



DISCIPLINE CASE *DIGEST*

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Case 99-11

TIMOTHY CHRISTOPHER FURGALE

Winnipeg, Manitoba

Called to the Bar

June 29, 1971

Particulars of Charges

Professional Misconduct (4 counts)

- Conflict of interest
- Failure to refer client for independent legal advice
- Failure to deposit funds to a pooled trust account
- Failure to maintain adequate records of client property

Date of Hearing

July 15, 1999

Panel

R. L. Pollack, Q.C. (Chair)

J. E. Neufeld, Q.C.

H. Gliner

Disposition

- Fine of \$1,500.00
- Costs of \$2,000.00

Counsel

J. R. Gallagher for The Law Society of Manitoba

V. W. Libitka for the Member

Conflict of Interest

Facts

In January, 1996 a client for whom Mr. Furgale had acted in various matters for about 9 years, became a tenant in a residential property owned by Mr. Furgale. The client expressed an interest in purchasing the property and in April, 1996 a verbal offer to purchase was accepted by Mr. Furgale. A \$2,000.00 deposit was given to Mr. Furgale who placed the funds into his personal bank account rather than into his pooled trust account. The purchase was not completed as the client was unable to secure mortgage financing. The deposit was not returned to the client at that time, nor were the funds placed in a specific trust investment account in the client's name.

In January, 1997 a second offer to purchase the property was made by the client. On this occasion, a written offer to purchase was drawn by Mr. Furgale and signed by the client. The \$2,000.00 Mr. Furgale was holding was credited as a deposit on the purchase. Mr. Furgale did not transfer the funds from his personal bank account to his pooled trust account. The transaction failed due to rejection of mortgage financing, and again, Mr. Furgale did not return the deposit to the client, nor did he place the funds in a specific trust investment account to the credit of the client.

Mr. Furgale breached his professional duty in that he had not advised the client in writing to obtain independent legal advice with respect to either of the two offers to purchase the property. As well, Mr. Furgale entered into the business transaction when the client expected or might reasonably be assumed to expect that Mr. Furgale was protecting the client's interests at a time where there was a significant risk that the interests of Mr. Furgale and the client might differ. Mr. Furgale also breached his professional duty in acting for the client in the transaction when his duty to the client and his own personal interests were in conflict.

During the period January, 1996 to July, 1997 Mr. Furgale and the client entered into an arrangement whereby the client would sign over his weekly paycheques to Mr. Furgale, who would then cash the cheques and deduct the weekly rent owed and pay other personal debts of the client as such debts arose. The balance of the monies, in the amount of about \$70.00 to \$90.00 per week, would be paid over to the client. On occasion, the client would request and receive cash advances as a draw against his next weekly paycheque and the advances would be deducted by Mr. Furgale when the next cheque was cashed.

In entering into this business transaction, Mr. Furgale did not disclose the terms to the client in writing, nor did he advise the client in writing to obtain independent legal advice and he did not receive the client's written consent to the arrangement. In addition, Mr. Furgale did not retain records of the transaction for the period January to September, 1996 and he did not provide any accounting to the client as to the total monies received or monies paid on behalf of the client.

Decision and Comments

The Committee accepted a guilty plea and on the basis of the information provided, found Mr. Furgale guilty of professional misconduct.

It was noted by the Committee that the client was unable to write and had very poor, if any, reading skills. The Committee commented that this, together with the fact that Mr. Furgale had failed to keep accurate records of the transactions and had not provided a proper accounting to the client, compounded the seriousness of Mr. Furgale's failure to notify the client in writing to obtain independent legal advice.

Penalty

The Committee accepted the joint recommendation made by counsel and imposed a fine of \$1,500.00 together with an order for costs of \$2,000.00. The fine and costs totalling \$3,500.00 were ordered by the Committee to be paid on or before November 30, 1999.

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