

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

October 2016

Reginald Chow
Commissioned: December 1996

Hearing Date: August 25, 2016
Panel: Kate Manvell (chair), Linda Manning, Ken Sherk, Patricia Wright, Rhoda Witherly
For the Society of Notaries Public: Marny Morin
For the Member: In Person

Background

1. This was a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* of the report of the inquiry to determine whether the member is guilty of any of the conduct described in s. 28(1) as professional misconduct or a breach of a provision of the *Act* or a regulation or rule made under it or of a bylaw of the society, or conduct that in the opinion of the directors is contrary to the best interests of the public or the profession or tends to harm the standing of the notarial profession.
2. The inquiry into this matter was conducted June 10, 2016. The member attended at that time and admitted the complaint against him. The inquiry panel report dated July 27, 2016 was reviewed by the Directors.
3. Counsel was present to assist the panel members at the hearing and the directors on review and in writing this report.

The Notice of Inquiry

4. The Notice of Inquiry received by the member alleged the following:

Re: Failure to properly maintain trust accounting records in accordance with Rule 4 as evidenced by your 2011, 2012, 2013 and 2014 audits, as follows:

That in 2011, 2012, 2013 & 2014 your self-audit reports did not match your member records with respect to gross trust liability

That in 2011, 2012, 2013 & 2014, you failed to correct reconciliation errors in your HSBC Account, in breach of Rule 4.14

That in October 2012 and on numerous occasions in 2013/2014, you failed to properly reconcile your HSBC account, in breach of Rule 4.21

For the period January 2011 to December 2011, you carried overdrawn client balances totaling \$38,196.25 on 42 client liability accounts, in breach of Rule 4.13

For the period January 2012 through August 2013, you carried overdrawn client balances totaling \$65,052.95 on 53 client liability accounts, in breach of Rule 4.13

That in 2012/2013 and 2013/2014 you carried a float in your HSBC account that exceeds \$500, in breach of Rule 4.10(b)

That your audits conducted for the years 2011, 2012, 2013 and 2014 were all determined to be unsatisfactory and were found to be unacceptable by the Audit Committee pursuant to Rule 4.24

That these breaches indicate a failure to properly maintain your trust accounting records in accordance with Rule 4; that this is professional misconduct, and is contrary to the best interests of the public and harms the standing of the notarial profession.

Facts and Admissions

5. At the inquiry, the Society provided the panel with copies of the auditor's reports on the member's trust accounting for the years in question. There have been three audits conducted on the member's accounts since 2011. The auditor's reports set out the numerous deficiencies alleged in the Notice of Inquiry.

6. The Society submitted that on all three audits, the member's trust accounting was found to be unsatisfactory, revealed the same types of errors and that there has been insufficient improvement from the member despite being made aware of the problems with his accounting.

7. In response, the member agreed with the Society's submissions and admitted to all of the allegations contained in the Notice of Inquiry. The member explained that he did not cure the deficiencies in his trust accounting mainly due to a lack of time. He also indicated that although it is not an excuse, he neglected to pay attention to his accounting because it was not something he enjoyed doing.

8. The member indicated that he knows he must pay more attention to his trust accounting and will speak with his accountant to help him stay up to date with his obligations. He also said that, moving forward, he would like to use software to help with bookkeeping.

Decision

9. Given the admissions made by the member and that the member and the Society accept the findings of the inquiry panel, the directors accept the inquiry report and find that the member has breached the Act and Rules as described in the Notice of Inquiry and that his actions constitute professional misconduct.

Penalty

10. After deciding the issue of liability, the Board received and considered a joint submission on penalty from the member and the Society.

11. The member said that he has hired a bookkeeper and a Certified Professional Accountant to manage and maintain his trust accounting records.

12. The member and the Society agreed on a proposed penalty, taking three matters into consideration:

- a. the seriousness of the member's continued failure to maintain proper accounts;
- b. deterrence; and
- c. protection of the public.

13. In view of the admissions and agreed facts, and having considered the joint submission on penalty, the Directors have assessed the following penalty in this matter:

- a. That within 30 days of the date of issuance of the decision, the member implement a plan for bringing his accounting records into required compliance by hiring a qualified bookkeeper;
- b. That the monthly maintenance of his trust accounts be reviewed against the Trust Accounting Rules of the Society by a Certified Professional Accountant ("CPA");
- c. That commencing February 1, 2017, the CPA provide the Secretary of the Society with a monthly report for 6 consecutive months confirming that all trust accounts have been reconciled and all exceptions or deficiencies have been rectified and that the records comply with Rule 4 of the Society's Rules;
- d. That the member be suspended for a period of 5 consecutive business days at a time agreed between the member and the Society, but to commence not later than 60 days from the date of issuance of this decision and the end of the member's appeal period;
- e. That the member pay a fine of \$2,500;
- f. That the member pay a contribution to costs of \$1,000;
- g. That the fine and costs be paid to the Society by November 30, 2016.

The Member and the Society have agreed that the Member will serve his suspension from and including November 21st through and including November 25th, 2016.