

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

Agatha So Chun Chung

July 2015

Hearing Dates

Inquiry Hearing: March 25, 2015

Board Hearing: June 17, 2015

Directors:

David Watts (Chair), Filip de Sagher, Kate Manvell, Daryl McLane & Susan Tong

This was a review of the Member's conduct with respect to the misappropriation of funds, failure to disclose the existence of a trust account, and abandoning her practice without notice.

1. The Notice of Inquiry sent to the member by the Society alleged as follows:

1. *Re: Bank of Nova Scotia Trust Account No. 50070 012029*

*That [the member] failed to inform the Society in writing or otherwise that [she] had opened and maintained a trust account to wit: Account number 50070*****029 at the Bank of Nova Scotia contrary to Rule 4.02 of the Rules of the Society;*

2. *Re: Misappropriating Client's Funds*

That [the member] misappropriated funds entrusted to [her] by [her] client JCL contrary to Principles 1 and 5 of the Principles of Ethical and Professional Conduct of the Society and professional misconduct as set out in s. 28(1)(a) of the Notaries Act, [RSBC 1996] chapter 334.

Member's History

2. The member has been a member since 1985. She is presently suspended but had a practice in Vancouver.

The Facts and Findings of the Inquiry

3. The inquiry report set out the following facts and findings of the panel.

4. Evidence was received by the panel by way of affidavit of Marny Morin, sworn March 9, 2015. That affidavit related the facts below which were accepted by the

panel.

5. On March 26, 2013, the Society received information from a representative of the TD Bank indicating that there were irregularities in the processing of trust cheques issued by the member.
6. On March 28, 2013, Ms. Morin attended at the member's office. The member was not present and her staff members did not know her whereabouts or how to contact her. Various conveyance transactions were scheduled to complete that day and were in jeopardy. Ms. Morin took conduct of the files and ensured they would be dealt with.
7. While dealing with the ongoing files Ms. Morin quickly determined that there appeared to be a shortfall in funds in the member's trust accounts.
8. On April 3, 2013, on application by the Society, a custodian was appointed by the Supreme Court to deal with the member's practice.
9. Despite searching, the member has not been contacted by or located by the Society since March 28, 2013.
10. The Society caused a forensic audit to be conducted on the member's trust account records, which determined funds were misappropriated. A copy of that report was provided to the panel.
11. Specifically, the account of a particular client, JCL, revealed the member received trust funds related to a non-resident holdback which funds were later used by the member for personal matters.
12. The member's records revealed a trust account at the Bank of Nova Scotia, account number 50070010202, which the member did not report to the Society.
13. The evidence received was sufficient for the panel to find the member to have engaged in conduct contrary to the best interests of the public and the profession and which harms the standing of the notarial profession.
14. The member's misappropriation and secret trust account provide ample reason to find her actions were of such a nature that they strike at the very heart of what the public does and should expect from notaries public. These actions are the most blatant breach of what is expected of an individual who enjoys the privilege that comes with admission to the profession.
15. The public and the profession have been harmed by the member's conduct. But for the swift response of the Society when the alarm was raised, it is likely the situation would have been worse. The panel was gratified to see the attention paid by the

Society to manage the member's clients' interests to ensure they were harmed as little as possible.

Decision

16. The directors accept the facts and findings of the panel and are satisfied on review that the member engaged in the conduct alleged in the Notice of Inquiry. There must be a clear message to members and to the public that there is no place in the Society for conduct of this nature.

Penalty

17. The inquiry panel recommended that the member's membership be terminated.
18. The directors agree that the member's actions must result in termination. There can be no mitigating circumstances and an individual that is capable of this behaviour has no place in a profession that necessarily places trustworthiness at the pinnacle of requirements of its members.

The member is terminated.