IN THE MATTER OF PART 3 OF THE
***LEGAL PROFESSION ACT*, RSA 2000, c. L-8**

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF RONALD SCHULDHAUS
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Cal Johnson, QC – Chair
Linda Long, QC – Bencher
Nick Tywoniuk – Adjudicator

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Roy Nickerson, QC – Counsel for Ronald Schuldhaus

Hearing Date

August 10, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT ON SANCTION

Overview

1. Ronald Schuldhaus (Schuldhaus) is a member of the Law Society of Alberta (LSA), admitted in July 1988. On December 7 and 8, 2020 a Hearing Committee (Committee) convened a hearing (Hearing) into the conduct of Schuldhaus, resulting from a LSA Conduct Committee Panel decision of October 22, 2019.

2. The Committee released its decision on the merits of the Hearing on May 26, 2021 which confirmed that Schuldhaus had been found guilty of conduct deserving of sanction in respect of the following citation:

> It is alleged that Schuldhaus failed to properly supervise his legal assistant and bookkeeper, D.D., and that such conduct is deserving of sanction.

3. The Committee also determined that the question of the appropriate sanction would be the subject of a separate sanction hearing (Sanction Hearing), which took place on August 10, 2021.

Preliminary Matters

4. The Chair of the Committee confirmed that since this Sanction Hearing was a continuation of the Hearing, jurisdiction had been established.

5. At the Sanction Hearing, the Committee received a Book of Authorities that contained a number of case reports on prior decisions of the LSA and other Law Societies on matters of sanction.

Sanction Submissions and Decision

6. In accordance with the LSA Prehearing and Hearing Guideline, April 2021 (Guideline), hearing committees are not bound by decisions of prior hearing committees (paragraph 208), but the decisions may be considered persuasive. There is no single correct sanction, and it is not the case that the sanction imposed in one case is necessarily the only reasonable one in other circumstances.

7. The parties at the Sanction Hearing did not tender any joint submission on sanction.

8. Paragraph 187 of the Guideline provides that the "fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession." It further sets out a number of purposes and factors that should be taken into account when determining sanction, including, among others, the goals of specific and general deterrence and denunciation of the misconduct (at paragraph 188).

9. Paragraph 201 of the Guideline indicates that, in considering the nature of the misconduct, a hearing committee should consider whether it raises concerns about "maintain[ing] public confidence in the legal profession". Other relevant factors at paragraph 200 include the "harm caused by the misconduct" and any aggravating or mitigating circumstances.

Submissions of the LSA

10. Counsel for the LSA referenced the sanctioning principles in the Guideline and indicated she was seeking a short suspension of two weeks, plus an award of costs.

11. The LSA submitted that sanction in this case must place an emphasis on the public dimension. The profession must protect the public's money as it would protect its own. This case presented a circumstance not protected by the Alberta Lawyers Insurance

Association (ALIA). In that regard the sanction would also have to be considered in light of the impact it would have on the profession in general.

12. Counsel for the LSA reviewed certain aggravating and mitigating circumstances in this matter. In her view, the aggravating considerations include:

    a. the risk to the reputation of the profession;
    b. the fact that the repayment to the affected clients was triggered by the employee who made the misappropriation, and not the member;
    c. the fact that the employee trust theft was reasonably foreseeable in the circumstances as Schuldhaus had attended a seminar on that issue and the conditions outlined therein were present in this situation;
    d. the misappropriation continued undiscovered for over 10 years; and
    e. the evidence Schuldhaus gave at the Hearing in some measure contradicted his evidence in the Statement of Agreed Facts (SOAF) in relation to the question of how often he reviewed the trust ledger cards.

13. The mitigating factors put forward by the LSA included that Schuldhaus had no prior discipline history with the LSA.

14. Counsel for the LSA included a large number of case authorities in the Book of Authorities, which she broke down into categories. The first category of cases evidenced a range of sanction from fines to relatively short suspensions. Her primary reliance in this category was on *Law Society of Alberta v. Engelking,* 2009 LSA 18; *Law Society of Alberta v. Venkatraman*, 2013 ABLS 29; and *Law Society of Alberta v. Dawe*, 2017 ABLS 19. It was argued that all of these involved suspensions and were analogous to the present situation in that there was no loss to the clients involved.

