

2018 LSBC 16
Decision issued: June 19, 2018
Citation issued: May 23, 2017

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

ANGIOLA-PATRIZIA PAOLA DE STEFANIS

RESPONDENT

DECISION OF THE HEARING PANEL

Written materials: April 17, 2018

Panel: Tony Wilson, QC, Chair
Dan Goodleaf, Public representative
Shona A. Moore, QC, Lawyer

Discipline Counsel: Alison Kirby
Counsel for the Respondent: Jean P. Whittow, QC

BACKGROUND

- [1] A citation was issued to the Respondent pursuant to the *Legal Profession Act* and the Rules of the Law Society on May 23, 2017 and amended on October 31, 2017 (“the Citation”).
- [2] The Respondent admits that she was served with the Citation.
- [3] This matter came on for disposition under Rule 4-30, which is headed “Conditional admission and consent to disciplinary action.” The Panel received a joint application from both the Respondent and the Law Society to conduct a hearing on the written record. The Panel considered the joint application and decided that this was an appropriate case to proceed on written materials only, without an oral

hearing, in accordance with the Law Society's new procedure for a "Hearing in Writing" pursuant to a Practice Direction issued on April 6, 2018. Under this new procedure, a "Hearing in Writing" is still a "hearing" within the meaning of Rule 4-30.

- [4] The Respondent made a conditional admission of professional misconduct and agreed to the proposed disciplinary action. Rule 4-30 requires that a hearing panel consider the conditional admission and proposal and, if the Panel finds them acceptable, impose the proposed disciplinary action.
- [5] As set out the Agreed Statement of Facts ("ASF") at paragraphs 23 – 25, the Respondent admits the following:
- (a) that between May 2013 and February 2014 while acting as executrix and representing the Estate of [the Deceased], she misappropriated the sum of \$50,000 when she was not entitled to those funds, contrary to her fiduciary duties and Rule 3-56 of the Law Society Rules then in force (now Rule 3-64), as set out in the Citation;
 - (b) that on or about May 11, 2013 and May 31, 2014, while acting as executrix and representing the Estate of [the Deceased], she misled [LG's daughter] as to the amount of funds she received and disbursed on behalf of the estate by preparing and delivering false accountings of her estate administration in which she failed to account for \$50,000 in estate funds;
 - (c) that in letters dated October 26, 2015 and March 10, 2016, she made representations to the Law Society during a compliance audit and professional conduct investigation that [LG] had gifted her \$100,000 from the estate funds when she knew that these representations were false; and
 - (d) that her conduct described in each of paragraphs (a) to (c) constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.
- [6] The Panel reviewed all of the written material, including the ASF, the exhibits attached to the ASF, and the submissions of the Law Society. The Respondent adopted those submissions, and on May 17, 2018 this Panel issued a decision to accept the Respondent's admission under Rule 4-30 of the Law Society Rules 2015.

- [7] Further, the Respondent consents to an order that she be disbarred and has agreed to pay costs in the amount of \$1,000 inclusive of disbursements, payable on or before July 1, 2018.
- [8] The Panel made a determination of professional misconduct pursuant to Section 38(4) of the *Legal Profession Act* and ordered that the Respondent be disbarred under Section 38(5)(e) of the *Legal Profession Act* and pay the Law Society \$1,000 in costs on or before July 1, 2018.
- [9] As well, the Panel ordered that, if any persons seek to obtain a copy of any exhibits filed in this proceeding, client names, identifying information and any information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person.
- [10] What follows are our reasons for those decisions.

FACTS

- [11] Below are portions of the ASF, which we have anonymized to protect solicitor-client privilege.

Member Background

- [12] Angiola-Patrizia Paola Maria De Stefanis (the “Respondent”) was called and admitted as a member of the Law Society of British Columbia on August 28, 1992.
- [13] From June 2007 until she wound up her practice in 2017, the Respondent practised with the firm Alliance Lex Law Corporation in Vancouver, British Columbia. She practised primarily in the areas of family law and wills and estates.

Background facts

- [14] In May 2009, the Respondent was introduced to the Deceased to assist in addressing potential elder fraud on the part of an Attorney appointed under a Power of Attorney. The Respondent prepared a new will and a revocation of the Power of Attorney, which the Deceased executed. The new will appointed the Respondent and a friend of the Deceased as co-executors of the will.
- [15] On November 9, 2010, the Deceased passed away. The Deceased’s elderly friend who had been appointed as co-executor under the will renounced her appointment as co-executrix of the Deceased’s estate (the “Estate”), leaving the Respondent as the sole executor of the Estate.

