



DISCIPLINE CASE *DIGEST*

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Case 97-10

RICHARD ANTHONY WARD
Winnipeg, Manitoba

Called to the Bar
June 25, 1976

Particulars of Charges
Professional Misconduct (11 charges)

- conflict of interest (10 counts)
- tool or dupe of unscrupulous clients (11 counts)
- charging a fee or disbursement that was not fully disclosed, fair and reasonable (9 counts)

Date of Hearing
February 10, 1998

Panel
D.D. Yard, Q.C. (Chair)
C.R. MacArthur, Q.C.
C. Wright

Disposition

- 3 year suspension
- Costs of \$15,000.00
- In the event member permitted to return to practice, at a minimum to practise under supervision of a member satisfactory to the Society for a period of not less than 2 years
- On any application to resume practice, Committee to be provided with copy of panel's Reasons for Decision and complete Citation in order to consider whether further conditions are required.

Counsel
R.B. McNicol, Q.C. and E.B. Eva for The Law Society of Manitoba
Member unrepresented.

Conflict of Interest

Facts

Mr. Ward was called to the Bar of Manitoba on June 25, 1976. On the date of his appearance before the Discipline Committee, he was an inactive member of the Law Society of Manitoba. He pleaded guilty to one omnibus charge of failing in his duty to be on guard against becoming the tool or dupe of an unscrupulous client and to ten specific charges of acting in a conflict of interest, failing to be on guard against becoming the tool or dupe of an unscrupulous client and charging a fee or disbursement that was not fully disclosed, fair and reasonable in respect of ten different real estate transactions.

Each of ten residential properties in question was purchased by Mr. Ward's client, A, in one of nine different company or business names utilized by A. A then resold or "flipped" each of these properties within a relatively short period of time at a significantly increased price.

Mr. Ward acted for A on his original purchase of each property and then concurrently acted for A and the purchasers and the mortgagee on the "flip" or sale of each property by A.

A sold the ten properties for \$201,000.00 more than he paid for them.

Each purchaser of a property from A obtained a high ratio mortgage from one of two financial institutions. The purchasers were required to provide approximately 5% of the total purchase price by way of equity. In each instance, the purchasers were unable to pay the full balance of the funds due from them on closing. A instructed Mr. Ward that he would provide the purchasers with a credit for the shortfall. These arrangements were not disclosed by Mr. Ward to the mortgagees for whom he was concurrently acting on each transaction.

In addition, there was no proper disclosure by Mr. Ward to each of the purchasers and mortgagees for whom he acted that:

- a. A was both the purchaser and vendor of each property;
- b. he acted for A on his original acquisition of the property;
- c. A was reselling the property at a significant increase in value; and
- d. he had an ongoing and continuing relationship with A.

On each transaction, Mr. Ward charged the purchasers for disbursements not incurred by him, such as land titles transfer fee, zoning memorandum or other filing fee.

Upon Mr. Ward's plea of guilty to each of the charges in the Citation, counsel for the Law Society and Mr. Ward presented a joint recommendation to the Committee as to disposition

of the charges.

Decision and Comments

As a result of Mr. Ward's admissions, the Committee found that each of the charges and counts in the Citation was proven and that Mr. Ward was guilty of professional misconduct.

The Committee noted that Mr. Ward had been previously disciplined on four earlier occasions in 1990, 1993, 1995 and 1997. In 1997, Mr. Ward was convicted of professional misconduct for failing in his duty to be on guard against becoming the dupe of an unscrupulous client and was suspended from practice for a period of 60 days.

The Committee pointed out that Mr. Ward's admissions involved serious integrity issues and that a penalty more severe than the joint recommendation might be appropriate. However, the Committee also recognized the exigencies of prosecution and the efficacy of plea bargains in the justice system.

Penalty

The Committee imposed the following penalty;

- a. that Mr. Ward be suspended from the practice of law for a period of three years commencing February 10, 1998 and ending February 9, 2001;
- b. that the fact of Mr. Ward's suspension be published in the Manitoba Gazette and the Winnipeg Free Press;
- c. that Mr. Ward pay costs of \$15,000.00, which costs are payable forthwith;
- d. that no application to return to active practice is to be made by Mr. Ward until such time as the aforesaid costs are paid in full;
- e. that in the event Mr. Ward is permitted to return to practice, that it be a minimum condition thereof that he practise under the supervision of a member satisfactory to the Law Society for a period of not less than two years; and
- f. that any Committee considering an application by Mr. Ward to resume practice be provided with a copy of the Reasons for Decision of the Discipline Committee and the complete Citation to which Mr. Ward entered pleas of guilty, in order to consider whether or not any further conditions ought to be imposed on Mr. Ward.

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