



# DISCIPLINE CASE *DIGEST*

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Case 10-04

<b>Member:</b>	Howard Lorne Tennenhouse
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 26, 1980
<b>Particulars of Charges:</b>	Professional Misconduct (8 counts) <ul style="list-style-type: none"><li>▪ Failure to deposit funds received from clients into a pooled trust account contrary to Law Society Rule 5-43(1)(a) [X6]</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (breach of duty of integrity in accounting for fees to law firm)</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (failure to respond to the Law Society as required by Law Society Rules 5-61(b) and 5-64(2))</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	June 7, 2010
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Brian A. Pauls (Chair)</li><li>▪ Jennifer A. Cooper, Q.C.</li><li>▪ Linda Brazier-Lamoureux</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Paul L. Jensen for The Law Society of Manitoba</li><li>▪ David G. Hill for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Suspension for a period commencing June 23, 2010 and ending August 31, 2010 (70 days)</li><li>▪ Upon resumption the member will practise for 1 year under supervision with conditions</li><li>▪ Costs of \$8,000.00</li></ul>

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## Breach of Accounting Rules / Breach of Integrity

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### Facts

A client retained Mr. Tennenhouse to act on a domestic matter. Mr. Tennenhouse received \$400.00 in cash on May 23, 2007 from his client which he retained. He did not deposit the cash into a pooled trust account and he did not render a statement of account. A review of the Form D for Mr. Tennenhouse's former firm showed that Mr. Tennenhouse had not accounted for the \$400.00 retainer which had been received in cash from his client.

Between February 27, 2007 and December 5, 2007, while acting for a client, Mr. Tennenhouse received cash from his client in the amount of \$10,000.00 as a retainer for legal services that had

been performed and that were to be performed. He failed to deposit the cash into a pooled trust account and he did not render a statement of account.

In November, 2007, Mr. Tennenhouse received cash from a client in the amount of \$2,000.00 as a retainer for legal services that had been performed, and he failed to deposit the money into a pooled trust account and he did not render a statement of account.

Between February 27, 2007 and October 31, 2008, Mr. Tennenhouse received cash from a client in the amount of \$3,000.00 as a retainer for legal services that were performed and that were to be performed. He failed to deposit the cash into a pooled trust account and he did not render a statement of account.

On January 18, 2008, Mr. Tennenhouse received cash from a client in the amount of \$2,000.00 as a retainer for legal services that were to be performed. He failed to deposit the cash into a pooled trust account and he did not render a statement of account.

In February, 2008, Mr. Tennenhouse received cash from a client in the amount of \$2,500.00 as a retainer for legal services that had been performed and that were to be performed. He failed to deposit the money into a pooled trust account and he did not render a statement of account.

Prior to June 29, 2007, Mr. Tennenhouse was associated with a law firm in Winnipeg. He was remunerated on a percentage of his billings collected. Prior to his departure from his former firm, Mr. Tennenhouse did not advise or record with the law firm the \$400.00 retainer he received in cash from a client on May 23, 2007.

With respect to a second client that Mr. Tennenhouse represented while at his former firm, at the time of his departure from the firm there was unbilled time and fees recorded in the amount of \$1,890.00. Mr. Tennenhouse wrote off most of that unbilled time and fees and rendered an account on behalf of his former firm on June 29, 2007 for fees of only \$600.00. After leaving the law firm on June 29, 2007 and starting his own firm, Mr. Tennenhouse prepared an account for the same client dated July 20, 2007 from his new office for fees of \$1,000.00. No legal services were provided to the client by Mr. Tennenhouse between June 30, 2007 and July 20, 2007. On October 25, 2007, Mr. Tennenhouse wrote off this account, and he shortly thereafter received \$2,000.00 in cash from that client. He did not deposit the cash into his trust account, nor did he render an account. He did not forward any of the cash received to his former firm to account for fees earned while he was at that firm.

On July 25, 2008, the Law Society wrote to Mr. Tennenhouse inquiring about the \$400.00 cash received from the client in May, 2007. On July 28, 2008, Mr. Tennenhouse replied to the Society in a letter that, "*The cash was returned to my client.*" The answer provided to the Law Society by Mr. Tennenhouse was false and misleading.

## **Plea**

Mr. Tennenhouse entered a plea of guilty to 8 counts of Professional Misconduct.

## **Decision and Comments**

The panel found Mr. Tennenhouse guilty of the charges in the citation based on his admissions of guilt. The panel considered a number of sentencing factors including specific deterrence, rehabilitation prospects and acceptance of responsibility, but noted that general deterrence was the primary factor for consideration, in that the primary purpose of the disciplinary arm of the governing body is to protect the public.

## **Penalty**

The panel accepted the joint recommendation made by counsel for the Law Society and Mr. Tennenhouse and ordered that:

1. Mr. Tennenhouse be suspended for a period commencing June 23, 2010 and ending on August 31, 2010, being a total of 70 days;

2. The Practising Certificate of Mr. Tennenhouse be cancelled and that a new certificate be issued subject to the following conditions:
  - (i) that Mr. Tennenhouse practice under supervision by a member approved by the Society for a period of one year;
  - (ii) the supervision of Mr. Tennenhouse would be subject to the conditions that:
    - the supervisor act as a co-signatory on all trust accounts of Mr. Tennenhouse;
    - prior to executing any trust cheques on behalf of Mr. Tennenhouse relating to his client matters, the supervisor will review the file in question as well as the client trust ledger sheet and any other records that may reasonably be required in order to ensure that monies are properly due and payable;
    - the supervisor will review all statements of account prepared by Mr. Tennenhouse as well as the file in question, the client trust ledger sheet and any other records that may reasonably be required in order to ensure that the fees are properly due and payable to Mr. Tennenhouse;
    - reports from the supervisor be submitted to the Law Society at six month intervals and that those reports include confirmation that there have been no problems with the handling of firm or client funds by Mr. Tennenhouse; and
    - Mr. Tennenhouse notify his clients that a supervisor is supervising his trust accounts and his statements of account, that he practices outside of his firm and that he will have access to the client's file;
  - (iii) that all conditions remain in effect for a period of one year, unless Mr. Tennenhouse should cease to be a sole practitioner, in which case, he may apply to the Society to have the conditions varied or removed;
3. Mr. Tennenhouse shall pay costs to the Society in the amount of \$8,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter;
4. With respect to payment of the costs:
  - (i) the payment of the costs is to be paid on a monthly basis, in the amount of \$333.33 per month, commencing October 1, 2010 and monthly thereafter until the costs are paid in their entirety; and
  - (ii) in the event of a default in any one payment, or if a cheque is dishonoured when tendered, and the default is not rectified or the cheque replaced with cash or money order, the entire amount outstanding will become due and payable within thirty (30) days of the date when the default in payment occurred.