



DISCIPLINE CASE *DIGEST*

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Case 02-03 (AMENDED)

JOHN LORING PATRICK SINCLAIR
Winnipeg, Manitoba

Called to the Bar
June 7, 1965

Particulars of Charges
Professional Misconduct

- failure to serve client in a conscientious, diligent and efficient manner.

Date of Hearing
June 4 and July 25, 2001, March 12, 2002

Panel
D. G. Ward, Q.C., (Chair)
D. R. Knight, Q.C.
H. L. Sector

Disposition

- Fine of \$4,000.00
- Costs of \$4,000.00

Counsel
J. R. Gallagher for The Law Society of Manitoba
G. M. Wood for the Member

Failure to Serve Client

Facts

In August 1996 a client retained the member to act on her behalf with respect to divorce proceedings and the sale of the marital home. By the time the home was sold in August 1997, the husband had been residing in the residence for several years and had incurred arrears in the property taxes. The client advised Mr. Sinclair that she was not willing to share in the payment of the property tax arrears from her portion of the net sale proceeds and also that she was not willing to provide any payment towards an invoice in the amount of \$529.65 for repairs to the well on the property.

Mr. Sinclair received closing documents including an Order to Pay on the sale transaction from the husband's counsel. Among other things, the Order to Pay provided for payment of the well invoice and payment of all outstanding property taxes. Mr. Sinclair had his client sign a revised form of the Order to Pay which deleted that his client would contribute to payment of the invoice for the well repairs. After the revised Order to Pay was signed by his client, Mr. Sinclair forwarded same to the husband's counsel. In his covering letter, Mr. Sinclair imposed trust conditions which included that the husband's lawyer would pay from the sale proceeds only those items stated in the Order to Pay and that he would hold the balance of the sale proceeds in trust until the parties had agreed upon the final disbursement of the funds. The sale closed without any changes to the trust conditions imposed by Mr. Sinclair.

A short time later, the client wrote to Mr. Sinclair indicating *inter alia* that she was concerned that the unpaid property taxes would not affect her share of the sale proceeds. Thereafter, the husband's lawyer forwarded a statement of monies received and disbursed to Mr. Sinclair. The statement indicated that from the sale proceeds the outstanding property taxes and the well invoice had been paid and set forth the net sale proceeds available for disbursement. The husband's lawyer requested that Mr. Sinclair confirm that the net sale proceeds were to be divided into three equal shares. Mr. Sinclair wrote back the same day confirming that the balance of the funds were to be divided three ways as set out by the husband's counsel. Mr. Sinclair's client understood that the tax arrears would have to be paid out of the sale proceeds but had instructed that she would not share in payment of the tax arrears from her portion of the net sale proceeds.

In view of Mr. Sinclair's correspondence to the husband's lawyer, the net sale proceeds were distributed by way of three equal shares. In February 1998, after receiving the final reporting letter from Mr. Sinclair, the client raised concerns that her instructions as to the property taxes had not been followed.

Decision and Comments

The Committee found that the client had never given instructions to Mr. Sinclair to agree that she would pay 1/3 of the property taxes. Further, the Committee found that this was an issue that the client indicated would have to be resolved after the sale of the marital home concluded and that she had continuously and repeatedly brought this to the attention of Mr. Sinclair. There was no evidence in the form of letters to or from the client or any memorandum to file from Mr. Sinclair confirming that she had changed her instructions.

Penalty

The Committee imposed the following penalty:

- Fine of \$4,000.00; and
- Costs of \$4,000.00.

The fine and costs totalling \$8,000.00 were ordered to be paid at the rate of \$200.00 per month commencing the month following the expiration of the appeal period.

The member filed an appeal to the Manitoba Court of Appeal from the Committee's decision with respect to sentence. The appeal was dismissed on December 11, 2002 with costs.

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