



DISCIPLINE CASE *DIGEST*

Case 15-09

Member:	Junling Wang
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 16, 2005
Particulars of Charges:	Professional Misconduct (2 Counts): <ul style="list-style-type: none">▪ Breach of Rules 5-64(3) and (4) of the <i>Rules of the Law Society of Manitoba</i> [failure to respond to the Society]▪ Breach of Rule 5-79 of the <i>Rules of the Law Society of Manitoba</i> and Rule 7.2-11 of the <i>Code of Professional Conduct</i> [failure to comply with Undertaking to the Society]
Plea:	Guilty
Date of Hearing:	November 30, 2015
Panel:	<ul style="list-style-type: none">▪ John E. Neufeld, Q.C. (Chair)▪ Dr. Lorna Turnbull▪ Miriam Browne (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Sidney Green, Q.C. for the Member
Date of Decision:	December 27, 2015
Disposition:	<ul style="list-style-type: none">▪ Fine of \$5,500.00▪ Costs of \$2,000.00▪ Restriction requiring that for 2 years Ms Wang have a member, acceptable to the Society, undertake to receive copies of all written communications from the Society and confirm that Ms Wang has received and read each such communication.

Breach of Undertaking to the Society / Failure to Respond to the Society

Facts

Ms Wang acted for an owner on the potential sale of a condominium. She received deposit funds in trust on a certain condition. The sale did not close and the buyer, through his lawyer, demanded

return of the funds. Ms Wang did not immediately comply. The buyer considered that she was, therefore, in breach of the trust condition. On October 1, 2014 the buyer complained to the Society. Ms Wang did not respond to phone messages from the Society's Complaints Resolution Counsel seeking to explore an informal resolution of the complaint and on October 6, 2014 Ms Wang was sent a copy of the complaint together with a letter requiring her response to it within 14 days. Ms Wang did not respond and a further letter from Complaints Resolution Counsel was delivered to her on November 5, 2014 requiring a response to the complaint within 7 days. Ms Wang still did not respond. On December 30, 2014 the Chief Executive Officer directed that Ms Wang be charged with professional misconduct and directed, also, that she appear before the Complaints Investigation Committee on January 14, 2015 unless a response to the complaint was received before then. Ms Wang was given notice of the requirement to attend before the Complaints Investigation Committee by letters dated December 31, 2014, January 2, 2015 and January 8, 2015. Ms Wang did not respond before January 14, 2015, nor at the Complaints Investigation Committee meeting on that date. She requested and was granted an adjournment to the Committee's next meeting. At the Complaints Investigation Committee meeting of January 14, 2015 Ms Wang gave her undertaking to the Society including that she would on or before 4:30 p.m. on January 28, 2015 provide her response to the complaint including an explanation as to the location of the deposit funds, an explanation as to why the funds had not been returned and an explanation as to why she had failed to respond to certain communications from the lawyer for the purchaser. Ms Wang did not comply with these aspects of her undertaking. On February 19, 2015 Ms Wang's counsel responded as to the location of funds and advised that Ms Wang was then prepared to return them. She returned the deposit funds on February 26, 2015.

Plea

Ms Wang did not contest the facts and did not contest a finding of professional misconduct.

Decision and Comments

The Panel noted that the complaint of the buyer could very likely have been dealt with on an informal basis if Ms Wang had replied to Complaints Resolutions Counsel at the outset. They noted also that ultimately the Society did not proceed with charges relating to the underlying complaint and that Ms Wang had let the matter fester rather than providing the information that might have exculpated her or at least made it clear that the complaint was premature. Her failure to deal with the matter transformed a matter that likely could have been resolved without a mark on her discipline record into a more serious matter.

As to the failure to respond, the Panel commented that lawyers must realize that there are real consequences to failing to respond to reasonable and lawful inquiries from the Society. If members fail to cooperate in investigations as required, it interferes with the Society's discharge of its duties to govern the profession. The public thereby suffers harm, or the risk of harm.

As to the breach of undertaking, the Panel noted that both courts and discipline panels have recognized the vital importance of members complying with undertakings given in the course of an investigation. An undertaking by a lawyer is a matter of honour and duty. It is a sacred promise accepted because the lawyer is a member of an honourable profession.

The Panel considered that Ms Wang had recently been disciplined for two separate instances of failure to respond to the Society. They took into account that those matters had occurred after the present conduct. Though the Society was not seeking a suspension in this case, the Panel accepted that a suspension was within the range of appropriate dispositions. They considered that a serious fine was required having regard to the facts that the failure to respond continued over many months, that the costs of the Society had been run up enormously in consequence of Ms Wang's failures, that during the this period of time the public was at risk of losing confidence in the

ability of the profession to effectively govern its members, and the compounding factor of failure to comply with the undertaking. No mitigating factors were submitted and no adequate explanation was given for Ms Wang's failures to respond or breach of her undertaking. It must be brought home to the member and to the profession and the public that such conduct will not be tolerated.

Penalty

The Panel order Ms Wang to pay a fine of \$5,500.00 and costs of \$2,000.00. It ordered that a restriction previously placed on Ms Wang's practicing certificate by the Complaints Investigation Committee be continued for two years. The restriction requires that Ms Wang have a practising member, acceptable to the Society, undertake to accept copies of all written communications from the Society to Ms Wang and to confirm with Ms Wang that she has received and read each such communication.