

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

**JEFFREY MARK RABB
(the “Member”)**

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: December 12, 2022

Panel: Dean Scaletta (Chair)
Wendy Stewart
Sandra Oakley (Public Representative)

Counsel: Ayli Klein for the Law Society of Manitoba
Richard J. Wolson, K.C. for the Member

REASONS FOR DECISION

Introduction

1. Jeffrey Mark Rabb is a member of The Law Society of Manitoba (“the Society”), having been called to the Bar and admitted as a solicitor on June 23, 1983.
2. He was charged in a citation dated September 9, 2020 (File No. 20-012-DIS) (“the Citation”) with one count of conduct unbecoming a lawyer, contrary to Rule 2.1-1 of the *Code of Professional Conduct* (“the Code”), and one count of professional misconduct, based on the same facts and the same Rule. The Citation is attached as Appendix “A” to these Reasons.

The parties consented to an amendment to Paragraph 1(a) of the Citation 1. The preamble, which read “Between approximately June 2009 and 2015, you misappropriated more than \$360,000.00 of trust funds from approximately 50 Winpark properties by:”, was amended to read “Between approximately June

2009 and 2015, you misappropriated more than \$360,000.00 of trust funds from a number of Winpark properties by:”.

3. The hearing convened on December 12, 2022, and quorum was declared pursuant to sub-Rule 5-93(7) of the *Rules of the Law Society of Manitoba* (“the *Rules*”). At the outset of the hearing, Mr. Rabb:
 - (a) confirmed that he was a member of the Society at all relevant times, and that he is not a member of any other law society;
 - (b) confirmed that he was validly served with the Citation;
 - (c) waived formal reading of the Citation; and,
 - (d) confirmed that he had no objection to any of the Panel members either on the basis of bias or conflict, or otherwise.
4. Mr. Rabb entered a plea of guilty before the Panel to Citation 1 as amended. The Society entered a stay of proceedings on Citation 2. Mr. Rabb further confirmed that:
 - (a) he was admitting the facts set out in Citation 1 and in the Statement of Agreed Facts (Exhibit 1 in the proceeding and Appendix “B” to these Reasons);
 - (b) these admissions constituted formal admissions for the purpose of the hearing; and,
 - (c) the conduct so particularized constitutes “conduct unbecoming a lawyer”.
5. The Panel is indebted to counsel for their well-researched, thoughtful, balanced, and compelling submissions.
6. For the reasons which follow, the Panel has determined that it would be appropriate to permit Mr. Rabb to resign his membership in the Society, subject to his providing to the Society, within 30 days after service of these Reasons on his counsel, a written undertaking (in a form acceptable to the Society) that he will never again apply for membership in the Society or in any other law society.

If Mr. Rabb does not provide this undertaking within the stipulated time (or within such further additional time as the Society may consent to), then he is to be disbarred and struck from the Rolls of the Society.

The Panel is satisfied that the cumulative effect of the various mitigating factors make this an appropriate case to depart from the presumptive penalty of disbarment. We find that the public interest will be adequately protected, and its confidence in the legal profession will be preserved, by permitting Mr. Rabb to resign his membership in the Society.

7. The Society seeks costs in the amount of \$4,525.00. Mr. Rabb neither agreed to, nor objected to, an order for costs in this amount. The Panel finds the amount sought by the Society is reasonable in the circumstances. Mindful of the admonition that the non-offending members of the profession ought not to bear the full costs of discipline proceedings, the Panel orders that Mr. Rabb pay to the Society costs in the amount of \$4,525.00 on a schedule to be agreed upon between himself and the Chief Executive Officer.

Evidence Tendered by the Society

8. The misconduct giving rise to these proceedings is particularized in Manitoba Securities Commission (“MSC”) Order No. 2772 dated November 27, 2019, which forms part of Exhibit 1. The Order adopted the provisions of a Settlement Agreement between the MSC and Mr. Rabb.
9. From August, 1992 until July, 2016, Mr. Rabb was registered under *The Real Estate Brokers Act (Manitoba)* (“REBA”) as an Authorized Official for a succession of closely-held corporations. The corporations were each registered “as a real estate broker with conditions on its license restricting its activities to property management”. During this same time frame, Mr. Rabb maintained “Active” practising status with the Society notwithstanding that his activities as a property manager did not require it. Regardless, real estate brokers in Manitoba operate trust accounts which are subject to rules similar to those which the Society has put in place for practising lawyers.
10. From June, 2009 and into 2015, Mr. Rabb misappropriated in excess of \$360,000.00 from the trust accounts for a number of his managed properties for services, supplies, and products which they did not receive. These diversions of funds were accomplished in several ways, namely:

- (a) manually altering invoices for work done on personal residences and other properties owned by himself and other closely-related individuals and companies to indicate that the work was done on one of the managed properties, and then paying the invoice from the trust accounts for those properties;
- (b) asking the owners of companies providing various services to change the job site locations on invoices from personal residences to managed properties such as apartment blocks;
- (c) asking the owner of a company providing various services to issue a fake invoice for work not done, then presenting the invoice to the owners of two managed properties for payment;
- (d) telling a service provider to include hours spent working on personal residences on invoices rendered by it for work done on two managed properties, and then charging the entire amount to the owners of those properties;
- (e) paying an invoice for work done on the residence of a close friend from trust funds properly belonging to the owners of a managed property;
- (f) paying the same invoice on multiple occasions using funds from different trust accounts; and,
- (g) paying for the construction of a backyard hockey rink using funds from multiple different trust accounts.

