



DISCIPLINE CASE *DIGEST*

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Case 04-01

JAMES MICHAEL DAVID BOMEK

Flin Flon, Manitoba

Called to the Bar

June 26, 1986

Particulars of Charges

Professional Misconduct (26 counts)

- failure to obtain a certificate of independent legal advice (x7)
- borrowing funds from client and not disclosing transaction on Annual Trust Account Report (Form D) (x7)
- failure to discharge duties with integrity (x2)
- breach of provisions of the Code of Professional Conduct when entering into a business transaction with client (x3)
- failure to comply with trust condition
- failure to serve client in a conscientious, diligent and efficient manner (x2)
- appropriation of trust funds on account of fees without authority of client
- misappropriation
- failure to be honest and candid with client
- failure to be honest and candid with insurer

Date of Hearing

March 23, 2004

Panel

D.G. Douglas (Chair)

R.C.M. Krause

J.E. Neufeld, Q.C.

Disposition

- Disbarment

Counsel

C.K. Dangerfield for The Law Society of Manitoba

Failing to Act With Integrity / Misappropriation

Facts

With respect to three clients, Mr. Bomek obtained loans on seven occasions. In each instance, he failed to obtain a certificate verifying that the client had received independent legal advice and he failed to disclose the loans on the borrowing declaration attached to the Annual Trust Account Report (Form D) for the relevant period.

On one occasion, Mr. Bomek provided his client with a bill of sale evidencing the transfer to the client of a boat and trailer. The bill of sale contained a false declaration, in that he swore there was no mortgage or claim against the boat and motor. In fact, he had previously mortgaged the boat and motor to the bank.

In another matter, Mr. Bomek entered into a business transaction with his client whereby they jointly purchased real property in the City of Calgary. Mr. Bomek was to provide the down payment and handle the legal aspects of the transaction. The client was to supply all of the materials and renovate the property, after which it was to be sold. Mr. Bomek provided part of the down payment as a result of which the client obtained early possession of the exterior of the house and yard. Thereafter, the client contributed labour and incurred expenses over a six week period. Mr. Bomek failed to provide the balance of his down payment and the client was required to make alternate arrangements in order to protect his own investment. Mr. Bomek failed to disclose the terms of the transaction in writing, failed to advise his client to obtain independent legal advice and failed to obtain the consent of the client in writing to the transaction.

In respect of another client, Mr. Bomek entered into a transaction whereby he purchased property in the City of Flin Flon. His client obtained funds through two lines of credit in order to finance the purchase and to meet other financial obligations. A mortgage was registered against the property and Mr. Bomek undertook to make the payments. He defaulted in his payment, as a result of which two Statements of Claim were issued by the bank against his client. In respect of the transactions relating to the purchase of the property and the mortgage, Mr. Bomek failed to disclose the terms of the transaction in writing, failed to advise his client to obtain independent legal advice and failed to obtain the consent of the client in writing to the transaction.

In respect of the same matter, Mr. Bomek was provided by his client with the two Statements of Claim to which he was asked to respond. He failed to do so, as a result of which Default Judgment was entered against the client.

In another matter, Mr. Bomek entered into a transaction with an elderly client whereby he invested funds obtained from her in a guaranteed investment certificate that he held with her jointly. He agreed to pay her a fixed monthly sum during the term of the investment. When the term expired, Mr. Bomek received the interest generated by the investment and applied it to two personal loans and also made a small payment to his client. The principal sum was reinvested in a second guaranteed investment certificate and he again agreed to pay his client a fixed monthly sum. In 2001, Mr. Bomek collapsed the investment certificate and applied the funds in part to a personal loan and the balance to his credit in a bank. In respect of these transactions, Mr. Bomek failed to disclose the terms of the transactions in writing, failed to advise his client to obtain independent legal advice and failed to obtain the consent of the client in writing to the transactions. After these transactions were completed, Mr. Bomek received a personal net benefit of \$18,291.46. He was charged with misappropriation.

In respect of another client, Mr. Bomek failed to serve the client's interests when he agreed to settle a claim for the return of insurance premiums without first obtaining instructions from his client to do so. In respect of the same matter, Mr. Bomek received settlement funds under the trust condition that he would not disburse them until a Release was executed by his client and a Notice of Discontinuance provided to the defendant's counsel. Contrary to the trust condition, Mr. Bomek transferred from the settlement funds an amount to satisfy his fee for services and disbursements. He did so without having provided either the release or the notice of discontinuance. In respect of the same matter, Mr. Bomek failed to obtain authority from his client prior to transferring the said sums on account of his fees and disbursements.

In another matter for the same client, Mr. Bomek failed to file a Statement of Defence on his client's behalf, as a result of which Default Judgment was entered against the client. When the Default Judgment was subsequently set aside, Mr. Bomek failed to advise his client that he had not filed a Statement of Defence to the Counterclaim, Default Judgement had been noted against him and that the client had been ordered to pay \$750.00 costs as a result thereof. In the same matter, Mr. Bomek failed to give prompt or any notice to his insurer of a potential claim against him arising out of his failure to file the Statement of Defence.

Plea

The Law Society withdrew two counts of professional misconduct. The member entered a plea of guilty to all of the remaining charges by way of a Statement of Agreed Facts.

Decision and Comments

The Committee found the member guilty of professional misconduct based on his admission to the charges.

As part of the Statement of Agreed Facts, Mr. Bomek made a joint proposal with the Law Society that he be disbarred and his name struck off the Rolls of the Law Society as a

barrister and solicitor.

Penalty

The Panel accepted the joint recommendation and resolved that Mr. Bomek be disbarred and his name struck off the Rolls of the Law Society as a barrister and solicitor.

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