



DISCIPLINE CASE *DIGEST*

Case 11-07

Member:	Avaline Janine Widmer Thrush
Jurisdiction:	Morden, Manitoba
Called to the Bar:	June 30, 1988
Particulars of Charges:	Professional Misconduct (1 Count): <ul style="list-style-type: none">▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> [Breach of Trust Condition]
Plea:	Guilty
Date of Hearing:	January 11, 2012
Panel:	<ul style="list-style-type: none">▪ John Neufeld, Q.C. (Chair)▪ William Haight▪ Miriam Browne (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Timothy Killeen for the member
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Practising certificate cancelled and reissued subject to condition that member register for and successfully complete at her own expense, the Society's Remedial Trust Conditions and Undertakings course within 6 months.▪ Costs of \$3,000.00

Breach of Trust Condition

Facts

Ms Widmer Thrush was retained by the wife in a domestic matter. The husband was represented by opposing counsel on the domestic matter. The husband and wife were joint owners of the marital home. During the course of the domestic proceedings, the marital home was placed for sale. An offer to purchase was made which was accepted with a possession date of November 27, 2009. Ms Widmer Thrush agreed to act for the wife and the husband with respect to the sale of the marital home.

According to Ms Widmer Thrush, the wife provided instructions pertaining to the order to pay. An order to pay was prepared which, in error, did not include these instructions and the order to pay was sent to opposing counsel.

Opposing counsel on the domestic matter provided Ms Widmer Thrush with documents executed by the husband in order to complete the sale (namely, the transfer of land, declaration as to possession and order to pay) and imposed on her certain trust conditions regarding the use of such documents including a condition that she forward the husband's one half share of the net sale proceeds to the opposing counsel's office along with any and all reporting letters and required documents.

Subsequently, Ms Widmer Thrush met with the wife who raised concerns that the order to pay was supposed to include payment of bills and joint debt from the sale proceeds. By letter dated November 19, 2009, Ms Widmer Thrush corresponded with opposing counsel and provided him with a revised order to pay which included a list of debts. In her letter, she advised that she could not accept the trust conditions imposed although she further indicated that she could accept the trust conditions if opposing counsel were to accept the revised order to pay.

On or about November 23, 2009, Ms Widmer Thrush forwarded the documents required to complete the sale to counsel for the purchaser in order to close the real estate transaction and the sale closed, as scheduled, on November 27, 2009.

By letter dated November 23, 2009, opposing counsel in the domestic matter advised Ms Widmer Thrush that he could not accept the proposed amended order to pay. Thereafter, Ms. Widmer Thrush exchanged further correspondence with opposing counsel in relation to the issues. Opposing counsel subsequently requested the husband's one half share of the net sale proceeds. Instead of forwarding the funds as requested to opposing counsel, Ms Widmer Thrush ultimately paid the funds into court.

Plea

Ms Widmer Thrush entered a plea of guilty plea to a breach of Chapter 16 of the *Code of Professional Conduct* in that she breached a trust condition that had been accepted.

Decision and Comments

Having regard to the guilty plea and the agreed facts that had been presented the panel found that the charge had been proven to its satisfaction and that the conduct in question constituted profession misconduct. The panel indicated that it hoped that Ms Widmer Thrush understood that trust conditions, once accepted, must be fulfilled and noted that this is important to both members of the profession and to the public.

Penalty

The panel accepted the joint submission with respect to penalty made by counsel for the Law Society and counsel for Ms Widmer Thrush because the proposed sanction would protect the public. Consequently, the panel ordered that she be reprimanded, that her practicing certificate be cancelled and reissued subject to the condition that she register for and successfully complete at her own expense, the Society's Remedial Trust Conditions and Undertakings course within 6 months of the hearing date and that she pay costs of \$3,000.00 towards the investigation and prosecution of the matter.