The beneficiaries of all of this largesse included relatives, associates, and employees of Mr. Rabb whose personal residences and vacation properties were repaired or upgraded at no cost to themselves.

11. The Panel notes that these methods of misappropriation were not overly sophisticated and, by requiring as they did the collusion (or at least acquiescence) of many other individuals, were not likely to remain undetected for long. Indeed, it is rather surprising that Mr. Rabb was able to continue his pattern of deceptions for as long as he did (about 5 years and 4 months).
12. From 2011 to 2014, Mr. Rabb was involved with the preparation and submission of nine rebate applications to Manitoba Hydro pursuant to its Power Smart

program. The applications generated rebates totaling \$61,046.00. The rebate cheques, when they arrived, were deposited not to the trust accounts for the managed properties to which they related but to the personal account of a close business associate of Mr. Rabb. Over the three-year period, Mr. Rabb received over \$30,000 from that associate by way of bank drafts, cash, and the discharge of debts.

13. In the Settlement Agreement, Mr. Rabb acknowledged that trust monies had been used for non-trust purposes, that he had committed a variety of fraudulent acts under *REBA*, and that he had acted contrary to the public interest. He agreed to a permanent cancellation of his *REBA* registration, a one-time payment of \$30,000.00 to the Province of Manitoba (presumably representing the portion of the Power Smart rebates which he received personally), and a contribution of \$70,000.00 to the costs incurred by the MSC.
14. Also on November 27, 2019 (the same day as the MSC hearing), Mr. Rabb appeared with counsel before a Judge of the Provincial Court of Manitoba. He entered a plea of guilty to a single count under subsection 362(1)(a) (False pretense or false statement) of the *Criminal Code (Canada)*. Pursuant to a joint recommendation, Mr. Rabb received a 12-month Conditional Sentence (which was fully served without incident) and was ordered to pay restitution of \$20,000.00.

Evidence of the Member

15. Mr. Rabb did not tender any formal evidence, but – with the acquiescence of counsel for the Society – was permitted to read a brief prepared statement in which he apologized to those closest to him for the harm his actions had caused to them. He accepted “full responsibility” for his actions, offered “no excuses”, and asked only that he be spared the “last humiliation” of being disbarred. The plea was clearly heartfelt and undoubtedly sincere.

Relevant Authorities and Principles

16. Ms. Klein provided a Book of Authorities in advance of the hearing. The “Table of Contents” page is attached as Appendix “C” to these Reasons, and the cases cited in the “Analysis” section will be referred to by the name of the member involved.
17. Mr. Wolson provided a binder of materials (medical reports and reference letters) together with a number of authorities from Manitoba and Ontario. The “Table of Contents” page is attached as Appendix “D” to these Reasons.

Four additional Ontario decisions were submitted on December 9, 2022. They are:

Law Society of Upper Canada v. Ricardo Max Aguirre, 2007 ONLSHP 46

Law Society of Upper Canada v. Edward Lawrence Stone, 2012 ONLSHP 116

Law Society of Upper Canada v. Robert Gordon Durno, 2015 ONLSTH 122

Law Society of Upper Canada v. Stevan Graham Ellis, 2016 ONLSTH 20

As above, the cases will be referred to by the name of the member.

18. The Panel is indebted to prior Discipline Panels both here and in Ontario which have articulated the guiding principles applicable to cases such as this one. These principles (in no particular order of importance) include the following:
- (a) The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. (*Nadeau*, citing *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012)
 - (b) The discipline hearing panel focuses on the offence rather than the offender, and considers the desirability of parity and proportionality in sanctions, and the need for deterrence. ... The panel also considers ... aggravating and mitigating factors [which] include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, ..., the length of time the lawyer has been in practice, the lawyer's general character and the lawyer's mental state. (*Nadeau*, citing *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012)
 - (c) Other relevant considerations (derived from the list of so-called "*Ogilvy*" factors) include: (a) the nature and gravity of the conduct proven; ... (c) the previous character of the respondent, including details of prior disciplines; ... (e) the advantage gained, or to be gained, by the respondent; (f) the number of times the offending conduct occurred; (g) whether the respondent had acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances; ... (h) the impact on the respondent of criminal or other sanctions or penalties; (j) the impact of the proposed penalty on the respondent; (k) the need for specific and general deterrence; (l) the need to ensure the public's confidence in the integrity

of the profession; and (m) the range of penalties imposed in similar cases. (*Nadeau*)

