



DISCIPLINE CASE *DIGEST*

Case 14-07

Member:

Shelley Loreen Overwater

Jurisdiction:

Morden, Manitoba

Called to the Bar:

April 21, 2011

Particulars of Charges:

Professional Misconduct (9 Counts):

- Breach of Rules 5-43(1)(c), (g) and (k) of the *Rules of the Law Society of Manitoba* [breach of trust account rules (withdrawing funds for fees without first rendering accounts, paying a personal/business debt from pooled trust account funds and failing to ensure that trust money paid out expeditiously)]
- Breach of Rule 5-79(2) of the *Rules of the Law Society of Manitoba* and Rule 6.02(1) of the *Code of Professional Conduct* [breach of written undertaking to the Law Society]
- Breach of Rule 6.02(11) of the *Code of Professional Conduct* [breach of trust condition]
- Breach of Rule 5-47(1) of the *Rules of the Law Society of Manitoba* [failure to file annual trust account self-report on or before due date]
- Breach of Rule 1.01 of the *Code of Professional Conduct* [integrity (misled clients, misled Law Society, while suspended rendered accounts and caused letters to be sent out under another lawyer's name without knowledge or consent)] [x4]
- Breach of Rule 2.05(5) of the *Code of Professional Conduct* [failure to deliver proceeds of sale at clients' request]

Plea:

Guilty

Date of Hearing:

March 26, 2015

Panel:

- William S. Gange (Chair)
- Catherine Finnbogason
- Suzanne Hrynyk (Public Representative)

Counsel:

- Darcia Senft for The Law Society of Manitoba
- Saul Simmonds for the Member

Date of Decision:

March 26, 2015

Disposition:

- Permission to resign membership in the Society as contemplated by s. 72(1) of *The Legal Professions Act*
- Costs of \$15,000.00

Breach of Trust Account Rules/Breach of Undertaking/Breach of Trust Condition/Integrity

Facts

On February 28, 2012, the Society's Director of Audit wrote to Ms Overwater advising that her Annual Trust Account Report (Self Report) was overdue as of February 24, 2012 and that she could be automatically suspended. Ms Overwater was given a deadline of March 6, 2012 to file her Self Report. After receiving that letter, Ms Overwater contacted the Society and advised that her pooled trust account was short the sum of \$66,500.00 because she had written a trust cheque for that amount on December 23, 2011 to pay a debt owing by her law practice to a contractor. The Society obtained further information from Ms Overwater and reviewed Ms Overwater's records. It became apparent that Ms Overwater had become aware of the shortage of trust funds by at least early January, 2012, but none of the missing funds had been replaced into the trust account and the matter was not disclosed to the Society until February 29, 2012.

On March 13, 2012 at the request of the Society's Complaints Investigation Committee, Ms Overwater provided certain undertakings to the Society which were confirmed in writing and sent to her. She provided a signed copy of her undertaking on March 21, 2012 wherein, among other things, she undertook to: repay the \$66,500.00 shortage owing to her pooled client trust account by April 13, 2012, or such other date as agreed upon by the Society's Chief Executive Officer; not sign any general or trust cheques whatsoever until all aspects of the supervision of her practice were in place; and provide forthwith all documentation requested by the Society.

Ms Overwater did not repay the \$66,500.00 shortage owing to her pooled trust account by April 13, 2012 and prior to the supervision of her practice being in place, 27 trust cheques and 4 general cheques were issued on the Overwater Law Office accounts. Ms Overwater also failed to provide all documentation requested. On April 18, 2012, following a second appearance before the Complaints Investigation Committee Ms Overwater was charged with breaching the 2012 Undertaking. The Committee also imposed conditions of practice on Ms Overwater such that she was required to obtain from the financial institutions in question the documentation that she had previously undertaken to provide and to repay the trust account shortfall in full by May 2, 2012, or in the alternative to produce a repayment plan by May 2, 2012. Ms Overwater subsequently proposed a repayment plan to the Society. By letter dated May 1, 2012, the Society's wrote to Ms Overwater advising that the Society was prepared to accept her repayment plan subject to certain conditions, which were outlined. Ms Overwater did not make the \$16,500.00 repayment to trust which was due on May 9, 2012, pursuant to the repayment plan. On May 11, 2012, Ms Overwater indicated to the Society that trust cheques would be deposited to her general account to pay invoices that she had recently rendered totalling \$12,446.25. She further indicated that she would, in turn, transfer the funds from general to her pooled trust account to repay part of the trust account shortage. On or about May 14, 2012, Ms Overwater did repay the sum of \$12,446.25 into the pooled trust account. The remaining shortfall of \$49,053.75 was paid by Ms Overwater on February 26, 2013.