15. The second category of cases all involved misconduct and losses of a more serious nature and involved suspensions from 12 – 20 months. The suspension sought here was of a shorter nature, acknowledging that over the course of the matter no client of Schuldhaus had come forth with a complaint or claim for loss. Authorities from other jurisdictions were also included to illustrate that Alberta sanctions have been lower for what was argued was equally serious conduct. Finally, it was argued that since *Engleking* was a 2009 decision it was a dated authority.

Submissions of Schuldhaus

16. Counsel for Schuldhaus argued that, given the deviousness and sophistication of the misappropriation by the employee, the length of time of the misappropriation should not adversely affect the sanction. He distinguished the *Venkatraman* case on the basis that Schuldhaus had trusted a person who had proven worthy of that trust, while *Venkatraman* involved a high volume real estate practice designed to bring in as much money as possible. He downplayed the seeming discrepancy in evidence between the SOAF and the Hearing concerning the trust ledger cards reviews. This was on the basis

that there were a large number of active estate files in any given month and that even a small number of such reviews each month would add up to a significant number per year.

17. Counsel also argued that although Schuldhaus had not suffered financially because of the misappropriation, it had taken a significant toll on him emotionally as he had taken a substantial hit to his professional reputation.

18. In terms of the case authorities, Counsel brought forward two other cases not cited in the LSA list of authorities. Both were cited on the basis that they were very recent authorities on sanction involving the LSA. In *Law Society of Alberta v. Herrington*, 2021 ABLS 9, a difficult family law matter had resulted in the lawyer for a husband attaching nude photos of the wife to an Affidavit in the proceeding. The member admitted to citations involving bringing the administration of justice into disrepute and failing to provide legal services to the standard of a competent lawyer. There the panel felt obligated to recommend a referral to the Attorney General for a possible criminal offence. Counsel argued that these were more severe breaches, yet the LSA request for a one-month suspension was refused and the member received only a reprimand and a costs award against her.

19. The case of *Law Society of Alberta v. Bontorin*, 2021 ABLS 13 was also brought to the Committee's attention. There the member put herself in a conflict of interest contrary to the Code of Conduct of the LSA, was not candid in correspondence in the matter and breached trust conditions. Mitigating and aggravating factors were also taken into consideration and the sanction was a one-week suspension, $2,500 fine and costs. However, there was a joint submission on sanction in that case. Counsel argued again that this involved conduct that was more serious, in terms of the member admitting to acting without integrity and voluntarily agreeing to the sanction imposed.

20. In the result, Counsel for Schuldhaus argued that the appropriate sanction was a reprimand and costs.

Sanction Decision

21. After reviewing the case authorities cited by respective Counsel and the additional arguments made at the Sanction Hearing, the Committee determined that the appropriate sanction is a reprimand. While the case authorities are helpful, it is not overly surprising that none of them is particularly persuasive or determinative for this Committee. The LSA primarily relied on three cases. As noted by the Committee at the Sanction Hearing, *Engelking* was of questionable relevance, not so much on the basis that it was dated, but rather that the member there was not found guilty on the citations that resulted from conduct similar to that in question in this matter. Rather, the suspension involved in that matter related to findings of guilt on citations involving breach of trust conditions.

22. *Venkatraman* involved an admission of guilt on what amounted to four citations involving failures to supervise an employee in multiple matters and failure to serve multiple clients. The panel there concluded that the member's firm had allowed the employee to effectively practice law on her own, open files, examine documents, meet with clients and manage trust monies. The Committee agrees with Counsel for Schuldhaus that the circumstances in that case were more extreme and the one-month suspension given there was appropriate in that circumstance, but not necessarily making a suspension appropriate here.

23. *Dawe* also involved an admission of guilt on four citations, although two of those were dismissed at the Hearing as being of minor severity. However, that still left one citation of a failure to supervise (as was the case for Schuldhaus) as well as a further serious citation for failing to act as a reasonable and prudent solicitor enabling a client and others to achieve an improper purpose. There, the 14-day suspension was a result of a joint submission on sanction. Based on those distinguishing factors, the Committee was not persuaded that a suspension of any duration was appropriate here.

