

THE LAW SOCIETY OF BRITISH COLUMBIA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, C. 9
AND
A HEARING CONCERNING
DAVID JACOB SIEBENGA
RESPONDENT

**RULE 4-29 ADMISSION OF MISCONDUCT
AND UNDERTAKING TO DISCIPLINE COMMITTEE**

TAKE NOTICE THAT on April 29, 2020, the Discipline Committee considered and accepted a proposal submitted by the Respondent under Rule 4-29 of the Law Society Rules.

Under the proposal, the Respondent admitted misconduct as alleged in Allegations 1-2 and 4-7 of the citation authorized May 2, 2019 and issued May 23, 2019 (the "Citation") and gave his undertaking, for a period of fifteen (15) years, commencing on April 23, 2020:

- (a) not to engage in the practice of law in British Columbia with or without the expectation of a fee, gain or reward, whether directly or indirectly;
- (b) not to apply for re-instatement to the Law Society of British Columbia;
- (c) not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society of British Columbia; and
- (d) not to permit his name to appear on the letterhead of, or work in any capacity whatsoever, for any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.

As a result, the Citation is now resolved under Rule 4-29 of the Law Society Rules and the Respondent's admission of professional misconduct and his undertaking will be recorded on his professional conduct record.

In making its decision, the Discipline Committee considered a letter to the Chair of the Discipline Committee in which the Respondent admitted the disciplinary violation and give his undertaking not to practise law, the Respondent's prior professional conduct record, and the Respondent's former member status.

The Respondent has acknowledged that pursuant to Rule 4-29(5) of the Rules, his undertaking not to practise law means that he is a person who has ceased to be a member of the Law Society as a result of disciplinary proceedings, and that section 15(3) of the *Legal Profession Act* applies to him.

The admitted facts underlying the professional misconduct are set out in the attached Schedule "A".

SCHEDULE “A”

Admitted Facts underlying the Rule 4-29 Admission of Misconduct and Undertaking to the Discipline Committee

Member Background

1. David J. Siebenga (“Mr. Siebenga”) was called and admitted as a member of the Law Society of British Columbia on June 12, 1987.
2. Sanda L. King (“Ms. King”) was called and admitted as a member of the Law Society of British Columbia on February 20, 1998.
3. In or around 2004, Mr. Siebenga and Ms. King established the Siebenga & King Law Corporation (“S&K”), which consisted of a partnership comprised of their respective law corporations. S&K’s main areas of practice were real estate and conveyancing.
4. Mr. Siebenga and Ms. King practised with S&K at all material times relevant to the Citation.
5. Mr. Siebenga did not renew his practicing certificate and retired from the practice of law as of December 31, 2019, after having closed down S&K. It is his intention to resign his membership.

Citation and Service

6. The citation in this matter was authorized by the Discipline Committee on May 2, 2019 and was issued on May 23, 2019 (the “Citation”). [**].
7. On May 24, 2019, Mr. Siebenga and Ms. King were served through their respective counsel with the Citation and waived the requirements of Rule 4-19 of the Law Society Rules 2015.

Attachments

8. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that it is admitted for its authenticity, which means that:
 - a. it is a true copy of the original document,
 - b. it was written or created on the date on the face of the document,
 - c. whereby the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,
 - d. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
 - e. where the document purports on its face to have been received on a particular date or time, that it was so received, and
 - f. it is admitted into evidence to prove that the statements were made and not for proof of the truth of the matters recorded in it.
9. None of the invoices or statements of account attached to this Agreed Statement of Facts are admitted for their authenticity.

Background Facts and S&K Accounting Practices

10. At the material times, Mr. Siebenga and Ms. King operated the following relevant bank accounts:
 - a. TD Canada Trust Account No. [**] (the "TD Delta Account");
 - b. TD Canada Trust Account No. [**] (the "Chilliwack Account");

- c. TD Canada Trust Account No. [**] (the “Abbotsford Account”);
 - d. Westminster Savings Credit Union Trust Account No. [**] (the “Westminster Account”);
 - e. Prospera Credit Union Trust Account No. [**] (the “Newton Account”)
 - f. Prospera Credit Union Trust Account No. [**] (the “Cloverdale Account”);
 - g. Envision Credit Union Trust Account No. [**] (the “Envision Surrey Account”);
 - h. Envision Credit Union Trust Account No. [**] (the “Envision Delta Account”);
 - i. G&F Financial Group Trust Account No. [**] (the “G&F Account”);
 - j. Vancity Trust Account No. [**] (the “Vancity Account”); and
 - k. Prospera Credit Union General Account No. [**] (the “Prospera General Account”).
11. At the material times, Mr. Siebenga and Ms. King were the only signatories to their trust accounts.
12. The chief place of practice of S&K was in Surrey, British Columbia, but the firm had three other locations: another office in Surrey, an office in Chilliwack, and an office in Abbotsford.
13. At the material times, Mr. Siebenga and Ms. King employed several administrative and conveyance staff to carry out their high-volume real estate conveyance practice, under their supervision.
14. The ordinary practice of S&K for real estate conveyance matters was to confirm the amount of S&K’s statement of account in an Order to Pay that was approved by the client around the time of closing.