- (d) After a guilty plea or following conviction, a Panel may consider whether the offending member has admitted guilt and expressed remorse, not for the purpose of imposing a higher penalty but for the purpose of considering whether leniency should be given. (*Nadeau*)
- (e) Integrity is the foundation of the legal profession. It is first rule in the Code of Professional Conduct and every other rule is based upon it. Clients must have faith that their lawyers are totally trustworthy. They must know that their money is safe, that their instructions will be followed and that they will be kept informed as to exactly what is happening with their matter. Without this level of trust, the profession cannot function. (*McKinnon*)
- (f) It would be a mistake ... to assume that disbarment is a penalty reserved for cases that combine the worst imaginable offence with the worst imaginable offender. In cases involving fraud or theft, in spite of evidence of prior good character and financial or other pressures, lawyers are almost certain to be disbarred. (*Anhang, MacIver, & McDowell, citing Lawyers & Ethics: Professional Responsibility and Discipline, Gavin McKenzie, Carswell 2012*)
- (g) Cases in which lawyers have been permitted to resign are usually those in which the misconduct is sufficiently serious to justify disbarment but in which mitigating circumstances persuade the [Panel] that the stigma of disbarment in addition to the withdrawal of the lawyer's right to practise law would be unfair. The practical result of the penalty is the same, except to the extent that [an Admissions and Education Panel] may give more favourable consideration to an application for readmission brought by a former lawyer who has been given permission to resign. (*MacIver, McDowell, & Gembey, citing Lawyers & Ethics: Professional Responsibility and Discipline, Gavin McKenzie, Carswell 2012*)
- (h) It would seem ... that a Discipline [Panel] having to decide between permission to resign and disbarment should be guided by three general considerations. ... Firstly, if the offence is of sufficient severity and there are no significant mitigating factors, then protection of the

public through general deterrence demands the heaviest penalty and there is little choice but to disbar. Secondly, in all other cases, the [Panel] should examine the seriousness of the misconduct and possible mitigating circumstances to see if there is a reasonable basis for exercising the compassion mandated by [ss. 72(1)(g) of *The Legal Profession Act (Manitoba)*]. Thirdly, the question of whether the lawyer might ever be trusted to again practice law, while potentially a factor in the choice for disbarment, may also be dealt with by the conditions of resignation and left to the authority of the Admissions Committee." (*MacIver*, citing *Lawyers & Ethics: Professional Responsibility and Discipline*, Gavin McKenzie, Carswell 2012)

- (i) ... [T]here is a distinction between circumstances mitigating the misconduct which directly address why a member committed an offence (and hence the degree of perceived culpability) and factors offered in mitigation that arose or were exacerbated by the offence and the adjudicative process that followed or are simply incidental. For example, age, infirmity, distinguished career, embarrassment, psychiatric problems, guilty plea, financial stress or addictions are all commonly offered as "mitigating factors". An assessment of the nature of a mitigating factor (i.e. whether a factor offered in mitigation relates to why the offence was committed, or relates to a consequence of having committed the offence or is just incidental) is necessary to properly weigh its impact on an appropriate disposition. (*MacIver*)
- (j) ... [W]hile it is never appropriate to impose a penalty with the desire to publicly humiliate a member, stigma resulting from the imposition of a proper penalty is an unfortunate but unavoidable potential byproduct of a member's misconduct. (*MacIver*)
- (k) ... [A]n assessment of allowing resignation rather than ordering disbarment should take into account the following:

first, the range of fit and appropriate sentences must be determined given the facts supporting the finding of guilt;

second, the nature of the mitigating factors;

third, if the facts underlying the offence indicate a strong *prima facie* case for disbarment as the only disposition within the range of an appropriate sentence, then a plea for resignation may arise as an appropriate alternative disposition only in the limited situation where the nature of the mitigating circumstances addresses why the member committed the offence (in effect, the mitigating factors must temper the culpability of the

member's commission of the offence and thereby tilt the sentencing objectives away from general deterrence and public confidence); and

fourth, if the facts underlying the offence fall short of a strong *prima facie* case for disbarment such that disbarment is one of a variety of appropriate sentences, and the nature of the mitigating circumstances relate to either why the offence was committed or there are significant mitigating circumstances that are consequential or incidental to the offence, then a panel may consider allowing resignation.

- (l) ... [T]he general policy rationale [is] to allow reasonable compassion in the right cases. ... [The Panel] must assess whether a right thinking member of the public, on a proper understanding of the case, would believe a penalty of disbarment to be harsh and excessive. (*McDowell*, citing *Nova Scotia Barristers Society v. Steele*, 1995)
- (m) ... [W]here a member urges upon a Panel not to disbar him or her because of the public humiliation that he or she would suffer, or the costs he or she has already suffered, ... the mitigating factor is less relevant than where, ..., it impacts upon the determination of the cause of the conduct in the first place. (*McDowell*)
- (n) When misconduct involves serious dishonesty and lack of integrity, exceptional circumstances are needed to depart from revocation in favour of permission to surrender, but they need not reach the same high level as those that would allow the person to continue as a licensee. (*Ellis*)
- (o) There is no value in seeking to try to define the concept of "exceptional circumstances" in any more particularity. The phrase is intentionally broad so as to allow for a common sense interpretation of the facts of individual cases to be brought to bear by the panel members chosen to adjudicate the outcome. (*Gorlick*)
- (p) The penalty of disbarment recognizes that the sentence imposed at a disciplinary hearing does more than address the conduct of the individual lawyer. Of paramount consideration is the preservation of the public's trust in the integrity of the legal profession and its faith in its ability to govern its own members. (*Gorlick*)
- (q) Permission to surrender is generally treated as the second most serious penalty, imposed when a panel finds that a licensee should not continue to practise law but the circumstances are less serious than those that warrant revocation [disbarment]. ...[I]t can also be imposed in different circumstances. Sometimes ... a licensee facing discipline may not want to continue practising law or providing legal services. ... This approach

allows licensees to make decisions that are best for them and also protects the public interest. ... [I]t should not be done where it improperly allows the licensee to avoid other investigations or hearings or the penalty of revocation. (*Willoughby*)

- (r) Revocation of a lawyer's license to practise is the most severe penalty that can be imposed as professional discipline. It stops the lawyer's practise of law and removes the risk of harm to the public and to the client.

