



DISCIPLINE CASE *DIGEST*

Case 09-04

Member:	Paul Sydney Shawa
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 29, 1989
Particulars of Charges:	Professional Misconduct (4 counts) <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [failing to act with integrity by taking steps that could be construed as an attempt to defraud Employment and Income Assistance]▪ Breach of Rule 5-43(1)(j) of the <i>Rules of The Law Society of Manitoba</i> [retaining money, other than trust money, in pooled trust bank account] (x2)▪ Breach of Chapters 1 and 3, Commentary 7, of the <i>Code of Professional Conduct</i> [failing to act with integrity and failing to be honest and candid when advising clients by using pooled trust bank account in such a way that actions could be construed as an attempt to assist client in defrauding, defeating or preferring creditors]
Date of Hearing:	September 4, 2008
Panel:	<ul style="list-style-type: none">▪ Gordon J. Hoeschen (Chair)▪ Vivian E. Rachlis▪ Ellen P. Leibl, Q.C.
Disposition:	<ul style="list-style-type: none">▪ 6 mo. suspension (commencing November 1, 2008)▪ Fine of \$5,000.00▪ Costs of \$5,000.00
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Member Unrepresented

Breach of Integrity / Breach of Accounting Rules

Facts

Mr. Shawa was retained by a client who was a resident of the U.S. with respect to her purchase of real property in Winnipeg. He was also retained by the client to prepare a specific Power of Attorney which appointed the client's daughter to do all things necessary in and about the purchase and management of the real property. The daughter became a tenant of the real

property and at all relevant times was receiving social assistance benefits from Employment and Income Assistance. Mr. Shawa was aware that if the daughter were to receive any rental payments from the real property, such payments could be construed as income and thereby affect her entitlement to social assistance benefits. Mr. Shawa held himself out to third parties, either as his client's agent or as manager or landlord of the real property and he arranged for rental payments from tenants to be paid to him, some of which were deposited into his pooled trust account. From the rental payments, Mr. Shawa paid monies to the daughter. Mr. Shawa knew or ought to have known, or acted with recklessness or was wilfully blind to the fact that by arranging for the rental payments to be paid to him and by facilitating the transfer of funds to the daughter through him, his actions could be construed as an attempt to defraud Employment and Income Assistance.

With respect to the same client matter, for a period of approximately 16 months, Mr. Shawa retained money other than trust money on behalf of his former client or the daughter of the client in his pooled trust bank account.

Mr. Shawa was retained by another client in respect of various matters including debtor and creditor matters. In the course of his retainer, he received information that creditors were making claims against his client for a total amount in excess of \$200,000.00. During a period of approximately 6 weeks, he deposited cheques into his pooled trust bank account that were payable to either his client or to one of the client's businesses in excess of \$33,000.00, each of which was endorsed by his client to Mr. Shawa or his office. During a period of approximately 3 months, Mr. Shawa disbursed funds totalling in excess of \$36,000.00 out of his pooled trust bank account to third parties, including his client's spouse, on the client's behalf, and at the direction of his client. Mr. Shawa knew or ought to have known, or acted with recklessness or was wilfully blind to the fact that his client was in financial difficulty and that Mr. Shawa's deposit of funds into and disbursement of funds from his pooled trust bank account could be construed as an attempt to assist his client in defrauding, defeating or preferring creditors.

With respect to the same client matter, for a period of approximately 5 months, Mr. Shawa retained money other than trust money on behalf of his client in his pooled trust bank account.

Plea

Mr. Shawa entered a plea of guilty to the charges.

Decision and Comments

The Panel determined that the conduct of Mr. Shawa as alleged and as admitted by him constituted professional misconduct and he was found guilty on all 4 charges.

In reaching its decision and in determining the disposition, the Panel considered the Statement of Agreed Facts, Mr. Shawa's circumstances, the fact that he is a sole practitioner, his compassion and desire to help his clients, the modest fees charged for such services and his plans for his future after any suspension has been served. The Panel noted that 2 of the charges went directly to the fundamental principle set out in Chapter 1 of the *Code of Professional Conduct* which requires that a lawyer must discharge with integrity all duties owed to clients, the court, other members of the profession and the public. In both of the instances outlined, the Panel found that Mr. Shawa exhibited a lack of integrity that reflected adversely upon him, the integrity of the legal profession and the administration of justice as a whole. With respect to the 2 charges that amounted to a breach of the trust accounting rules, the Panel noted that in one case, the rent monies were received by Mr. Shawa in his capacity as a property manager, that the monies were not trust monies, and therefore, should have been dealt with in a manner other than as a deposit into his pooled trust bank account. As well, they noted that in the other matter, Mr. Shawa deposited into his pooled trust bank account a client's third party cheques in an amount far exceeding any fees for services reasonably expected to be rendered.

The Panel accepted Mr. Shawa's submission that he did not act with any deliberate intent to deceive or defraud anyone. They accepted that his actions were motivated by his desire to help people who were less fortunate; refugees and immigrants who, in many instances, are illiterate and unable to access assistance in the community. However, the Panel pointed out that at all times, Mr. Shawa remained governed by his professional responsibilities. At one point Mr. Shawa admitted that he started to question his role in the events. The Panel said that Mr. Shawa should have acted immediately to extricate himself from the situation and seek advice when he started to question his role. The Panel was satisfied that Mr. Shawa understood the need to have a support system in place, should he return to practice in the future.

Penalty

The Panel determined to accept and agree with the joint submission proposed by the parties and ordered that Mr. Shawa be suspended from practicing law for a period of 6 months, commencing on November 1, 2008, that he pay a fine to the Society in the amount of \$5,000.00 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 matters.