



DISCIPLINE CASE *DIGEST*

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Case 04-04

PAUL VICTOR WALSH, Q.C.
Winnipeg, Manitoba

Called to the Bar
June 26, 1968

Particulars of Charges
Professional Misconduct (5 counts)

- conflict of interest and failing to refer client for independent legal advice
- entering into a business transaction with client and acting in a conflict
- stipulating a fee that is not fully disclosed, fair and reasonable
- failing to discharge duties with integrity (x2)

Date of Hearing
March 3, April 8 and August 6, 2004

Panel
D.J. Miller, Q.C. (Chair)
P.L. Fraser
D.E. Finkbeiner, Q.C.

Finding

- Guilty of Charges 1 and 5
- Acquitted of Charges 2, 3 and 4

Disposition

- Fine of \$6,000.00
- Costs of \$12,000.00

Counsel
D. Senft for The Law Society of Manitoba
D. Margolis, Q.C. for the Member

Conflict of Interest / Failing to Act With Integrity

Facts

Mr. Walsh represented his client on the sale of his house. The purchaser's lawyer had imposed a trust condition that he hold back the sum of \$10,000.00 pending the completion by the vendor of outstanding work to the property. In breach of that trust condition, Mr. Walsh inadvertently disbursed all of the sale proceeds either directly to his client or in payment of his obligations. When the purchaser's lawyer subsequently made a demand for the monies that were to have been held back, Mr. Walsh requested that his client return the sum of \$10,000.00. The client advised that he no longer had the money to pay this amount. Mr. Walsh then deposited the sum of \$10,000.00 from his general account into his pooled trust account and thereafter paid those funds to the purchaser's lawyer.

As security for the debt owing to Mr. Walsh, the client signed a Transfer of Land in favour of Mr. Walsh in relation to another property owned by him. Mr. Walsh was aware that the value of the equity in this property greatly exceeded the amount owing to him. Mr. Walsh did not advise the client in writing to obtain independent legal advice prior to the execution of the Transfer of Land nor did he obtain his client's consent in writing prior to the execution of the Transfer of Land.

Mr. Walsh wrote two letters to the client following the signing of the Transfer of Land. In the first letter, Mr. Walsh stated that the Transfer of Land would be used as security. He said it would remain unused until the end of the year at which time he would act on his security, if necessary. Mr. Walsh further advised that if he received the amount owed to him by the end of the month, that would end the matter. Otherwise, he noted that the client had agreed to pay a fee of \$2,000.00 for services rendered relating to the advance of the funds. A second letter written weeks later stipulated that if Mr. Walsh did not receive the full amount owing by the end of the month, he would file the Transfer of Land at the beginning of the following month.

Plea

The member entered a plea of not guilty to each of the charges and a hearing was conducted.

Decision and Comments

The Panel found Mr. Walsh guilty of professional misconduct in that he knowingly acquired from his client an ownership, security or other pecuniary interest and did not at any time advise his client to seek independent legal advice pertaining to the execution of the Transfer of Land. The Panel found that there was no written consent to the transaction

before the client signed the Transfer of Land and that the transaction was not fair and reasonable given the disparity between the value of the land and the amount of the debt.

With respect to the allegation that by having the client execute a Transfer of Land in the circumstances the member had breached the provisions of Chapter 6(b) and (c) of the Code of Professional Conduct, the Panel concluded that the member had not entered into a "business transaction" with his client within the meaning of Chapter 6 of the Code of Professional Conduct and that the complaint was not proved. The Society further alleged that the \$2,000.00 fee contravened Chapter 11 of the Code of Professional Conduct because it was not fully disclosed, fair and reasonable. Alternatively, the Society alleged that Mr. Walsh had charged his client a sum that amounted to a usurious rate of interest on funds advanced on his behalf, in breach of his duty to act with integrity. The Panel dismissed those charges.

The Society also charged Mr. Walsh with failing to discharge his duties with integrity, by obtaining the Transfer of Land and threatening in correspondence to act upon it in order to recover the amount owed to him by his client. The Panel concluded that this complaint had been proven, and found these actions by Mr. Walsh to be particularly egregious in light of the fact that his client continued to regard him as his lawyer and, therefore, a person who would protect his interests.

Penalty

The Panel decided that Mr. Walsh be ordered to pay a fine in an amount which would reflect the seriousness with which the Panel viewed the conduct as well as his discipline history. It ordered a fine in the amount of \$6,000.00 and costs in the amount of \$12,000.00.

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