



DISCIPLINE CASE *DIGEST*

Case 11-06

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| Member: | Barry Lee Gorlick, Q.C. |
| Jurisdiction: | Winnipeg, Manitoba |
| Called to the Bar: | June 26, 1980 |
| Particulars of Charges: | Professional Misconduct (1 Count): <ul style="list-style-type: none">▪ Breach of Chapters 2 of the <i>Code of Professional Conduct</i> [quality of service] |
| Plea: | Guilty |
| Date of Hearing: | November 25, 2011 |
| Panel: | <ul style="list-style-type: none">▪ Jon van der Krabben (Chair)▪ Mark Toews▪ Suzanne Hrynyk (Public Representative) |
| Counsel: | <ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Stephen Vincent for the member |
| Disposition: | <ul style="list-style-type: none">▪ Fine of \$1,500.00▪ Costs of \$3,000.00 |

Failure to Serve Client

Facts

Mr. Gorlick was retained by a client with respect to a franchise dispute and issued a Statement of Claim in November 2000 against the corporate franchisee and others associated with it. He actively pursued the matter through mid 2003 and scheduled Examinations for Discovery in May 2003. The examinations were cancelled when lawyers for one defendant withdrew, and the lawyers for the remaining defendants advised that neither pleadings nor an affidavit of documents would be delivered prior to the agreed date. From May 2003 to the summer of 2005 Mr. Gorlick took no steps to pursue the matter. When he contacted the lawyers for the main group of defendants they responded with a Statement of Defence and Counter Claim and an offer to settle the matter by an exchange of discontinuances without costs. Mr. Gorlick neither communicated with his client nor responded to the offer or to the Statement of Defence and Counter Claim. On November 9, 2005, without warning to Mr. Gorlick, the lawyers for the main defendants noted default against Mr. Gorlick's client on the Counter Claim. Mr. Gorlick was notified on November 15, 2005 that default had been noted, and the main defendants again offered to resolve the matter by an exchange of discontinuances. He neither communicated with his client nor responded to the offer. By letter dated January 17, 2006 the lawyers for the main defendants

sought answers from Mr. Gorlick to letters of September 22 and November 10, 2005. On January 26, 2006 Mr. Gorlick advised that his client intended to continue with its claim, and the lawyers for the main defendants again offered to resolve the matter by an exchange of discontinuances without costs. Mr. Gorlick met with the lawyers on March 27, 2006 to see if the matter could be resolved. From April 2006 until he was discharged in March 2009 Mr. Gorlick was instructed by his client to proceed with the discovery process, however, despite some efforts on his part, examinations did not take place. At no time did Mr. Gorlick advise his client that default had been noted, or take any steps to have the noting in default set aside. Mr. Gorlick failed to report to his client his communications in 2005 with the lawyers for the main defendants, despite requests from his client for information as to the status of the matter. He did not do so until April 2006 when he was contacted by the client's Alberta counsel. While Mr. Gorlick reported to his client in 2008 that he was making efforts to arrange examinations for discovery, he failed to report the defendant's position that no appointment for examination could be enforced because of the noting in default. Mr. Gorlick failed to provide copies of correspondence from the lawyers adverting to the noting in default and he failed to advise that the stated intention of the lawyers for the group of defendants was to move for judgment on the Counter Claim relying on the default. Mr. Gorlick's client did not learn of the noting of default and of the defendant's position on settlement until March 2009 when the client retained other counsel.

Plea

Mr. Gorlick entered a plea of guilty to one count of failing to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation, contrary to Chapter 2 of the *Code of Professional Conduct*.

Decision and Comments

The panel accepted Mr. Gorlick's admission and found Mr. Gorlick guilty of professional misconduct.

Penalty

The panel accepted the joint recommendation made by counsel for Mr. Gorlick and for the Law Society and ordered that Mr. Gorlick pay a fine of \$1,500.00, and that he pay \$3,000.00 to the Society as a contribution towards the costs of the investigation, prosecution and hearing of the matter. In accepting the joint recommendation the panel took into account that the conduct related to an isolated incident with respect to one particular client, Mr. Gorlick's lack of discipline history, his candour with the Law Society after the complaint was made and his good character, including his contributions to the public over the years.