Orders allowing lawyers to surrender their licenses also are a severe penalty. The lawyer's privilege to practise law comes to an end. Similarly, the risk to the public and clients comes to an end.

Both penalties send a message to the public at large and to the legal community that the relevant professional conduct is condemned by the Law Society and by the legal profession. (*Ronen*)

19. Cases in which a penalty of disbarment was imposed include *Anhang* (MB, 2002), *MacIver* (MB, 2003), *McKinnon* (MB, 2010), *Nadeau* (MB, 2013), and *Cherret* (MB, 2015).
20. Cases in which the Member was permitted to resign include *McDowell* (MB, 2007), *Stone* (ON, 2012), *Durno* (ON, 2015), *Willoughby* (ON, 2015), *Ellis* (ON, 2015), *Ronen* (ON, 2016), *Petryshyn* (MB, 2017), *Wang* (MB, 2020), *Gembey* (MB, 2021), and *Carroll* (MB, 2022).

Submission of the Society

21. The Society argues that there are two options open to the Panel – to disbar Mr. Rabb, or to permit him to resign his membership in the Society. The major difference between these two outcomes is that there is a stigma attached to disbarment which is mostly absent from permission to resign. An examination of the particular circumstances of this case, which involves both aggravating and mitigating factors, dictates disbarment as the appropriate disposition. The stigma itself is reputational and is commensurate with the misconduct from which it flows.
22. The purpose of professional discipline is not punish, or exact retribution from, the recalcitrant member but to protect the public interest.
23. If the Society has presented a strong *prima facie* case establishing serious misconduct and has negated the presence of relevant mitigating factors, disbarment is the presumptive (default) penalty. If not, then permission to resign becomes available as an alternative to disbarment.

24. In this case, Mr. Rabb is guilty of serious misconduct – the creation, alteration, and use of false documents to perpetrate multiple frauds for his personal benefit, the misuse of trust moneys, and methodical thefts over an extended period of more than 5 years. This misconduct – going as it does to the very heart of the honesty and integrity which the public is entitled to expect from lawyers – is of utmost concern to the Society. It also reflects poorly on the profession as a whole. The fact that Mr. Rabb was not actively practising law when the misconduct occurred (and, indeed, did not *need* to be a practising member of the Society to conduct his property management activities) is an irrelevant consideration in this type of case. He *was* a practising member and his conduct was of a nature which should normally result in disbarment.
25. In fairness, Mr. Rabb has acknowledged his guilt and taken responsibility for his actions in two other venues, being the MSC and the Provincial Court of Manitoba. His cooperation with both of those processes (and with the Society) was exemplary, and yet significant penalties were still imposed. Mr. Rabb has, as well, made his victims whole by repaying to them all of the funds he misappropriated.
26. The significant penalties already imposed flowed directly from the impugned conduct; they were natural and expected consequences of the misconduct which he acknowledged and, to that extent, cannot be considered out of the ordinary or “exceptional”.
27. By the same token, the contents of the medical reports – which the Society consented to being entered into evidence without the necessity of hearing directly from Dr. Rutner – are also not unique in cases of this type. Misconduct by lawyers often occurs during times of extraordinary stress in their lives, and often those stressors are unrelated to their work. It is clear from the reports that Mr. Rabb was not under the care of Dr. Rutner when the misconduct occurred, meaning (again, as is often the case) that Dr. Rutner must of necessity rely upon “self-reports” from Mr. Rabb as to what was going on his life at that time.

Submission on Behalf of the Member

28. The Member argues that regardless of the disposition the Panel chooses, the public will have the protection the Society seeks and the Society will have fulfilled the obligations imposed upon it by Subsection 3(1) of *The Legal Profession Act*, “to uphold and protect the public interest in the delivery of legal services with competence, integrity and independence”.

29. This case is unique; no authorities have been cited where the Member who was guilty of misappropriating trust money and guilty of other dishonourable conduct: (a) was not actively engaged in the practice of law, and (b) stole from one or more parties with whom they were not in a solicitor-client relationship.
30. Disbarment today is not the humiliating public spectacle it once was, but with pervasive news cycles and ubiquitous social media platforms, the public was “fully aware” of the details of the misconduct of Mr. Rabb as they rapidly spread through the community following the court and MSC hearings on November 27, 2019. The release of the Panel decision in this matter is likely to generate similar media attention.
31. Whether the Panel elects to disbar Mr. Rabb or permits him to resign, the practical result is the same; Mr. Rabb will never again be permitted to practise law. The main difference (as noted by counsel for the Society) is the stigma attached to disbarment. The various authorities where other Panels have had to make the same decision mention a wide range of aggravating and mitigating factors which ought to be considered:

- (a) The presence or absence of a prior discipline record.

In the more than 37 years from the time of his Call to the issuance of the Citation, Mr. Rabb had never before been involved with the discipline process of the Society. In addition, he had a lengthy history of distinguished service to the community.

- (b) The cooperation of the Member with the discipline process.

When the Winnipeg Police Service began its investigation, Mr. Rabb voluntarily attended for an in-depth interview. He provided whatever documents were requested, and he was the only person involved in the various schemes to face criminal charges. He entered a guilty plea and served his conditional sentence without any further involvement with the criminal justice system.

When the MSC began its investigation, Mr. Rabb cooperated fully. He consented to the permanent revocation of his registrations and paid a significant contribution towards the costs of the MSC investigation.

