



DISCIPLINE CASE *DIGEST*

Case 18-06

Member:	Paul Sydney Vyamucharo-Shawa
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 29, 1989
Particulars of Charges:	Professional Misconduct (5 Charges): <ul style="list-style-type: none">▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust condition] [x3]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of duty of integrity]▪ Breach of Rule 7.2-5 of the <i>Code</i> [breach of duty to lawyers – failure to respond to communications]
Plea:	Guilty
Dates of Hearing:	January 31, 2019 & February 11, 2019
Panel:	<ul style="list-style-type: none">▪ Douglas Bedford (Chair)▪ Patricia Fraser▪ Carmen Nedohin (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Phillip Cramer for the Member (January 31, 2019)▪ Member Self Represented (February 11, 2019)
Date of Decisions:	Oral Decision: February 11, 2019 Written Reasons for Decision: March 1, 2019
Disposition:	<ul style="list-style-type: none">▪ Suspension (6 months)▪ Costs of \$10,000.00

Breach of Trust Conditions / Breach of Duty of Integrity / Breach of Duty to Lawyers

Facts

April 2016 Condominium Purchase

Mr. Vyamucharo-Shawa acted for the purchaser and mortgagee credit union in the purchase of a condo with an April 2016 closing date. He failed to honour a trust condition to provide the credit

union with seven documents it required to record the transaction as properly closed. The documents were outstanding for almost one year, despite the credit union's repeated requests and Mr. Vyamucharo-Shawa's own assurances to provide the same, and despite the fact that Mr. Vyamucharo-Shawa had possession of the documents within one month of the closing date.

April 2016 Hotel Shares Purchase

Mr. Vyamucharo-Shawa acted for the purchasers of shares of a hotel business with a closing date of April 2016. He breached a trust condition that required him to register two mortgages in favour of the vendors of the shares. Mr. Vyamucharo-Shawa registered the mortgages over a year after the transaction closed and as a result of the delay, there was an intervening registration on the title of the land owned by the business by a creditor of the business. Counsel for the vendors was then required to alter his trust condition in order for the registration of the mortgages to proceed. Mr. Vyamucharo-Shawa also failed to discharge his responsibilities to the vendors' counsel honourably and with integrity by sending him a misleading email. On April 7, 2017 he advised the vendors' counsel that the mortgages had been registered, despite having previously received communication from the Property Registry that the registration could not be completed and would require certain adjustments in order to proceed.

Mr. Vyamucharo-Shawa has agreed to be financially responsible for any loss to the vendors in the event that the intervening registration reduces the amount secured to them by way of the two mortgages.

October 2016 Condominium Sale

Mr. Vyamucharo-Shawa acted for the vendor in the sale of a condo in October 2016. He failed to honour a trust condition and corresponding undertaking to pay out a condo lien in the amount of \$361.07 and to provide a discharge of the same. The lien was not paid until the end of June 2017 after repeated enquiries from the purchaser's counsel. Following payment, Mr. Vyamucharo-Shawa did not meet his obligation to provide a discharge of the lien. He was not familiar with the preparation of the discharge form for the lien, he missed scheduled appointments to obtain the relevant signature on the discharge, he incorrectly completed the form and he left the matter unresolved for almost five additional months, until a formal complaint was filed with the Law Society. Mr. Vyamucharo-Shawa also failed to answer enquiries by the purchaser's counsel with reasonable promptness.

Member's Record

Mr. Vyamucharo-Shawa has a prior discipline record with the Law Society:

- In 1999, he accepted a formal caution for breach of a trust condition.
- In 2000, he pled guilty to nine charges of professional misconduct, three of which were for misappropriating a total of \$19,656.69 from a trust account. He was suspended from practice for one year, ordered to pay costs of \$10,000.00, was required to practise under supervision for two years upon his return to practice and was prohibited from signing on a trust account during that time.
- In 2008, he pled guilty to four charges of professional misconduct. Two charges were related to assisting clients defraud others and two charges were related to having funds in his trust account that were not trust funds. He was suspended for six months and ordered to pay a fine of \$5,000.00 and costs of \$5,000.00.
- In 2008, during his six-month suspension and as a result of a subsequent investigation, Mr. Vyamucharo-Shawa gave an undertaking to the Law Society not to practise law for at least five years following the expiry of the forgoing six-month suspension.

Mr. Vyamucharo-Shawa returned to practice in 2015 and was required to practise under supervision. As a result of the present charges, Mr. Vyamucharo-Shawa signed an undertaking in December 2017 to cooperate with the Law Society, maintain proper notes and records of all advice and dealings with clients and others on files, and to implement a formal diarization system. This undertaking remains in effect.

Plea

Mr. Vyamucharo-Shawa entered a guilty plea to five charges of professional misconduct.

Decision and Comments

The Panel considered various factors that ought to be weighed in considering an appropriate penalty. In this case, Mr. Vyamucharo-Shawa had not gained any benefit or advantage from the misconduct. The Panel expressed serious concern regarding Mr. Vyamucharo-Shawa's record with the Law Society and the repetition of similar misconduct. They stated however, that it would not be appropriate to impose a harsher penalty for the current charges in order to address the seriousness of previous misconduct for which he had already been penalized. The Panel opined that a six month suspension would serve to deter future misconduct as it would have serious financial consequences for Mr. Vyamucharo-Shawa and would send a clear message to him and others that such repeated misconduct would be met with increasingly serious penalties. The Panel also stated that Mr. Vyamucharo-Shawa showed maturity in acknowledging his failures and committing to compensate the vendors of the shares described above, if needed. The Panel viewed the present undertaking given by Mr. Vyamucharo-Shawa as a reliable method to oversee his practice and reduce the likelihood of future competence issues.

Penalty

Counsel for the Law Society and for Mr. Vyamucharo-Shawa made a joint recommendation as to disposition. The Panel accepted this joint recommendation. In so doing, they acknowledged that joint submissions should not be set aside unless accepting the submission would bring the administration of justice into disrepute or be otherwise contrary to the public interest. In balancing these interests, the Panel determined that the joint recommendation, while not the "perfect" solution, is fair to Mr. Vyamucharo-Shawa and was made with consideration of the public interest.

In the result, the Panel ordered that Mr. Vyamucharo-Shawa:

- a. Be suspended for a period of six months commencing March 18, 2019 and ending on September 17, 2019, both dates inclusive; and,
- b. Pay costs in the amount of \$10,000.00 as a contribution to the investigation and prosecution of this matter, payable in instalments as set out in the Reasons for Decision.