



DISCIPLINE CASE *DIGEST*

Case 16-08

Member:	Allan Phillip Baker
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 29, 1978
Particulars of Charges:	Professional Misconduct (1 Count): <ul style="list-style-type: none">▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service]
Plea:	Guilty
Date of Hearing:	February 17, 2017
Panel:	<ul style="list-style-type: none">▪ Grant Mitchell, Q.C. (Chair)▪ Katherine Bueti▪ Kenneth Molloy (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Date of Decision:	Oral Decision: February 17, 2017
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Costs of \$3,000.00

Quality of Service

Facts

Mr. Baker acted for three sisters on the sale of residential property that they had inherited from their mother. He failed to complete one aspect of the matter and to comply with a trust condition for over 18 months after closing, throughout which time he failed to communicate with one of the clients.

One of the vendors lived in the United States, as a result of which there was a requirement of reporting to Canada Revenue Agency and for funds to be withheld and remitted to CRA in respect of a capital gain. In particular, a Request for Certificate of Compliance together with the required withholding amount is required to be submitted within 10 days of the date of the transaction. Upon assessing the Request and making a determination that it has received the correct withholding amount, CRA issues a Certificate of Compliance. Mr. Baker accepted a trust condition from the lawyer for the purchaser that he provide a Certificate of Compliance regarding any non-resident seller.

Mr. Baker was aware of the requirement to obtain a Certificate of Compliance and sent the proper documents to his non-resident client. He did not, however, then deal with the matter with the amount of dispatch required in the circumstances. The transaction closed on October 30, 2014. Mr. Baker received a partially completed Request form from his non-resident client on December 15, 2014. After the transfer of land was registered, he retained sufficient funds in trust to cover the anticipated withholding amount. He did not, however, consult an accountant to complete the necessary calculations until March 10, 2015. Mr. Baker received the calculation on April 8, 2015 but did not submit the Request to CRA until August 12, 2015. On September 22, 2015, Mr. Baker received communication from CRA advising that it appeared that the calculation was incorrect and requesting further information. Mr. Baker did not respond to CRA's request and on February 9, 2016 CRA issued a decision refusing to issue a Certificate of Compliance and assessing an additional withholding amount to be paid within 15 days. Though he retained sufficient funds in his trust account, Mr. Baker did not remit the additional amount within the time required and did not otherwise respond to the assessment. As a result, on November 20, 2015 CRA assessed a penalty and interest against the client. Throughout this time and through to the eventual conclusion of the matter, Mr. Baker did not communicate with his non-resident client as to the status of her matter and did not respond to many communications from her.

After the client complained to the Law Society in April 2016, the Insurance Department immediately advanced a payment to CRA to cover the assessment, interest and penalties. Mr. Baker subsequently reimbursed the interest and penalty and paid out to the client the funds that had been held back in trust. He then received confirmation that the trust condition imposed by the purchasers' lawyer had been fulfilled.

Plea

Mr. Baker entered a guilty plea to the charge of professional misconduct.

Decision and Comments

The Discipline Committee Panel noted that there were three elements to the misconduct: undue delay, failure to communicate with the client and noncompliance with a trust condition. They noted that Mr. Baker had acknowledged his misconduct. He was aware of the requirements regarding a Certificate of Compliance and he maintained a to-do list and had entered this matter on that list but simply failed to do the work. They noted, also, that he had reimbursed the interest and penalties. In accepting the joint recommendation of Mr. Baker and counsel for the Law Society, the Panel considered that a reprimand is a significant event in a member's practice history. They considered, also, that Mr. Baker believes that he has learned from this incident. Though he has a discipline record, it was so old as to probably be immaterial to this incident.

Penalty

The Discipline Committee Panel accepted the joint recommendation of the member and counsel for the Law Society and ordered that Mr. Baker be reprimanded and that he pay \$3,000.00 as a contribution to the costs of the investigation and prosecution of this matter.