

2014 : No. 02 Summer

Alan Gordon Shursen Hultman

Vancouver, BC

Called to the bar: June 13, 1986

Discipline hearing : December 12, 2013

Panel : Barry Zacharias, Chair, James E. Dorsey, QC and Patrick Kelly

Decision issued : March 7, 2014 (2014 LSBC 13)

Counsel : Carolyn Gulabsingh for the Law Society; Gerald Cuttler for Alan Gordon Shursen Hultman

Facts

Alan Gordon Shursen Hultman represented a long-time client on several matters, including two foreclosure actions against her property, as well as an action for money owed by the client to a creditor on a promissory note. A default judgment was obtained on the promissory note and registered against the client's property.

In November 2009, Hultman was served with the sale approval order for the client's property, which enumerated some charges and encumbrances that were to be discharged and also had a clause noting all charges subsequent to the certificate of pending litigation were cancelled. The balance of the proceeds were to be paid into court under the terms of the order.

On December 20, 2009, Hultman spoke with his client who was recovering from surgery. She stated she needed the balance of the sale proceeds to look after her immediate needs, including the move necessitated by the sale of the property. She said she intended to satisfy the promissory note judgment from funds from her mother's estate, which she expected shortly. She wanted the funds paid out of trust and told Hultman not to disclose the existence of the promissory note judgment.

Hultman told his client he could not apply for a payout of those funds without disclosing the judgment. He then spoke with a senior litigator and concluded he could not act on the application for the payout of the funds due to his client's instructions not to disclose the judgment. At his client's request, he then took steps to obtain another lawyer for her for the payout application.

On January 6, 2010, Hultman wrote the client asking if a portion of his account could be paid from her proceeds if the application was successful. Subsequently, through Hultman, the client directed her other lawyer to pay his own account from those funds and send the balance to Hultman. Hultman was directed to pay \$5,000 from the funds toward his outstanding account and forward the rest to the client.

Admission and disciplinary action

Hultman admitted that he assisted his client to retain another lawyer in order to obtain a variation of the sale order, knowing the judgment was unsatisfied. He also admitted that he received the funds from the varied sale order, paid himself \$5,000 on an account owed to him by his client, and paid her the balance, when he knew the judgment was unsatisfied.

It was clear to the panel that Hultman's actions in assisting his client in the way he did were contrary to and a marked departure from his obligations as a lawyer. Additionally, his actions in dealing with the sale proceeds when he knew of the unsatisfied judgment are a marked departure from those obligations. The

panel found his conduct amounted to professional misconduct.

Hultman is experienced counsel and was not duped by his client, but knew exactly the nature of his actions. The creditor on a promissory note who was owed money by the client was victimized by losing the protection of her registered judgment and had to pursue further legal remedies. Hultman personally benefitted from his actions by having monies paid on his account.

The panel took into consideration that Hultman was cooperative and had no prior discipline record. Hultman's compassion for his client does not diminish his responsibility for his actions but, perhaps, makes them more understandable.

The panel ordered that Hultman:

1. was suspended from practice for a period of one month; and
2. pay \$3,000 in costs.