



DISCIPLINE CASE *DIGEST*

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Case 05-04

PETER JOEL MOSS
Winnipeg, Manitoba

Called to the Bar
June 24, 1975

Particulars of Charges
Professional Misconduct (2 counts)

- Breach of Chapter 6 of the Code of Professional Conduct (acquiring from a client an ownership, security or other pecuniary interest and entering into a business transaction with a client without advising the client to obtain independent legal advice)

Date of Hearing
October 12, 2005

Panel
Alan Sweatman, Q.C. (Chair)
Celia E. Gorlick, Q.C.
Dr. Jane Ursel

Disposition

- Reprimand
- Costs of \$5,000.00

Counsel
Darcia A.C. Senft for the Law Society of Manitoba
Frederick E. Bortoluzzi for the Member

Conflict of Interest

Facts

Mr. Moss was retained by his client to represent her in a domestic matter. Mr. Moss arranged for his client to execute a Retainer Agreement wherein she charged to his law office her interest in residential property she owned as security for her undertaking to pay Mr. Moss's Statements of Account. Prior to having his client execute the Retainer Agreement, Mr. Moss failed to advise his client in writing to obtain independent legal advice. Shortly after the retainer agreement was executed, Mr. Moss filed a caveat against the residential property, evidencing his interest therein. The domestic retainer was eventually completed and the caveat was ultimately discharged.

As a result of the foregoing, Mr. Moss was charged with breaching Chapter 6 of the Code of Professional Conduct in that he acquired from his client an ownership, security or other pecuniary interest without advising his client, in writing, to obtain independent legal advice.

During the course of Mr. Moss's retainer on the domestic matter, he and his client entered into a business transaction whereby they agreed to:

- a. purchase residential property;
- b. carry out renovations to the property; and
- c. sell the property and share any profits arising from the sale thereof.

It was further agreed that:

- a. the client would carry out the said renovations;
- b. Mr. Moss would provide the legal services relating to the transaction;
- c. Mr. Moss and the client each would be reimbursed for out-of-pocket expenses and monetary contributions related to the transaction; and
- d. The client's share of any profits arising from the sale of the property or a portion thereof would be used to offset outstanding legal accounts that might be owing to Mr. Moss with respect to the domestic retainer.

In furtherance of the transaction, the client purchased some property and Mr. Moss provided the legal services. The client provided a deposit towards the purchase price and it was agreed that Mr. Moss would arrange the financing. Notwithstanding the deposit made by the client, Mr. Moss prepared a Mortgage for the full purchase price. The Mortgage set out that the Mortgagee was a numbered company, of which Mr. Moss was an Officer and Director. Mr. Moss was listed as the Mortgagor. The Mortgage was executed by the client who was listed as the Covenantor. The Mortgage did not set out an interest rate to be charged on the money advanced pursuant to the Mortgage. At the time the Mortgage was executed, Mr. Moss also had his client execute a Guarantee whereby his client was listed as his Guarantor in relation to debts he might owe to the numbered company. Mr. Moss was listed as the Transferee in the Transfer of Land and title to the property ultimately vested in his name.

Subsequently, an Offer to Purchase the property was made. Mr. Moss and his client signed a Counter-Offer that was ultimately accepted. Mr. Moss acted as the solicitor on the sale. He prepared an accounting with respect to the proceeds of sale for the purpose of determining the profits; however, the client took issue with the accounting. Ultimately, the client and Mr. Moss entered into a settlement with respect to the distribution and accounting of the proceeds of sale and the determination of profits.

Mr. Moss was charged with breaching Chapter 6(a) of the Code of Professional Conduct in that he failed to disclose the terms of the transaction, in writing, to his client, to obtain the written consent of his client to the transaction, and to advise his client, in writing, to obtain independent legal advice about the transaction.

Plea

Mr. Moss entered a plea of guilty to both charges.

Decisions and Comments

The panel found Mr. Moss guilty of professional misconduct based on his admission to the charges.

Penalty

The panel accepted a joint recommendation made by the Society and counsel for Mr. Moss and ordered that Mr. Moss be reprimanded for his conduct in this matter and that he pay costs to the Society in the amount of \$5,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.

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