While acting for the vendor on the sale of real property, Ms Overwater failed to comply with trust conditions imposed by the solicitors for the purchasers. Specifically, Ms Overwater issued an account for fees and disbursements dated May 17, 2012 which she paid from trust funds received from the purchaser's counsel, prior to title issuing and in breach of the trust conditions that had been imposed upon her.

In another matter, Ms Overwater was retained to act with respect to the sale of real property. On April 20, 2013, \$41,858.10 was deposited to her pooled trust account to the credit of her clients. On April 25, 2012 the Land Titles Office registrations were completed and Ms Overwater received the Status of Title. Her clients advised that they would be leaving the country for a vacation on May 12, 2012 and telephoned Ms Overwater on several occasions, prior to their departure, to inquire whether their sale proceeds were available for pick up. Ms Overwater misled her clients about the status of their matter and the availability of the proceeds of sale when she advised that the sale was not completed and that the sale money could not be released to them. It was only after the Society made inquiries of her that Ms Overwater reported to her clients on the sale and deposited on May 17, 2012 the net sale funds that she was holding in trust to her clients' credit union account. Ms Overwater therefore failed to ensure that trust money was paid out to her clients expeditiously once their legal matter was concluded and failed to deliver proceeds of sale at her clients' request. Ms Overwater also misled the Society when she advised that the clients did not obtain title until after they were on holiday and that they had called and asked for the funds to be deposited directly. This information was not correct.

While acting for two other clients with respect to the purchase of real property, Ms Overwater withdrew money from her pooled trust account on April 20, 2012 to pay for her fees and disbursements without having provided a statement of account to her clients. Ms Overwater misled her clients as to the date on which she transferred funds from her pooled trust account to pay for her fees and disbursements. Rather than sending to them her statement of account dated April 17, 2012, she instead sent them an identical statement of account dated May 28, 2012

Ms Overwater withdrew money from her pooled trust account on six other client matters to pay for her fees and disbursements in full or in part without having provided a statement of account to those six clients.

Following a third appearance before the Complaints Investigation Committee on June 13, 2012, Ms Overwater was interim suspended from the practice of law pending disposition of the charges that had been authorized. Immediately following Ms Overwater's suspension, Ms Overwater was advised of the effect of the suspension and the limited activities that she would be able to undertake. This included a prohibition against practicing law or holding herself out in any way as a barrister or solicitor. Some time prior to May 31, 2013 Ms Overwater was advised by her associates that they were leaving Overwater Law Offices effective June 1, 2013. Without the knowledge of one of the associates, Ms Overwater issued or authorized her assistant to issue statements of account to four clients of one of the associates. The statements of account were sent under cover letters, one of which was signed by Ms Overwater without the associate's knowledge.

Plea

Ms Overwater entered a plea of guilty to the charges.

Decision and Comments

The Panel of the Discipline Committee found Ms Overwater guilty of the charges based on her admissions and made a finding that she was guilty of professional misconduct.

The Panel determined that there were a number of aggravating factors including the fact that Ms Overwater had misled clients and the Law Society, and that she undertook certain deliberate acts. As well, it was noted that although she had a support team, she did not lean on those people enough. However, the Panel also placed importance upon other factors such as Ms Overwater's remorse. It was clear that the experience had been a shameful and humiliating one. The Panel considered her guilty plea and her cooperation with the Society. As well, it appeared there was no premeditation to her actions and that her actions were not driven by greed. The

Panel determined that her inexperience appeared to be the most important factor that led to the tragic result.

Penalty

The Panel accepted the joint recommendation made by Counsel for the Society and Counsel for Ms Overwater in respect of an appropriate penalty. The Panel made an order that Ms Overwater:

- a) be granted permission to resign membership in the Society as contemplated by s. 72(1) of *The Legal Profession Act*; and
- b) pay \$15,000.00 to the Society as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.