



DISCIPLINE CASE *DIGEST*

Case 11-09

Member:	Howard Lorne Tennenhouse
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1980
Particulars of Charges:	Professional Misconduct (7 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [breach of integrity, misappropriation and the unauthorized practice of law]▪ Breach of Chapter 9 of the <i>Code of Professional Conduct</i> [failure to treat tribunal with courtesy and respect]▪ Breach of Rule 2.02(7) of the <i>Code of Professional Conduct</i> [attempting to improperly influence client]▪ Breach of Rules 5.03(4) and 5.03(5) of the <i>Code of Professional Conduct</i> [harassment and discrimination against client]
Plea:	Guilty
Date of Hearing:	February 21, 2012
Panel:	<ul style="list-style-type: none">▪ Karen Clearwater (Chair)▪ Catherine Tolton▪ Marston Grindey (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravestsky for The Law Society of Manitoba▪ Robert Tapper, Q.C. for the Member
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$57,512.00

Breach of Integrity / Misappropriation / Unauthorized Practice of Law

Facts

Mr. Tennenhouse acted as counsel for a number of claimants under the Independent Assessment Process (IAP) established by the "Final Settlement Agreement" entered into in 2005 to deal with the Indian Residential Schools legacy. In each case Mr. Tennenhouse entered into a retainer agreement with the claimant providing for a fee of 30% of the amount awarded in compensation, which consisted of the 15% payable by the Government of Canada and an additional 15% to be paid by the client out of the compensation received. In 47 cases, Mr. Tennenhouse appropriated fees to himself in excess of the amount payable by Canada either after those excess fees had been disallowed by the adjudicator or while those excess fees were

going to be reviewed or to his knowledge were under review by the Adjudicator. In all 47 cases, he failed to repay the disallowed fees to his clients. In respect of seven matters, Mr. Tennenhouse advised the Adjudicator that he would accept the amount fixed by Guidelines issued by the Chief Adjudicator even after having already issued a statement of account to the client for a fee equal to the full 15% of the compensation awarded over and above the 15% paid by Canada. In each of these cases a Ruling subsequently issued for the Guideline amount but Mr. Tennenhouse did not repay the disallowed amount to his clients. In another matter, Mr. Tennenhouse advised the Adjudicator that he would not be charging any fee in excess of the amount payable by Canada, but in fact, he extracted from his client a further fee of \$27,607.50. In total, Mr. Tennenhouse appropriated to himself \$960,104.20.

In 26 matters, Mr. Tennenhouse obtained from the client an agreement to pay the portion of the fees that were subject to review by an Adjudicator without advising the client to seek independent legal advice as to the agreement to pay the additional 15% and none received such advice.

In each of three cases, Mr. Tennenhouse received notice from the Adjudicator of a Schedule 2 Fee Review and a request for information regarding his fees. In each of those cases Mr. Tennenhouse failed to respond to those requests. In two of the cases Mr. Tennenhouse received requests from the Adjudicator seeking information as to whether he had complied with the Schedule 2 fee ruling. Mr. Tennenhouse had not in fact complied with the Schedule 2 fee ruling and in each case he failed to respond to the request from the Adjudicator.

On May 31, 2011 Mr. Tennenhouse became ineligible to practice law. In or about November 2011, while still ineligible to practice Mr. Tennenhouse met with four separate IAP claimants, completed their application forms for compensation, submitted those application forms to the IAP Admissions Unit and advised the IAP Admissions Unit that he was representing those claimants.

On December 1, 2011 Mr. Tennenhouse appeared before the Complaints Investigation Committee of The Law Society of Manitoba "CIC." He told the CIC that he had not been meeting with IAP claimants when in fact he met with four claimants in November 2011 and had completed and submitted their Applications as set out above.

Pursuant to an Order of a Panel of the Discipline Committee pronounced in June 2010, Mr. Tennenhouse was required to practise under supervision for a period of one year. His supervisor was instructed by the Law Society not to approve payment out of the trust account to Mr. Tennenhouse of any amount in respect of fees charged to IAP claimant clients in excess of the amount paid by Canada until a Fee Ruling was received from the Adjudicator, and then only in accordance with that Fee Ruling. In respect of a matter in which an Adjudicator advised that she would be conducting a Schedule 2 Fee review, Mr. Tennenhouse advised the Adjudicator that he was waiving any fee beyond the 15% payable by Canada, notwithstanding an agreement from the client to pay 30% of the amount of compensation received. Mr. Tennenhouse received a cheque from Canada for the amount of the compensation plus the amount of his account for the fee equal to 15% of the compensation. He advised his supervisor that he was forgoing his claim for a further fee, the amount of which would otherwise have been held back pending a Schedule 2 Fee Ruling. He instructed the supervisor to issue a cheque to the claimant for the full amount of the compensation awarded to him, and a cheque to Mr. Tennenhouse for the amount that had been billed to and paid by Canada. The supervisor issued those cheques. Mr. Tennenhouse then met with the client and gave him a cheque for the full amount of the compensation, but advised him that he owed Mr. Tennenhouse \$27,607.50, that being the additional 15% of the compensation. Mr. Tennenhouse then accompanied the client to his bank and directed the client to purchase a bank draft in the amount of \$27,607.50 and to provide that draft to Mr. Tennenhouse. He directed that the bank draft be payable to the Royal Bank of Canada rather than to Mr. Tennenhouse and the bank draft was then deposited into an account at the bank in the name of Mr. Tennenhouse's wife.

In that matter, Mr. Tennenhouse repeatedly communicated with the client by phone in an attempt to persuade him not to pursue his complaint.

Plea

Mr. Tennenhouse entered a plea of guilty to seven counts of Professional Misconduct.

Decision and Comments

Based on his admission to the charges the Panel found Mr. Tennenhouse guilty of Professional Misconduct.

Penalty

The Panel accepted the joint recommendation made by counsel for the Law Society and Counsel for Mr. Tennenhouse and ordered that:

- (a) Mr. Tennenhouse be disbarred; and
- (b) Mr. Tennenhouse pay costs to the Society in the amount of \$57,512.00 associated with the investigation, prosecution and hearing of this matter.