



DISCIPLINE CASE *DIGEST*

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Case 95-10

HARRY KOHM
Winnipeg, Manitoba

Called to the Bar
May 31, 1952

Particulars of Charges
Professional Misconduct (3 counts)

- failure to serve clients (3 counts)

Date of Hearing
May 15 & 16, 1995

Panel
Lawrence McInnes (Chairperson)
John Menzies
Douglas Yard, Q.C.

Disposition

- suspension for two years
- costs of \$2,500.00

Counsel
Daniel Dutchin for the Law Society
Morris Feuer for the Member

Failure to Serve Clients

Facts

Mr. Kohm, who was called to the Bar on May 31, 1952, appeared before the Discipline Committee on May 15 and 16, 1995.

Mr. Kohm was retained by Client A to file a Statement of Claim as a result of the purchase of premises which contained U.F.F.I. The Statement of Claim was filed on November 6, 1987, Statements of Defense were then filed by the defendants, and Examinations for Discovery were held in September of 1989. In 1993, the client complained to the Law Society about Mr. Kohm's inaction on the file. Subsequent to the complaint, Mr. Kohm set a pretrial date for September of 1993, but the date was set aside when Mr. Kohm failed to provide information to the defendant's counsel in advance of the pretrial. Mr. Kohm then withdrew as counsel of record.

At the Disciplinary Hearing, Mr. Kohm admitted that between September of 1989 and September of 1993 he did nothing on the file. He justified his inaction by stating that he and the plaintiff knew that the defendants had no money and the best hope was for a settlement, although he acknowledged that no settlement discussions were held with counsel for the defendants.

Mr. Kohm was retained by Client B to act on a real estate transaction. B was the vendor of property that had to be subdivided before title could be transferred. The possession date was to be November 15, 1993 and on that date, B turned over the keys to the purchasers so that renovations could be commenced. The house was then left vacant for a period of time and B discovered that there was damage to the house. B further determined that Mr. Kohm had agreed to change the possession date to a later date without his authority and without advising him that he had consented to the change.

Mr. Kohm was also retained by Client C to act on her behalf with respect to domestic matters. A Petition for Divorce was filed by C's husband and an Answer was filed on her behalf by Mr. Kohm, with the matter proceeding to hearings and Divorce Judgment on May 23, 1991. Concurrently, Mr. Kohm filed a Statement of Claim on behalf of C with respect to property owned by the parents of her husband. The Statement of Claim was filed on January 17, 1991 but after the Statement of Defence was filed in February of 1991, no further action was taken on the claim.

Mr. Kohm made two applications to court in June of 1992 and April of 1994 to consolidate the actions but the matters were struck as a result of Mr. Kohm's failure to appear. Counsel for the defendants then brought an application to dismiss the action for delay, with costs, due to Mr. Kohm's delay in prosecuting the matter. An Order Dismissing was granted in July of 1994.

Comments of the Discipline Committee

The Committee found that Mr. Kohm failed to serve Client A in a conscientious, diligent and efficient manner as Mr. Kohm admitted that he had done nothing on the file.

The Committee found the Mr. Kohm failed to serve Client B in a conscientious, diligent

and efficient manner and the Committee preferred the testimony of Client B over that of Mr. Kohm.

The Committee found that Mr. Kohm failed to serve Client C in a conscientious, diligent and efficient manner as Mr. Kohm admitted the charge.

Findings and Penalties

The Committee found Mr. Kohm guilty of professional misconduct on all three counts and also found that the conduct complained of in each case was very serious and showed a course of conduct which had continued for some time.

The Committee suspended Mr. Kohm from practice for two years and also ordered that costs be paid in the amount of \$2,500.00. The Committee noted that Mr. Kohm was 75 years of age, had voluntarily retired from practice, and had given personal undertaking to the Committee that he would not practise law again.

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