- [16] The Deceased's brother, LG was the sole beneficiary of the Estate. LG and his family, including his daughter, lived in a small town in Italy. As LG was unfamiliar with legal documents and email, LG's daughter often communicated with the Respondent on LG's behalf.
- [17] The Respondent issued two trust cheques, one dated May 23, 2013 for \$100,000 and the other dated February 1, 2014 for \$10,000 from Estate funds she held in trust. The Respondent issued these two cheques to herself for payment of executrix fees for her role in administering the Estate. The \$110,000 remuneration was approximately 12 per cent of the gross aggregate value of the Estate, and greater than five per cent of the gross aggregate value of the Estate, and therefore was not in compliance with section 88(3) of the *Trustee Act*.
- [18] The Respondent's client trust ledger for the Estate reflected that \$100,000 was withdrawn from trust on May 23, 2013 for executrix fees and \$10,000 was withdrawn from trust on February 1, 2014 for executrix fees.
- [19] By email dated May 11, 2013, the Respondent sent LG's daughter an email that had been translated from English into Italian. The email had attached to it a document entitled Interim Summary of Estate Account Transactions ("Interim Summary Version #1"), which reflected that the executrix fees charged to the Estate were \$50,000; as well as a Consent and Release form for LG to sign (in Italian), to approve of the accounting as described in Interim Summary Version #1. Before sending the email, the Respondent had obtained a translation from English to Italian of the Consent and Release form.
- [20] On May 31, 2014, the Respondent sent an email to LG's daughter to finalize the administration of the Estate. She included with the email a document entitled Final Summary of Estate Account Transactions ("Final Summary Version #1") that reflected that total executrix fees charged to the Estate were \$60,000. As she had done with Interim Summary Version #1, the Respondent sent a Consent and Release form in English and Italian for LG to sign, to approve the accounting set out in the Final Summary Version #1.
- [21] On June 17 and 18, 2015, the Respondent's practice was subject to a compliance audit for the period November 1, 2013 to June 18, 2015 conducted by the Law Society's Trust Assurance Department.
- [22] In the Respondent's response to the Law Society's request for an explanation for charging the Estate a greater percentage than the *Trustee Act* allows for executrix fees, the Respondent stated:

....

The family was extremely appreciative and grateful to me for the assistance provided to [the Deceased] prior to his passing and for attending to the administration of the Estate. They had been so worried for him over the involvement of the former Attorney and felt helpless to be of assistance from such a distance. Without me, they felt, much if not all would have been lost and [the Deceased] would have suffered in his last years, rather than be at peace knowing that all was well and he was not being taken advantage of. For this, [the Deceased's] family was adamant that I be compensated in a measure that to them was reflective of their appreciation of my personal attendances upon [the Deceased] and my professional assistance before and after his passing, as well as the peace of mind that I brought to [the Deceased] and [his] family, following the terrible experience he had with his former appointed Attorney.

There is a cultural element to this as well ... Their generosity towards me was their way of repaying a social debt towards me, and showing in a fashion they deemed appropriate their gratitude and appreciation that a trusted person was found to support [the Deceased] to attend to his affairs before and after his passing.

... LG made it clear that he wished to confer a benefit on me as an expression of his gratitude for my role in handling matters on behalf of his brother, as outlined above, in addition to payment of my firms' legal fees.

... I cannot now recite word for word how the figure of \$100,000 was arrived at. I do recall, however, specifically advising LG that he was under no legal obligation to compensate me beyond payment of my firm's legal fees.

....

- [23] By letter dated February 19, 2016, the Law Society wrote to the Respondent to investigate the concerns raised by the Trust Assurance Department in a memo dated January 6, 2016. The Respondent replied by letter dated March 10, 2016, and she maintained that the \$100,000 received from LG was a gift.
- [24] The attachments to the Respondent's March 10, 2016 letter included an Interim Summary of Estate Account Transactions ("Interim Summary Version #2"), and a Final Summary of Estate Account Transactions ("Final Summary Version #2"), and both documents reflected payment of the executrix fees in the amount of \$110,000.

The amounts afforded to the Respondent for executrix fees that were reflected in the Interim Summary Version #2 and the Final Summary Version #2 corresponded with the Respondent's client trust ledger but differed from the amounts allocated to executrix fees in Interim Summary Version #1 and Final Summary Version #1.