When the Society began its investigation, Mr. Rabb cooperated fully.

- (c) The extent to which the victims of the misappropriations have been recompensed.

Mr. Rabb has repaid all of the misappropriated moneys, including funds and benefits which were received and retained by others. He has paid all of the financial penalties which were imposed by the MSC and the Court. His victims have been “made whole”.

- (d) Whether the Member has accepted responsibility for his actions, and has expressed genuine regret and remorse for his conduct.

Mr. Rabb has done both – repeatedly, and very publicly.

32. There are many parallels between the situation of Mr. Rabb and the facts in the *Stone* case:

- (a) neither man had any intention of returning to practice;
- (b) both had experienced significant personal embarrassment and humiliation as a result of their misconduct;
- (c) both fully cooperated with their regulators;
- (d) both were in poor mental and physical health (and, in fact, both had suffered a serious and debilitating strokes);
- (e) both accepted full responsibility and expressed profound remorse for their actions;
- (f) there was a similar time frame during the which the misconduct took place, and neither case involved an “isolated event” of misconduct; and,
- (g) in both cases, there were – and are – “exceptional circumstances” which justified the Panel showing compassion and imposing the (modestly) more lenient penalty of permission to resign.

33. The mitigating factors in this case far exceed, and are far more compelling than, those mentioned in the *Stone*, *Durno*, *McDowell*, and *Nadeau* cases. And not to be overlooked or discounted are the many and significant contributions Mr.

Rabb made to the community during his decades of charity work and public service.

34. The *MacIver* case involved a member who was found guilty of tax evasion and perjury (lying under oath and fabrication of evidence). The clients he had stolen from were unsophisticated and vulnerable, yet he was abjectly unrepentant and contested the charges at his criminal trial. He also had two prior Society-related discipline convictions. Yet in that case, the Society supported a joint recommendation that MacIver be permitted to resign his membership (although the Panel ultimately rejected the joint recommendation and disbarred him).
35. The misconduct which Mr. Rabb admitted to took place between 8 and 14 years ago, and has not been repeated.
36. The reports of Dr. Toby Rutner, Ph.D., C. Psych. merit serious consideration notwithstanding that Mr. Rabb was not under his care at the time the misconduct was taking place. The last paragraph on Page 5 of 138 of their materials (the first page of the report dated November 3, 2022) is telling. It reads:

It is my professional opinion that his state of emotional stress leading to cognitive impairment and poor judgment is his characteristic response to extreme stress. It has become apparent during our time in therapy that Mr. Rabb was suffering from overwhelming stress and pressure both at home and at work at the time of his transgressions. His depression, anxiety and worry about his failing marriage, domestic conflict at home with his children and family, loss of status as a successful and socially conscious businessman and his fall from grace in the Jewish community, as well as business problems contributed to an emotional state in which his judgment was seriously affected and he acted out of character from his usual responsible and reputable manner.

37. Mr. Rabb, during the time when his misconduct took place, was susceptible to lapses in judgment brought on by his psychological distress.
38. There is no risk to the public if Mr. Rabb is permitted to resign. His downfall has already played out in a very public forum, such that there is no need for specific deterrence in his case. Whether he is disbarred or is permitted to resign will make no difference to the general public.

Reply by the Society

39. Ms. Klein had no comments in Reply.

Analysis

40. The purpose of Society discipline proceedings is not to punish, exact retribution from, or humiliate the sanctioned member, but to protect the public interest and to preserve public confidence in the profession.
41. The wrongdoing of Mr. Rabb was not a momentary, impulsive decision. There was some degree of planning and preparation involved in each of the dozens of individual instances of misconduct. This course of misconduct continued over an extended period of time (5 years and 4 months), which makes it even more serious.
42. But context here is an important consideration. This case appears to be one of first instance. In no other case that was brought to the attention of the Panel was the individual concurrently governed by two separate and distinct regulatory regimes at the time the impugned misconduct took place. Further, the fact that the same activities constituted a serious breach of the honesty and integrity tenets of both regimes makes this case unique from the others in which the Panel had to decide between disbarment and permission to resign. Finally, while concurrent criminal proceedings are not uncommon, and while the Society will typically wait until any criminal proceedings have run their course before initiating or continuing its own discipline proceedings, in this case the full regulatory weight of the other (and arguably primary) regulator has already been brought to bear upon the Society member who is now the subject of these proceedings.
43. There was a tacit consensus that had Mr. Rabb voluntarily transitioned to “non-practising” or “inactive” status with the Society before (or even soon after) undertaking his property management activities, the Society would have had no role to play in censuring the misconduct which later drew the ire of the MSC. There is no suggestion that a non-member of the Society involved in the customary activities of property management may be engaging in “the unauthorized practise of law”.
44. The Society argues, with considerable force and with considerable merit, that this distinction does not matter; that *any* member who demonstrates the level of dishonesty exhibited by Mr. Rabb must be held to account by the Society in furtherance of its legislated mandate to govern in the public interest.
45. While this is ultimately an issue for another day, the point is that – *on these unique facts* – disbarment was not a certainty had the Citation been contested by Mr. Rabb. A panel which had had the benefit of fulsome argument on both

sides of the question might well have concluded that the misconduct, while unquestionably egregious, had already been sanctioned, with the most severe penalty available to the regulator with arguably the most direct interest in that misconduct (that is, deregistration), such that it could be perceived as unnecessarily harsh to then “pile on” the most severe penalty available to a discipline panel of the Society.

