

2015 : No. 1 Spring

Sebastian Nejat

Vancouver, BC

Called to the bar: June 1, 2010

Discipline hearing : August 26, 2014

Panel : A. Cameron Ward, Chair, Patrick Kelly and David Layton

Decision issued : November 3, 2014 (2014 LSBC 51)

Counsel : Carolyn Gulabsingh for the Law Society; Sebastian Nejat on his own behalf

Facts

On March 16, 2011, Sebastian Nejat was retained by a client to act for him in a matrimonial matter. Another lawyer acted for him and his wife on the sale of their home, and \$175,000 of the sale proceeds had already been paid out to the spouse by court order dated March 4, 2011. The balance of proceeds of sale were being held in trust by the other lawyer.

On March 17, Nejat brought an application without notice seeking an order restraining the spouse from disposing of the funds that were paid out to her pursuant to the March 4 order.

On March 23, Nejat received a cheque from the other lawyer in the amount of \$80,952.70, being the balance of the net sale proceeds, and deposited it into his trust account.

On March 29, Nejat brought an application without notice before the court seeking an order compelling the spouse to pay \$175,000 into court. Nejat advised the court that he had not been able to serve the spouse with the March 17 order and had been unable to contact her. The court granted the requested order.

On May 5, at the request of his client, Nejat provided him with a trust cheque for \$78,952.70, which was the balance of the net sale proceeds he held in trust, less legal fees. He also included a cover letter advising his client of the potential ramifications of requesting this sum and disposing of it.

On June 28, the spouse's lawyer appeared in court to set aside the orders made on March 17 and 29. The court attempted to clarify the status of the net sale proceeds from the family residence. An order was made that the funds held in Nejat's trust account be frozen pending final determination of the issues between the parties. Nejat did not disclose that he no longer held any funds in trust on behalf of his client.

Subsequently, Nejat failed to correct the record and continued to leave the impression that he held the funds in trust when he wrote opposing counsel and the spouse on three occasions.

At a trial management conference on April 12, 2012, the court ordered Nejat to advise the spouse's lawyer of the amount he held in trust on behalf of the parties. Nejat wrote to the spouse's lawyer and advised that he no longer held any funds in trust on behalf of the parties, as \$78,952.70 had been released to his client on May 5, 2011. Nejat also stated in this letter that he was going to withdraw as his client's lawyer.

On August 24, Nejat obtained a court order removing him from the record as his client's lawyer. The spouse's lawyer did not appear on the application.

On September 28, Nejat appeared in court and was questioned about the trust funds and how he had obtained an order removing himself from the record without proper notice to the spouse's lawyer. The judge was highly critical of Nejat's lack of candour in his earlier dealings with the court, opposing counsel and his client's spouse, and directed that his reasons for judgment be transcribed and forwarded to the Law Society.

Admission and determination

Nejat's uncertainty regarding the status of the trust monies at certain points was partly the result of his inexperience, combined with the fact that he had no control over his law firm's trust account. While he did not intend to mislead the court or opposing counsel, the panel found that his failure to disclose constituted gross culpable neglect.

There were five occasions, over a span of ten months, on which Nejat failed to disclose material information or failed to correct the record. The benefit accruing to Nejat was not significant, but he was able to pay his modest account sooner than if he had kept the funds in his trust account as required. These were aggravating factors.

The panel also considered a number of mitigating factors. Nejat had no relevant professional conduct record, he did not intend to mislead the court or opposing counsel, and he was a fairly new call to the bar at that time. He admitted his misconduct to the Law Society from the outset of disciplinary proceedings. He has deep contrition and indicated that he had taken steps to ensure that he would never commit such errors again.

The panel accepted Nejat's admission of professional misconduct and ordered that he pay:

1. a \$5,000 fine; and
2. \$1,000.00 in costs.