24. The Committee considered the various factors cited in the Guideline and particularly noted from paragraphs 187, 188 and 200: (i) the need to maintain public confidence in the integrity of the profession and in the LSA's ability to govern its members, (ii) the general deterrence of other members and (iii) denunciation of this particular conduct.

25. The Committee considered the specific factors outlined in paragraph 206 of the Guideline and noted a number of mitigating considerations. In particular, (i) Schuldhaus' lack of a prior disciplinary record notwithstanding his lengthy time at the Bar, (ii) his responsible and conscientious response to the discovery of the misappropriation in reporting the matter and retaining a forensic accounting specialist to prepare a report provided directly to the LSA without prior review or comment, (iii) the cooperation and candour extended to the LSA during the course of its investigation and interviews, and (iv) the steps taken by his firm to address the deficiencies and prevent any reoccurrence in the future.

26. As noted earlier, the purpose of sanction is not to be punitive but to protect the public. The Committee does not view Schuldhaus as constituting any sort of ongoing threat to the public and considers a reprimand to provide the requisite deterrence in this circumstance.

27. The reprimand was delivered orally at the hearing and the contents of that reprimand are attached to this decision.

Costs Award

28. The Committee requested submissions by Counsel on the Estimated Statement of Costs produced by the LSA at the Sanction Hearing.

29. LSA counsel submitted an estimate of costs that took into account that the Hearing included another member. Accordingly, the costs from the Hearing were claimed based on one-half of the Hearing costs, which 50% share totaled $14,801.25. The estimated costs of this Sanction Hearing totaled $3,766.88.

30. Counsel for Schuldhaus argued that Schuldhaus had saved the LSA considerable sums by retaining the forensic accountant and providing the report to the LSA. Counsel for the LSA countered that this type of report would have been necessary in any event and that, if the LSA had requisitioned it, the cost would have been added to the Hearing Costs.

31. The Committee agrees with LSA Counsel on the merits phase and orders that Schuldhaus pay one-half of the costs associated with the merits phase of this hearing. In light of the success of Schuldhaus on the question of sanction, the Committee determined that he would only be required to pay one-half of the Sanction Hearing costs.

Concluding Matters

32. A Notice to the Profession in this matter is not required nor ordered.

33. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Schuldhaus will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, August 30, 2021.

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Cal Johnson, QC

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Linda Long, QC

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Nick Tywoniuk

Schedule 1

Reprimand

Mr. Schuldhaus, you've been convicted of the very serious offence of failing to properly supervise a member of your staff. We have found this conduct to be rightly deserving of sanction. That is publicly in evidence. We have found the appropriate sanction is a reprimand and a substantial portion of the costs.

This sanction hearing brings to a conclusion a process that I'm sure has been challenging and, I would suggest, humbling for you. For someone who has practiced as long and as ably as you have without a disciplinary record, we suspect that the impact on your reputation and your self esteem has been substantial.

This situation involves a very serious obligation and sacred trust imposed upon our profession when dealing with the public's monies. The public demands, and very reasonably expects, that we will carry out these duties to the highest standards. We must jealously guard and uphold these expectations and continue to do everything possible to safeguard and preserve that trust reposed in us.

It was clear to this panel that your integrity and conscientiousness and dedication to your clients was not in issue, but effectively, you took your eye off the ball in one critical aspect, which could have had very serious consequences.

We do not want to wish to be seen to in any manner be downplaying the very significant nature of this misstep. However, this panel is satisfied that you've learned some very hard lessons and which will affect your practice going forward.

We believe that you have many substantial contributions to be made to your clients and to the profession in the future and wish you the very best in conducting your practice in a safe and effective manner.

We also wish to thank you for the cooperation that you've given to the LSA over the extended course of both the investigation and these hearings and to the able and helpful assistance of your counsel. It certainly expedited the process and bringing this matter to a satisfactory conclusion.