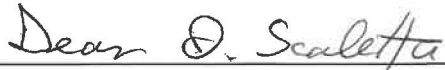
46. The Society takes its role as guardian of the public interest very seriously, and the fact that this Panel has determined that the public interest will be adequately protected by the imposition of the “second most severe penalty” should in no way be construed as a criticism of the position taken by the Society in this proceeding. In fact, its vigorous and principled defence of the public interest is to be commended.
47. In summary, the Panel adopts the sentiments so eloquently expressed in *Zaitzeff* (at paras. 43 and 47): In the circumstances of this case, permission to resign is within the range of reasonable outcomes, and is neither unreasonable or unconscionable. The penalty accords deference to concerns of general and specific deterrence, protection of the public, maintenance of high professional standards, and preservation of the public confidence in the legal profession. The end result is that Mr. Rabb will no longer be able to practise law, in Manitoba or elsewhere. This result will serve to maintain public confidence in the integrity of the profession, and will satisfy the obligation of the Society to protect of the public interest.

Disposition

48. As noted in Para. 4, Mr. Rabb pled guilty to one count of conduct unbecoming a lawyer, contrary to *Rule 2.1-1 of the Code*.
49. Based on the facts and evidence admitted by Mr. Rabb, and on the relevant authorities cited above, this Panel directs that:
 - (a) Mr. Rabb be permitted to resign his membership in the Society, subject to his providing to the Society, within 30 days after service of these Reasons on his counsel, a written undertaking (in a form acceptable to the Society) that he will never again apply for membership in the Society or in any other law society;
 - (b) If Mr. Rabb does not provide this undertaking within the stipulated time (or within such further additional time as the Society may consent to), then he is to be disbarred and struck from the Rolls of the Society; and,

- (c) Mr. Rabb pay to the Society costs in the amount of \$4,525.00 on a schedule to be agreed upon between himself and the Chief Executive Officer.

DATED this 23rd day of January, 2023.



Dean Scaletta



Wendy Stewart



Sandra Oakley

APPENDIX "A"

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JEFFREY MARK RABB

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

CITATION

TO: JEFFREY MARK RABB of the City of Winnipeg, in the Province of Manitoba, lawyer, and a member of The Law Society of Manitoba.

TAKE NOTICE that a hearing will be held by a panel of the members of the Discipline Committee of The Law Society of Manitoba to consider charges of professional misconduct and conduct unbecoming a lawyer laid against you by the Complaints Investigation Committee of The Law Society of Manitoba. If you are found guilty of professional misconduct or of conduct unbecoming a lawyer, you may be disbarred and your name struck off the Rolls of The Law Society of Manitoba or you may be suspended

from practising law or you may otherwise be dealt with by the Discipline Committee panel under the provisions of *The Legal Profession Act* and the *Rules of The Law Society of Manitoba*.

A statement of the charges is as follows:

THAT YOU, JEFFREY MARK RABB, called to the Bar in the Province of Manitoba on June 23, 1983, and entered as a lawyer in the Rolls of The Law Society of Manitoba under the provisions of *The Legal Profession Act*, and being a member of The Law Society of Manitoba, by your actions, as particularized herein, did commit professional misconduct and did commit conduct unbecoming a lawyer in that:

Conduct Unbecoming a Lawyer

1) While and in connection with your operation of a corporation variously known as Dorchester Developments, Winpark Dorchester Properties, Winpark and Alderman Capital Corporation ("Winpark"), you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to discharge all of your responsibilities to your client, tribunals, the public and other members of the profession honourably and with integrity.

Particulars

- a) Between approximately June 2009 and 2015, you misappropriated over \$360,000.00 of trust funds from approximately 50 Winpark properties by:
 - i) Directing that invoices for work done at various locations for personal

benefit be altered so as to appear that the work had been done at Winpark properties, and directing that those invoices be paid out of Winpark accounts, when the services, supplies and products reflected on the invoices were not received by the Winpark properties in question.

b) Between 2011 and 2014, you misappropriated approximately \$61,046.00 from Manitoba Hydro Power Smart rebate cheques by:

i) Personally receiving, in either bank draft or cash form, approximately half of the value of the rebate monies, with the other half being received by the Winpark director in whose personal account the rebate cheques were cashed.

c) On November 27, 2019 you pled guilty to a criminal charge in relation to some of the above-noted actions, and you were sentenced to a 12 month Conditional Sentence Order.

d) Also on November 27, 2019, you entered into a Settlement Agreement with the Manitoba Securities Commission, wherein you acknowledged that in committing the above-noted actions, you had committed fraudulent acts under the *Real Estate Brokers Act* and that in doing so, you had acted contrary to the public interest.

Professional Misconduct

2) While and in connection with your representation of a corporation variously known as Dorchester Developments, Winpark Dorchester Properties, Winpark and Alderman Capital Corporation ("Winpark"), you acted contrary to Rule 2.1-1 of the *Code of Professional Conduct* in that you failed to discharge all of your responsibilities to your client, tribunals, the public and other members of the profession honourably and with integrity.

Particulars

- a) Between approximately April 2003 and September 2018, you were listed with the Law Society of Manitoba as an active and practicing lawyer for Dorchester Developments and Alderman Capital Corporation.