[25] During an interview with the Law Society's Professional Conduct Department, LG's daughter advised:

- (a) the Respondent first communicated with LG's daughter's sister-in-law and then directly with LG's daughter, as LG was not familiar with email and legal documents;
- (b) the Respondent's executrix fees were set out in a "summary" that had been sent to her family;
- (c) the Respondent's executrix fees were not conferred upon her but rather they were requested by the Respondent. The family was happy to oblige the request because they were satisfied with the work the Respondent had done;
- (d) LG's daughter had no idea whether the executrix fees the Respondent requested were excessive, too low or fair; and
- (e) she did not want to compromise the Respondent as her family was happy with the work she had done for them.

[26] On June 27, 2016, the Respondent, and her counsel, Jean Whittow, QC, met with the Manager of the Intake and Early Resolution Department. During the meeting, the Respondent admitted that LG's "gift" to her was supposed to be \$50,000 but she had taken \$100,000 and LG and his family were unaware that she had taken more than the \$50,000.

[27] The Respondent admits that she altered the figures in Interim Summary Version #2 and Final Summary Version #2 to conceal from LG and LG's daughter that she had taken \$110,000 rather than \$60,000 in executrix fees. In particular, the Respondent admitted that, under the Estate Income columns, she had changed two deposits of Estate funds to reduce the total income by \$40,000, and the last income tax refund had been omitted. The Respondent admitted that, under the Estate Disbursement columns, she changed the executrix fees to be \$50,000 less; the income tax refund of \$5,945.92 was reflected as tax owing; there was an additional debit for accounting and she altered her last invoice.

[28] On November 18, 2016, during an interview with the Law Society, the Respondent was unable to offer an explanation of why she took the funds.

Medical history

- [29] The Respondent has had a series of serious and life threatening illnesses since the 1990s ... that led to repeated surgeries and other illnesses. These conditions continue. Since 2017, the Respondent has commenced weekly psychiatric treatment for disorders associated with her profound history of physical illness (and other conditions). On April 15, 2018, the Law Society filed written submissions with respect to the conditional admission and the proposed penalty that the Respondent be disbarred, pay costs in the amount of \$1,000 inclusive of disbursements and that the publication of the circumstances summarizing these admissions will be made pursuant to Rule 4-48 and that such publication will identify the Respondent.
- [30] The Respondent agreed to the ASF, the Law Society's written submissions and the proposed order, including that she be disbarred.
- [31] The Respondent, through counsel, conveyed her apologies to the profession regarding her conduct. While not relying on her medical condition as an excuse for her conduct, the Respondent reiterated that she continues to seek medical treatment for her ongoing conditions.
- [32] With specific reference to the Respondent's admission that she misled the Law Society during its investigation, the Respondent emphasized that, after June 2016, she fully cooperated with the Law Society, "substantially admitted the misconduct" and on June 30, 2016 entered into an undertaking in which she agreed to restrict her practice and refrain from the operation of a trust account pending completion of the Law Society's investigation. In that undertaking, the Respondent specifically acknowledged her obligation to eliminate the trust shortage by paying \$50,000 to trust, which she did in October 2016. Those funds were disbursed to the beneficiary in October 2017.
- [33] In 2017, the Respondent wound up her practice and ceased membership.
- [34] In bringing these facts to our attention, the Respondent stated that she did so, not to alter the outcome in this case but "to emphasize her deep regret."

ISSUES

- [35] The issue in this case is whether the Respondent acted in a manner that constitutes professional misconduct and, if so, is the proposed disciplinary action of disbarment within the acceptable range for this misconduct.

PROFESSIONAL MISCONDUCT

- [36] Professional misconduct is defined in *Law Society of BC v. Martin*, 2015 LSBC 16 at paragraph 154:

The real question to be determined is essentially whether the Respondent’s behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

- [37] And at paragraph 171:

... whether the facts ... disclose a marked departure from that conduct the Law Society expects of its members

- [38] We are satisfied that the conduct to which the Respondent admits is serious. She misappropriated the sum of \$50,000 from the trust account, funds to which she was not entitled, and did so contrary to her fiduciary duties and Rule 3-56 of the Law Society Rules then in force (now Rule 3-64). Further, she misled a beneficiary of the estate by preparing and delivering false accounting of her estate administration and knowingly made false representations about this conduct to the Law Society during a compliance audit and a professional misconduct investigation. Accordingly, we accept the Respondent’s admission that she committed professional misconduct.

