 25, 2010 and April 10, 2010, only some of which were replied to by Mr. Singh.
43. On April 13, 2010, Mr. Singh provided to AB three cheques payable from the Firm's general account as follows:
- a. cheque #3485 dated April 13, 2010 in the amount of \$300, for interest accrued on the Loan in March 2010;
  - b. cheque #3486 dated April 23, 2010 in the amount of \$5,000, as partial repayment of the principal amount of the Loan; and
  - c. cheque #3487 dated May 21, 2010 in the amount of \$5,000, as partial repayment of the principal amount of the Loan.
44. On April 23, 2010, AB negotiated cheque #3486 in the amount of \$5,000; it was returned due to insufficient funds.
45. On April 26, 2010, the Respondent deposited \$35,000 to the Firm's general account, then transferred the funds to the Trust Account as part of his repayment of trust funds he had wrongfully withdrawn. Mr. Singh understood from discussions with the Respondent that \$5,000 of these funds were to be used to partially repay the Loan by replacing cheque #3486.
46. On April 30, 2010, Mr. Singh withdrew \$5,000 from the Trust Account by purchase of a bank draft. He delivered the bank draft to AB.
47. AB ultimately retained another lawyer, BS, to assist her in obtaining repayment of the Loan balance. BS contacted the Respondent on or about May 25, 2010 and shortly thereafter, the Respondent borrowed funds from his brother to repay the loan. AB received a bank draft on June 4, 2010 in the amount of \$15,640 for the balance owing on the principal amount of the Loan plus interest.
48. After receiving payment, AB made a complaint to the Law Society. Law Society staff wrote to



Respondent's counsel on September 17, 2010 requesting a response to the complaint.

49. During a meeting with Law Society staff on October 5, 2010, the Respondent admitted that he borrowed funds from KB and AB and did not advise them that he was not protecting their interests. He subsequently provided a written response to the complaint by way of a letter from his counsel dated October 20, 2010 stating:

Mr. Abrahams was aware that KB was a client of Mr. Singh ... He knew that Mr. Singh was proposing to borrow money from KB, a client of the firm. Mr. Abrahams was aware, generally, that this was improper. However, having improperly removed funds from trust on a number of occasions since June 2009, Mr. Abrahams [sic] judgment regarding proper conduct was dulled. He did not recommend that KB obtain independent legal advice prior to advancing the funds.

50. The Respondent admits Allegation #2 that he borrowed the principal amount of \$20,000 from KB and AB, when KB was a client of the Firm, which transaction was not of a routine nature to, nor in the ordinary course of, his business, contrary to Chapter 7, Rule 4 of the *Professional Conduct Handbook* then in force, and that his conduct constitutes professional misconduct.

51. The Respondent admits Allegation #3 that when he entered into the Loan with KB and AB, he failed to advise them that he was not protecting their interests, contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook* then in force, and that his conduct constitutes professional misconduct.

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

- 1, To cease membership in the Law Society of British Columbia on September 26, 2013.
2. Not to apply for reinstatement to the Law Society of British Columbia before September 26, 2025.
3. 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 of British Columbia.
4. Not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any other lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society of British Columbia.