- b) Between approximately June 2009 and 2015, you misappropriated over \$360,000.00 of trust funds from approximately 50 Winpark properties by:
 - i) Directing that invoices for work done at various locations for personal benefit be altered so as to appear that the work had been done at Winpark properties, and that those invoices be paid out of Winpark accounts, when the services, supplies and products reflected on the invoices were not received by the Winpark properties in question.

- c) Between 2011 and 2014, you misappropriated approximately \$61,046.00 from Manitoba Hydro Power Smart rebate cheques by:
 - i) Personally receiving, in either bank draft or cash form, approximately half of the value of the rebate monies, with the other half being received by the Winpark director in whose personal account the rebate cheques were cashed.

- d) On November 27, 2019 you pled guilty to a criminal charge in relation to some of the above-noted actions, and you were sentenced to a 12 month Conditional Sentence Order.

- e) Also on November 27, 2019, you entered into a Settlement Agreement with the Manitoba Securities Commission, wherein you acknowledged that in relation to the above-noted actions, you had committed fraudulent acts under the *Real Estate Brokers Act* and that in doing so, you had acted contrary to the public interest.

AND THEREFORE you did commit professional misconduct and you did commit conduct unbecoming a lawyer.

YOU OR YOUR COUNSEL are required to appear before the Chairperson of the Discipline Committee or his designate on **Tuesday, October 6, 2020 at 12:00 noon**, at the offices of The Law Society of Manitoba, 200 - 260 St. Mary Avenue, Winnipeg, Manitoba, to set a date for the hearing of the charges against you. If you or your counsel do not attend at the said time and place, the Chairperson of the Discipline Committee or his designate, in accordance with *The Rules of The Law Society of Manitoba*, may proceed to set a date for the hearing in your absence.

DATED at the City of Winnipeg, in the Province of Manitoba, this 9th day of September, 2020.


LEAH KOSOKOWSKY
Director of Regulation
The Law Society of Manitoba

NOTE: Until further notice all attendances before the Chairperson of the Discipline Committee and Panels of the Discipline Committee will be by video conference. You will be provided with the details necessary to attend by email to the latest email address provided by you to the Society being jeffrabb@alderman.capital. If your email address has changed you must contact the Administrative Assistant to the Discipline Committee by email at: lharrison@lawsociety.mb.ca or by telephone at 204-942-5571.

APPENDIX "B"

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JEFFREY MARK RABB

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

STATEMENT OF AGREED FACTS

For the purpose of the above proceeding, the parties agree on the following facts:

I. Jurisdiction

1.1. Jeffrey Rabb was admitted to act as a solicitor in the Manitoba Court of Queen's Bench and was Called to the Bar of the Province of Manitoba on June 23, 1983 and his name was entered as a solicitor and barrister on the Rolls of the Court and of the Law Society of Manitoba ("the Society") on that date.

1.2. Mr. Rabb is a member of the Society and has been a member since June 23, 1983. He is not a member of the governing body of the legal profession in any other Canadian jurisdiction.

1.3. Mr. Rabb admits that he was validly served with the Citation dated September 9, 2020 (“the Citation”). [Tab 1]

1.4. Mr. Rabb has no objection to any of the panel members either on the basis of bias or conflict or otherwise.

II. Background and Practice History

2.1 Mr. Rabb is 65 years old. His practice history is as follows:

- June 23, 1983 – March 30, 1987: Buchwald Asper & Co (later, Buchwald Asper Henteleff)
 - March 31, 1987 – March 31, 1988: Qualico Homes
 - April 1, 1988 – March 31, 1991: inactive / nonpracticing status
 - April 1, 1991 – April 1, 2003: Barrister & Solicitor
 - April 2, 2003 – March 20, 2016: Dorchester Developments aka Winpark*
 - March 21, 2016 – September 3, 2018: Alderman Capital Corporation*
- *Not acting as legal counsel, but maintaining active status with the Society

2.2 Since September 4, 2018, Mr. Rabb has held first non-practising, and then later and to date, inactive membership status with the Society.

2.3 Mr. Rabb does not have a discipline record.

III. Admission

3.1 The Society seeks to make an amendment to the Citation, Tab 1 . Particular 1(a).

should read:

“Between approximately June 2009 and 2015, you misappropriated over \$360,000.00 of trust funds from **a number of** Winpark properties by:”

This amendment is sought with the consent of Mr. Rabb.

3.2 Mr. Rabb has reviewed the Citation (as amended) and this Statement of Agreed Facts. He admits the facts set out in Count 1 of the Citation and in this Statement of Agreed Facts.

3.3 The facts and other admissions set out in this Statement of Agreed Facts constitute formal admissions.

3.4 Mr. Rabb and the Society tender no evidence and make no submissions on the issue of professional misconduct or conduct unbecoming a lawyer other than that the conduct hereinafter described constitutes conduct unbecoming a lawyer.

3.5 In particular, Mr. Rabb admits that he is guilty of the misconduct set out in Count 1 of the Citation.

3.6 The Society enters a stay of proceeding in relation to Count 2 of the Citation.

IV. The Facts

4.1 Mr. Rabb acted as property manager for a corporation known as Dorchester

Developments and its various iterations including Winpark Dorchester Properties, Winpark and Alderman Capital Corporation (“Winpark”) from 2003 until 2019. During that period and until 2018, Mr. Rabb held active status with the Society, but he did not act as counsel for the various corporations.