DISCIPLINARY ACTION

- [39] The next question is whether the proposed disciplinary action, disbarment and the payment of \$1,000 costs to the Law Society is within the “range of fair and reasonable disciplinary action”: *Law Society of BC v. Rai*, 2011 LSBC 2 at paragraph 7.
- [40] In assessing the proposed disciplinary action, we have considered the factors set out in *Law Society of BC v. Ogilvie*, 1999 LSBC 17, *Law Society of BC v. Lessing*, 2013 LSBC 29 (on review), and *Law Society of BC v. Faminoff*, 2017 LSBC 04 (on

review). Misappropriation is amongst the most serious misconduct a lawyer can commit. It is a betrayal of the trust that lies at the heart of a solicitor-client relationship. In *Law Society of BC v. Tak*, 2014 LSBC 57, the panel put it this way at paragraph 35:

Misappropriation of client trust funds is perhaps the most egregious misconduct a lawyer can commit. Wrongly taking clients' money is the plainest form of betrayal of a client's trust and is a complete erosion of the trust required for a functional solicitor-client relationship. The public is entitled to expect that the severity of the consequences reflect the gravity of the wrong. In the absence of multiple, significant mitigating factors, public confidence in the profession and its ability to regulate itself would be severely compromised if anything short of disbarment is ordered for misappropriation of client funds.

In the case before us, the Respondent has admitted to misappropriation of client funds and to misleading a beneficiary of the estate in order to obscure this misappropriation.

- [41] After considering all of the evidence and the submissions of the parties, we are satisfied that the sanction of disbarment is appropriate to maintain public confidence in the integrity of the legal profession. Members of the legal profession must understand that intentional misappropriation, save extraordinary mitigating circumstances, which are absent in the instant case, will result in disbarment.
- [42] Our decision that disbarment is an appropriate sanction in this case is consistent with the range of sanction imposed in similar cases.
- [43] In reaching this decision, we have taken into account the fact that the Respondent apologizes for her misconduct and that she suffers from a serious long-standing medical condition for which she continues to receive treatment. While the Respondent does not rely on her medical condition as a mitigating circumstance, even if that evidence were advanced for that purpose, we would conclude that disbarment is the appropriate sanction in this case.
- [44] Finally, we have concluded that the fact that the Respondent is a former member does not preclude us from deciding that disbarment is, nevertheless, an appropriate penalty. The fact the Respondent is a former member does not preclude this Panel from imposing a disbarment if otherwise warranted: section 38(4)(b)(v) and (5) of the *Legal Profession Act*.
- [45] The *Legal Profession Act*, section 1, defines "disbar" in this way:

“**disbar**” means to declare that a lawyer *or former lawyer* is unsuitable to practise law and to terminate the lawyer’s membership in the society;

[emphasis added]

- [46] One effect of disbarment is a declaration that the Respondent is not suitable to practise law. Disbarment is not immediately necessary to protect the public in this case, as the Respondent is a former member and not able to practise law. However, that penalty serves to ensure that, should the Respondent apply in the future for reinstatement in the Law Society, a credentials hearing on that application for reinstatement must be held: Rule 2-85(11). Moreover, a lawyer who has been disbarred may not perform legal services for anyone, even for free: *Legal Profession Act*, section 15(3); and *Law Society of BC v. Power*, 2009 LSBC 23.

COSTS

- [47] The Respondent consented to an order for costs in the amount of \$1,000, inclusive of disbursements to be paid on or before July 1, 2018. This amount falls within the range consistent with Item 25 of Schedule 4 – Tariff for Hearing and Review Costs, which provides for a range of \$1,000 to \$3,500 for a Rule 4-30 hearing.
- [48] In light of the fact that this matter proceeded as a hearing in writing, we are satisfied that costs at the lower range of this Tariff are appropriate in all of the circumstances.

NON-DISCLOSURE ORDER

- [49] The Respondent expressly acknowledges that publication of the circumstances summarizing these admissions will be made pursuant to Rule 4-48 and that such publication will identify the Respondent.
- [50] The parties seek an order by consent under Rule 5-8(2) that portions of the exhibits that contain confidential client information or privileged information not be disclosed to members of the public. We agree that such an order is appropriate in these circumstances.

ORDER

- [51] On May 16, 2018, after consideration without an oral hearing and by consent and having accepted the Respondent’s admission under Rule 4-30 of the Law Society

Rules 2015 and having made a determination of professional misconduct pursuant to section 38(4) of the *Legal Profession Act*, the Hearing Panel ordered that:

- (a) The Respondent is disbarred under section 38(5)(e) of the *Legal Profession Act*;
- (b) If any person, other than a party, seeks to obtain a copy of any exhibit filed in these proceedings, client names, identifying information and any information protected by solicitor-client privilege be redacted from the exhibit before it is disclosed to that person; and
- (c) The Respondent pay the Law Society \$1,000 in costs on or before July 1, 2018.