



DISCIPLINE CASE *DIGEST*

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Case 99-09

PETER RICHARD STEFANYSHYN
Winnipeg, Manitoba

Called to the Bar
June 25, 1976

Particulars of Charges
Professional Misconduct (3 counts)

- Conflict of Interest (x2)
- Failure to discharge duties towards other lawyers with integrity and good faith

Dates of Hearing
July 28, 1998, February 25, March 3, 4 and 18, April 5 - 9, May 10 - 12, November 8 and 17, and December 15, 1999

Panel
D. G. Douglas, Chair
R. C. Krause
J. W. Hedley

Disposition

- Four month suspension commencing December 17, 1999;
- Fine of \$40,000.00;
- Costs of \$40,000.00;
- Resumption of practice subject to the Society receiving a \$20,000.00 payment of the fine on or before April 17, 2000;
- Payment of \$6,000.00 on or before April 1, 2001, and an annual payment of \$6,000.00 on or before April 1 each year thereafter until the fine and costs are fully paid;
- In the event of default of any annual payment, the entire amount then outstanding would immediately become due and owing; and
- Practising certificate cancelled and to be reissued annually upon compliance with the repayment schedule.

Counsel

Conflict of Interest

Facts

Between about March 1993 and May 1994, Mr. Stefanyshyn acted on behalf of Client T or various businesses or corporations owned or controlled by T as the purchaser and subsequent vendor of thirty-six separate residential properties. Mr. Stefanyshyn also acted for the individuals who ultimately purchased those properties from T and, as well, acted for the lenders who were providing mortgage loan proceeds to the purchasers.

The thirty-six properties were "flipped" by T, who sold the properties for a total of \$633,000.00 more than he originally paid for them.

Mr. Stefanyshyn failed in his duty to provide the thirty-six purchasers and the lenders with adequate disclosure before accepting the retainer to act on their behalf and also on behalf of T when there was or was likely to be a conflicting interest between the parties. He also failed in his duty to disclose all material facts and to be both honest and candid when advising the purchasers and lenders in that:

- a. He failed to advise the purchasers and lenders that he had also been retained to act for T in the same matter;
- b. He failed to advise the purchasers and lenders that he had a continuing relationship with and regularly acted for T, and he failed to recommend that they obtain independent representation; and
- c. He failed to advise the purchasers and lenders that he acted on behalf of T with respect to a recent purchase of the property for a significantly lower price than what the purchasers were paying for the property.

Mr. Stefanyshyn also failed in his duty to obtain the consent of the purchasers and lenders before accepting a retainer to act on their behalf and for T in the same matter. He also failed in his duty not to act in a conflict of interest in that he preferred the interests of T over the interests of the purchasers and lenders.

In each of the thirty-six transactions, Mr. Stefanyshyn failed in his duty to serve the purchasers in a conscientious and diligent manner. He failed in his duty to protect their interests while, at the same time, he preferred the interests of T over those of the purchasers in that he failed to obtain a declaration as to possession sworn on behalf of T in respect of the sale of the said properties.

In three of the thirty-six transactions, Mr. Stefanyshyn failed to discharge with integrity his duty owed to the clients and failed in his duty to conduct himself towards other lawyers with good faith in that:

- a. He forwarded letters to each of the solicitors for the vendors enclosing a trust cheque and representing such amount to be his client's cash to mortgage when, in fact, no such mortgage had been arranged;
- b. He failed to comply with the trust conditions imposed upon him by each of the solicitors for the vendors in that he failed to make registrations forthwith and in series with a mortgage that he represented had been arranged; and
- c. He gave an undertaking to each of the solicitors for the vendors to register his client's mortgage immediately and upon completion of the registration to request mortgage proceeds and to pay the amount outstanding as at the date of possession, with interest thereon payable at the same rate as his client's mortgage, when he knew or ought to have known that he could not fulfill such an undertaking as no such mortgage had yet been arranged.

In one of the thirty-six transactions, a dispute arose between T and the purchaser. Mr. Stefanyshyn failed in his duty in that he continued to act for both parties after the contentious issue arose. He also failed in his duty to the purchaser in that, in continuing to act, he preferred the interests of T over the interests of the purchaser. In the same matter, Mr. Stefanyshyn failed in his duty to be both honest and candid when advising the purchaser and failed in his duty of integrity by concealing material facts from the purchaser.

The hearing into these matters initially proceeded on a contested basis, however, after approximately ten days of hearing and after the Society had closed its case, Mr. Stefanyshyn changed his plea to guilty, following which both counsel presented a joint recommendation as to disposition.

Decision and Comments

On the basis of the evidence and Mr. Stefanyshyn's guilty plea, the Committee found that Mr. Stefanyshyn was guilty of professional misconduct.

The Committee noted after careful consideration that it was unable to fully accept the joint recommendation particularly as to the amount of the fine and the terms of payment of the fine and costs. The Committee considered the conduct of Mr. Stefanyshyn to be reprehensible. The number of transactions, the common nature of the transactions and the persons involved in the short period of time within which this all transpired made it impossible for the Committee to believe that Mr. Stefanyshyn was not aware of, or at the very least, willfully blind to the impact or potential impact that his acts or omissions would have on both the purchasers and mortgagees he purported to represent. The Committee found clearly that Mr. Stefanyshyn grossly preferred the interests of T over those of his other clients, and that T's scheme could not have succeeded without the involvement of Mr. Stefanyshyn. The Committee felt that it was necessary for the member, the clients and the profession to know that Mr. Stefanyshyn had truly been punished for his wrongdoing and

that there had to be some real deterrent beyond the suspension from practice.

Penalty

The Committee imposed the following penalty:

- Four month suspension commencing December 17, 1999;
- Fine of \$40,000.00;
- Costs of \$40,000.00;
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