

2014 : No. 02 Summer

Rudi Gellert

Surrey, BC

Called to the bar: May 19, 1995

Ceased membership: December 16, 2003 (reinstated May 11, 2006) and January 1, 2011

Discipline hearing : July 18 and November 27, 2013

Panel : David Renwick, QC, Chair, Dennis Day and David Layton

Decisions issued : August 26, 2013 (2013 LSBC 22) and February 13, 2014 (2014 LSBC 05)

Counsel : Carolyn Gulabsingh for the Law Society; no one appearing on behalf of Rudi Gellert

Facts

Between March 2008 and September 2010, Rudi Gellert misappropriated \$14,486.69 of client funds by means of 31 transactions involving 31 different clients. Most of the transactions involved cancelling a stale-dated trust cheque made out to the client, after which the same amount was paid either to Gellert's law firm or a company run by his wife. The bulk of the money went to his wife's company.

Gellert's misappropriations were discovered during a routine compliance audit at his law office in October 2010. After the two Law Society auditors arrived, Gellert expressed displeasure and told one auditor that if he had a gun he would shoot someone. He also said that he would not allow the first auditor to look at any files and would not have her in his office.

Later on during the audit, Gellert refused to answer an auditor's question about a number of trust cheques he had caused to be made out payable to cash. He subsequently failed to respond to Law Society letters asking for information regarding these cheques as well as numerous other matters.

Gellert failed to appear at the hearing on facts and determination as well as the hearing on disciplinary action. The panel exercised its discretion to proceed with each hearing in his absence.

Determination

The panel concluded that Gellert had committed professional misconduct by misappropriating over \$14,000 in client trust funds, making discourteous and threatening comments to a Law Society auditor and failing to respond to communications from the Law Society. It was also determined that he had breached three rules by issuing trust cheques payable to "cash" and failing to maintain proper trust accounting records.

The panel considered a number of factors, including that Gellert had deliberately misappropriated a substantial amount of client money. Further, the misappropriations occurred over a period of almost three years and involved 31 different clients. This was not a one-time misadventure on Gellert's part.

There was no evidence that any of the 31 clients complained. Since the money was taken from clients whose matters had concluded, it was likely that they did not realize that any funds were left owing to them. However, the failure of a client to know or complain about deliberate misappropriation does not mitigate the seriousness of the infraction.

Gellert received an indirect benefit from the misappropriations insofar as most of the funds were transferred

to a company in which his wife was the sole director and officer.

A particularly aggravating factor was that there are 12 prior findings of professional misconduct against Gellert, arising from four different citations covering conduct occurring from 1999 to 2003, including a prior finding of misappropriation of client funds.

The penalty decision in Gellert's prior instances of misconduct shows that he came close to being disbarred. It was only the presence of significant mitigating circumstances that resulted in an 18-month suspension and the imposition of conditions on any return to practice.

Gellert returned to practice after his suspension and was prohibited from having signing authority over any trust accounts. This restriction would have underlined for him the paramount importance of properly managing trust accounts and avoiding any conduct that might put a client's trust money at risk.

However, six days after the Law Society removed the restriction regarding his handling of trust money, Gellert commenced misappropriating client funds. His actions demonstrated that even a lengthy suspension combined with practice restrictions and supervision were insufficient means of protecting the public from his continued misconduct.

Disciplinary Action

The panel ordered that Gellert:

1. be disbarred; and
2. pay \$8,630 in costs.

The panel also ordered that a number of materials filed during the hearing be sealed to protect confidential client information.