



DISCIPLINE CASE *DIGEST*

Case 16-01

Member: Kelly Rhodel Dunn Ferriss

Jurisdiction: Swan River, Manitoba

Called to the Bar: June 17, 1999

Particulars of Charges: Professional Misconduct (1 Count):

- Breach of Rules 3.4-1 and 3.4-8 of the *Code* [failure to advise or withdraw when a contentious issue arose (conflict of interest)]

Plea: Guilty

Date of Hearing: August 19, 2016

Panel:

- Grant Mitchell, Q.C. (Chair)
- Vivian Rachlis
- Lorne Gibson (Public Representative)

Date of Decision: Oral Decision: August 19, 2016

Counsel:

- Rocky Kravetsky for The Law Society of Manitoba
- Gavin Wood for the Member

Disposition:

- Fine of \$1,500.00
- Costs of \$3,500.00

Conflict of Interest

Facts

Ms Ferriss had acted for both the seller and the buyers of the shares of an active business corporation. At the first intended closing date a problem arose between the parties because the value of the inventory to be adjusted on closing was greater than the purchasers had anticipated and greater than what they considered they were obligated to accept. They did not have financing available to close if the full inventory value was included. With the agreement of the parties Ms Ferriss mediated a settlement of that issue and the transaction closed at a later agreed date. Under that settlement, receivables were to be assigned by the business corporation to the seller, reducing the total amount the purchasers had to finance. After closing, a dispute arose between the parties as to the effect of the settlement and in particular as to what constituted assigned "receivables." After the dispute came to her attention Ms Ferriss continued to act for the seller in attempting to enforce his interpretation of the settlement agreement and for that purpose made

demands on certain debtors in which she stated that she acted for the both seller and the buyers. She did not withdraw until counsel became involved on behalf of one of the customers from whom both the corporation, now owned by the purchasers, and the seller were attempting to collect.

Plea

Ms Ferriss entered a guilty plea to the charge.

Decision and Comments

The Panel accepted the guilty plea and also accepted the joint recommendation of counsel for the Society and for Ms Ferriss as to disposition. In so doing, they noted that Ms Ferriss had previously accepted a formal caution in relation to a conflict of interest and that she acted in a conflict in this case soon after having completed a conflict of interest course. They took into account, however, that Ms Ferriss had taken significant constructive remedial steps prior to this hearing and that she was voluntarily pursuing further educational opportunities in the area of conflicts of interest.

Penalty

The Panel ordered that Ms Ferriss be fined \$1,500.00 and that she pay a contribution to the Society's costs of \$3,500.00.