4.2 Winpark was registered under *The Real Estate Brokers Act* (the “Act”) as a real estate broker, and Mr. Rabb was registered under the Act as Winpark’s Authorized Official throughout the years in question. The Act requires real estate brokers to maintain trust accounts subject to rules and regulations, in a similar fashion to the Society’s trust accounting rules.

4.3 Between 2009 and 2015, Mr. Rabb, acting in his capacity as property manager at Winpark, misappropriated over \$360,000.00 from a number of properties managed by Winpark. The misappropriation involved billing accounts and paying money from trust accounts for services, supplies and products which they did not receive. In particular, invoices were falsely prepared and/or altered after the fact in order for Mr. Rabb, his relatives and girlfriend, a director of Winpark and the general manager of Winpark to receive personal benefits, and those invoices were paid by trust funds held for the managed properties.

4.4 Between 2011 and 2014, Winpark submitted applications for 9 of its properties to receive rebate cheques through the Manitoba Hydro Power Smart program, ultimately receiving \$61,046.00 in total rebates. All of those cheques were cashed through the personal account of a Winpark director, who then provided Mr. Rabb with approximately half of those monies by way of bank draft, cash or discharge of debt, totalling over \$30,000.00 in monies taken when he was not entitled to those funds.

4.5 All of the monies taken as set out above have been repaid.

4.6 On November 27, 2019, Mr. Rabb appeared before the Manitoba Securities Commission (the "Commission") in answer to the above-described misconduct. He entered into a Settlement Agreement, which was approved by the Commission at the hearing by way of an Order, a copy of which is attached as Tab 2.

4.7 Mr. Rabb and Winpark's registrations under the *Act* were cancelled by the Commission, and neither are eligible for any future registration under the *Act*. Mr. Rabb was directed to pay \$30,000.00 to the Treasury of the Province of Manitoba, and he was ordered to pay costs to the Commission in the amount of \$70,000.00. These funds have also been paid.

4.8 Acknowledged within the Settlement Agreement is that Mr. Rabb used trust monies for non-trust purposes and committed fraudulent acts under the *Act* and acted contrary to the public interest by engaging in a scheme to obtain money or profit by

fraudulent means, contrary to law or by wrongful or dishonest dealing for his own use or benefit.

4.9 In addition to the proceedings before the Commission, Mr. Rabb was charged criminally for the above-described conduct. On November 27, 2019, he appeared in Provincial Court and plead guilty to obtaining property by false pretenses contrary to section 362(1)(a) of the Criminal Code of Canada. The Presiding Judge accepted a joint submission as to sentence, and as a result Mr. Rabb was sentenced to a 12 month Conditional Sentence Order and ordered to pay \$20,000.00 in restitution, which was paid in full on that date. A copy of the Information and Disposition Sheet are attached as Tab 3.

4.10 Mr. Rabb's health has severely declined both mentally and physically over the last number of years. He suffered a stroke in July of 2021 resulting in his being hospitalized first at St Boniface Hospital and then at Riverview Hospital for a number of months. He continues to suffer cognitive and physical disability.

V. Disposition

5.1 The Society submits that Mr. Rabb ought to be disbarred for the admitted misconduct.

5.2 Mr. Rabb submits that he should be permitted to resign from membership with the Society, with the agreement that he would not re-apply to any Law Society.

December ___9___, 2022

Richard Wolson

J. Richard Wolson, K.C.,
Counsel for Jeffrey Mark Rabb



Ayli Klein,
Counsel for the Law Society of Manitoba

APPENDIX "C"

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Legislation and Other Authorities

1. *The Legal Profession Act, CCSM c.L107, excerpts*
2. *Code of Professional Conduct, excerpts*
3. *Rules of the Law Society of Manitoba, excerpts*

Professional Discipline, in General

4. Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Thomson Reuters, 2020) – excerpt
5. *The Law Society of Manitoba v Nadeau*, 2013 MBL 4

The Law – Disbarment vs Resignation

6. *The Law Society of Manitoba v MacIver*, 2003 MBL 4
7. *The Law Society of Manitoba v McDowell*, 2007 MBL 9

Precedential Cases

8. *The Law Society of Manitoba v Ross*, unreported Case Digest and Decision (1996)
9. *The Law Society of Manitoba v Griffin*, 2005 MBL 5
10. *The Law Society of Manitoba v Dolovich*, 2010 MBL 11
11. *The Law Society of Manitoba v Gorlick*, 2015 MBL 5
12. *The Law Society of Manitoba v Cherrett*, 2015 MBL 10 (upheld 2016 MBCA 119; not provided)

Costs

13. *The Law Society of Manitoba v MacKinnon*, 2010 MBL 5

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Cases

8. *The Law Society of Manitoba v. Anhang*, 2002 MBLs 7
9. *The Law Society of Manitoba v. McDowell*, 2007 MBLs 9
10. *The Law Society of Upper Canada v. Willoughby*, 2015 ONLSTH 129
11. *The Law Society of Manitoba v. Petryshyn*, 2017 MBLs 15
12. *The Law Society of Upper Canada v. Ronen*, 2017 ONLSTH 89
13. *The Law Society of Manitoba v. Wang*, 2020 MBLs 5
14. *The Law Society of Manitoba v. Gembey*, 2021 MBLs 6
15. *The Law Society of Ontario v. Zaitzeff*, 2021 ONLSTH 108
16. *The Law Society of Ontario v. Kay*, 2022 ONLSTH 1
17. *The Law Society of Manitoba v. Carroll*, 2022 MBLs 1