



DISCIPLINE CASE *DIGEST*

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Case 99-04

RAYMOND PHILLIP OAKES
Winnipeg, Manitoba

Called to the Bar
June 28, 1984

Particulars of Charges
Professional Misconduct (8 counts)

- Conflict of Interest (x2);
- Failing to discharge duties with integrity (x4);
- Failing to disclose his personal interest in a transaction when engaging in a transaction outside of the practice of law (x1);
- failing to disclose material facts to a person not legally represented (x1)

Date of Hearing
November 22, 1999

Panel
G.R. Gilmour, Chair
L.D. Wasel
J. McKelvey

Disposition

- Four month suspension;
- Fine of \$10,000.00;
- Costs of \$13,000.00

Counsel
C.K. Dangerfield for The Law Society of Manitoba
D.G. Hill for the Member

Conflict of Interest

Facts

Mr. Oakes represented the Estate of Mr. O, who had died intestate in December 1995. Mr. O died leaving three children, one of whom was appointed the Administrator of the Estate. The Estate initially appeared to be insolvent. Mr. Oakes became aware in January 1996 of the existence of two life insurance policies, each of which was in the principal amount of \$500,000.00. It was his belief at the time that the policies might not fund due to circumstances occurring prior to, and shortly after the policies were issued. When he filed a Request for Administration in July 1996 he did not make specific reference to either of the two policies, but instead estimated life insurance proceeds of \$250,000.00 in anticipation that the amount might accurately reflect a settlement with one or both of the insurers.

In March 1996 Mr. Oakes contacted Mr. O's estranged spouse and advised that the Estate was insolvent. He failed to advise her of the existence of the life insurance policies. The spouse indicated that she did not wish to have any involvement with the Estate and Mr. Oakes sought and obtained from her a Release of her interest in the Estate and a Quit Claim Deed.

In the Spring of 1997 each of the insurance policies fully paid out the insurance proceeds to the Estate. The effect of the insurance was that the Estate had sufficient assets to meet its liabilities. Mr. Oakes failed to file a Revised Inventory and Valuation of Property until November 1997. Prior to receiving the insurance proceeds, Mr. Oakes had advised a creditor that the Estate was insolvent. Subsequent to the receipt of the proceeds, he made a compromised settlement of the Estate's debt to that creditor without having filed the Revised Inventory or advising the Creditor that the Estate was no longer insolvent. In another instance, after having received the insurance proceeds, he represented to a creditor of the Estate in the course of negotiations to compromise a debt of the Estate that the Estate was insolvent, when in fact it was not.

One of the Estate's most significant liabilities was a judgment in favor of the Mortgagee of a trailer park. The Beneficiaries of the Estate wished to divest themselves of the trailer park and the associated liability. Attempts made by Mr. Oakes to locate a purchaser were unsuccessful. The trailer park had substantial infrastructure problems which it was anticipated would require a significant cash outlay from any new purchaser. Mr. Oakes suggested to the Beneficiaries that in order to sell the property an incentive could be given to the purchaser, providing that as a condition of purchase, the Mortgagee would provide a Release and Notice of Satisfaction of the Estate's debt to the Mortgagee. Mr. Oakes received instructions from the Estate to pay up to \$200,000.00 for that purpose.

In due course, Mr. Oakes decided to incorporate "W. Co." to purchase the trailer park and to take the incentives being offered by the Estate. A business associate of Mr. Oakes ("B")

was named as the sole shareholder of W. Co.. B thought that she and Mr. Oakes were equal partners in W. Co., although she was subsequently informed by Oakes that she held all of her shares in W. Co. in trust for him. At the time the trailer park was purchased by W. Co., Mr. Oakes failed to advise B to obtain independent legal advice, he failed to disclose to B and to obtain B's consent in writing to the terms of the transaction, and Mr. Oakes' personal interests and those of B were in conflict.

Mr. Oakes advised the Beneficiaries that he had incorporated W. Co. to purchase the trailer park, but he concealed the fact that he was the undisclosed principal of W. Co. He subsequently advised the Beneficiaries that it would be necessary to increase the Estate's contribution to \$325,000.00. W. Co ultimately purchased the property, with the Estate paying the \$175,000.00 purchase price to the Mortgagee, and then paying \$150,000.00 to W. Co. as the incentive for having purchased the trailer park. At the time that he entered into the transaction, Mr. Oakes failed to advise the Estate to obtain independent legal advice, he failed to disclose to the Estate and to obtain the Estate's consent in writing to the terms of the transaction, and Mr. Oakes' personal interests and those of the Estate were in conflict.

Shortly after the purchase of the trailer park by W. Co., Mr. Oakes was approached by Mr. S., a former director of the trailer park, who advised that he wished to purchase the property. Mr. Oakes agreed to sell the property to Mr. S. for \$145,000.00. He failed to disclose to the Estate that he had transferred the trailer park to Mr. S. During the course of negotiations with Mr. S, Mr. Oakes wrote to both Mr. S and counsel for Mr. S asserting that he represented the vendor. He failed to disclose his personal interest in W. Co. to either Mr. S or his counsel.

Following the sale of the trailer park from W. Co. to Mr. S, Mr. Oakes negotiated an agreement with B whereby B was to be compensated for B's role in W. Co.. At the time that he entered into the transaction, Mr. Oakes did not advise B to obtain independent legal advice, he failed to disclose to B and to obtain B's consent in writing and Mr. Oakes' personal interests and those of B were in conflict.

Mr. Oakes appeared before the Discipline Committee on November 22, 1999, at which time he entered a guilty plea to eight counts of professional misconduct.

Decision and Comments

The Committee found Mr. Oakes guilty of professional misconduct based on his admission to the charges.

Penalty

The Committee accepted the joint recommendation of counsel for the Society and for Mr. Oakes and ordered that he be suspended for a period of four months commencing December 10, 1999. The Committee also ordered that he pay a fine of \$10,000.00 and costs in the

amount of \$13,000.00.

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