



DISCIPLINE CASE *DIGEST*

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Case 00-03

PAUL SYDNEY SHAWA
Winnipeg, Manitoba

Called to the Bar
June 29, 1989

Particulars of Charges
Professional Misconduct (9 counts)

- misappropriation (x3);
- attempt to mislead the Law Society;
- failure to serve client in a conscientious, diligent and efficient manner;
- failure to show courtesy and fairness to a fellow lawyer
- breach of the Rules Respecting Accounts;
- failure to invest client funds in specific trust investment account;
- failure to refer client for independent legal advice

Date of Hearing
September 11, 2000

Panel
H.S. Leonoff, Q.C. (Chair)
D.F. Plett, Q.C.
R.H.G. Adams

Disposition

- One year suspension;
- Costs of \$10,000.00;
- If member applies to resume practice following the suspension, member to practice under supervision for a period of two years, or as an employee of a corporation as in-house counsel
- If under supervision or employed with a corporation:
 - i. the supervisor to meet monthly to review all new and open files;

- ii. reports from the supervisor or the corporation at six month intervals confirming there have been no problems with the member's handling of firm funds, client funds, or corporate funds;
 - iii. at six month intervals, the member to provide all of his clients with a written statement of the balance of the client's trust funds; and
 - iv. no signing authority on any trust account for two years
- Member to comply with any conditions imposed by the Admissions and Education Committee
 - Costs to be paid at the rate of \$200.00 per month, commencing three months after the member resumes active practice, or commencing November 1, 2001, if the member does not resume practice by that date, with an acceleration clause if default occurs on any payment.

Counsel

J.R. Gallagher for The Law Society of Manitoba
S.F. Vincent for the Member

Misappropriation

Facts

Between January and December, 1999, Mr. Shawa made five unauthorized withdrawals totalling \$19,656.69 from his pooled trust bank account and charged the withdrawals to the trust ledgers of three separate clients. In four of the cases, the cheques were written to friends or acquaintances who had requested that Mr. Shawa loan them money. In the other case, Mr. Shawa wrote the cheque to a client to whom he owed money. On January 31, 2000, Mr. Shawa deposited \$16,656.69 into his trust account to replace the unauthorized withdrawals.

In an effort to mislead the Law Society, Mr. Shawa approached two of the clients and led them to believe that the withdrawals were as a result of errors. The clients signed orders and directions to pay which Mr. Shawa back-dated and placed in the relevant client files to give the impression that the payments had been pre-authorized by the clients. At the time of making the withdrawals and deposit back into trust, Mr. Shawa failed to accurately record on the three client trust ledger cards, to whom the money was paid or from where the money was received.

In March, 1998, Mr. Shawa was retained by the purchaser of a revenue property. He failed to address through trust conditions the vendor's obligation to repay outstanding overpayments of rent. Mr. Shawa later failed to take steps to have the vendor repay the rent overpayments. He also failed to enforce his trust condition requiring the vendor to pay

unpaid utilities up to the date of possession.

Mr. Shawa acted for a client in domestic proceedings and a property settlement was set out in a consent judgment. After determining that the wife's pension could not be split in the agreed manner, Mr. Shawa requested that opposing counsel have his client sign the necessary forms to have the pension divided equally. The opposing client refused to sign the forms until other property issues were resolved. Over one year later, without further notice to opposing counsel, Mr. Shawa witnessed his client's signature and submitted the forms, which resulted in the pension being divided in a manner contrary to the consent judgement and in a \$6,000.00 benefit to Mr. Shawa's client.

Mr. Shawa failed to obey or did not conform with the requirements of the Rules Respecting Accounts in a number of cases:

- In two matters, Mr. Shawa failed to accurately record on the client trust ledgers from where certain monies were received and/or to whom they were disbursed.
- On four separate occasions, Mr. Shawa received funds for legal services to be performed and he failed to deposit these funds into his pooled trust account as soon as practicable.
- In another matter, Mr. Shawa withdrew \$107.00 from his pooled trust account for the recovery of fees, without a bill having been prepared and sent to the client at the time the money was withdrawn.

On two matters, Mr. Shawa held large amounts in his trust account for long periods. Mr. Shawa failed to either obtain written instructions from the clients to retain the funds in trust, or alternatively, to deposit the funds into separate interest-bearing accounts for the clients.

Mr. Shawa failed to advise a client in writing to obtain independent legal advice regarding a retainer agreement which gave Mr. Shawa a security interest in land owned by the client. Mr. Shawa later filed a caveat against the property after the client failed to pay an interim statement of account.

Decision and Comments

Mr. Shawa entered a guilty plea to the nine charges and the Committee found him guilty of professional misconduct.

The Committee noted that misappropriation was a very serious matter and that unless special or exceptional circumstances existed disbarment was the appropriate penalty. The Committee did find that there were three specific exceptional circumstances in this case. First, Mr. Shawa admitted to the practice reviewers before a financial audit was commenced that he had engaged in the behaviour. Second, the remorse shown by Mr. Shawa was exceptional, in that he assisted the custodian, he made total restitution, he entered a guilty plea, and he spoke very eloquently and sincerely on his own behalf before the Committee. Finally, the Committee considered the particulars of Mr. Shawa's life story and the cultural

factors which might have influenced his behaviour.

Penalty

The Committee accepted the joint recommendation that was presented and disposed of the matter by imposing a one year suspension on Mr. Shawa, ordering that he pay costs of \$10,000.00 and requiring Mr. Shawa to comply with the conditions as noted on the face page of this digest

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