15. In matters where the total anticipated liabilities from the Order to Pay and S&K's statement of account did not fully exhaust the money held in trust for a client, an amount of money was left over in the trust account, owing to the client (a "Residual Balance").
16. In some instances, when a Residual Balance remained at the conclusion of a client matter, S&K would issue a cheque to the client for the amount of the Residual Balance.
17. When a cheque issued by S&K to the client for the Residual Balance was not cashed within six months of issue, the cheque would become stale-dated.
18. In some instances, when a Residual Balance remained at the conclusion of a client matter, S&K would not issue a cheque to the client for the amount of the Residual Balance. In those instances, the Residual Balance was held in trust, unresolved, for extended periods.
19. S&K's bookkeeper, I.G., prepared a trust liability report on a monthly basis, which she provided to Mr. Siebenga and Ms. King for their review with the monthly trust reconciliations.
20. The monthly trust liability reports provided by I.G. detailed the amounts and aging of S&K's outstanding trust liabilities, including all stale-dated cheques and Residual Balances.
21. When S&K issued a statement of account to a client, the billed amount was not immediately withdrawn from trust and deposited into the firm's general account in a discrete transaction.
22. Rather, S&K utilized a "fee ledger" system. Each trust account in operation had a separate fee ledger. The amount in the statement of account would be transferred from the client ledger to the respective fee ledger in S&K's trust account.
23. I.G. would periodically review the fee ledgers in S&K's various trust accounts and prepare a single cheque from each trust account to S&K's general account for the aggregate amount of fees recorded as due from clients (the "Aggregate Cheques").

24. The Aggregate Cheques were then presented for signature to either Mr. Siebenga or Ms. King.
25. Both Mr. Siebenga and Ms. King signed Aggregate Cheques, authorizing the transfer of funds from the fee ledgers in S&K's trust accounts to S&K's general account.
26. As set out in more detail below, some of the Aggregate Cheques included amounts that had not been properly billed to the client and were not authorized for withdrawal.

2009 Compliance Audit, Initial Misappropriations and Creation of False Invoices

27. On February 28, 2009, Mr. Siebenga and Ms. King completed their trust report for the period ending November 30, 2008 and submitted it to the Law Society (the "2009 Trust Report"). [**].
28. Mr. Siebenga and Ms. King certified that their answers in the 2009 Trust Report were "true and correct".
29. The 2009 Trust Report asked the following question:
 7. At any time during the reporting period, did the practice have outstanding stale-dated cheques issued from the Trust account? If yes, use the note function to advise the number of cheques issued and outstanding for periods that exceed one year and total dollar value only of such stale-dated cheques at the end of the reporting period.
30. Mr. Siebenga answered "No" to Question 7. This answer was incorrect.
31. Mr. Siebenga knew or ought to have known that his answer to Question 7 was incorrect given that the monthly trust liability reports prepared by I.G. showed the existence of stale-dated cheques throughout the period ending November 30, 2008.
32. On March 4, 2009, Mr. Siebenga and Ms. King received notification from the Law Society's Trust Assurance Department that S&K was scheduled for a compliance audit of its practice starting April 20, 2009, covering the period of March 1, 2008 to the commencement of the audit (the "2009 Audit").

33. The 2009 Audit was postponed to commence on May 4, 2009.
34. Under Mr. Siebenga's direction and before commencement of the 2009 Audit, Mr. Siebenga and Ms. King began a process of:
 - i. reversing stale-dated cheques and paying the reversed amounts into S&K's general account, and
 - ii. also paying unresolved Residual Balances held in trust into S&K's general account. This was accomplished by transfers of the involved client funds to one of the fee ledgers in S&K's respective trust accounts, which were later paid from trust to S&K's general account by way of Aggregate Cheques.
35. In total, between February 24, 2009 and April 29, 2009, \$12,971.51 was wrongly transferred in 158 instances prior to the 2009 Audit (the "Initial Misappropriations"). The details of the Initial Misappropriations are set out in the Schedules to the Citation as follows:
 - a. Schedule A, nos. 16-56; 142-162; 179-220; 246-290; and
 - b. Schedule B, nos. 108-116.
36. S&K had no entitlement to the Initial Misappropriations.
37. In order to create apparent justification for the Initial Misappropriations, Mr. Siebenga and Ms. King each participated in the creation of 197 false statements of account backdated to between February 6, 2008 and February 27, 2009, or no dates, as particularized in Allegation 4 of the Citation (the "2009 Invoices").
38. [**].
39. After receiving notification of the upcoming 2009 Audit, but before it commenced, Mr. Siebenga and Ms. King exchanged email communications about the Initial Misappropriations and the creation of the 2009 Invoices. [**].

40. As an example, on March 10, 2009 (11:33 am), Mr. Siebenga sent the following email message to Ms. King regarding one of the pooled trust accounts with outstanding stale-dated cheques (an account nicknamed “Prospera Red”):

...On the stale dates, the cheques need to be reversed. This may be a bit complicated for you so the best way to do is to get [I.G.’s] spreadsheetTo (sic) do so we need to date the reversal prior to the date we submitted the declaration for the trust funds to the law society (i.e. needs to be dated for last month). The way we do this is to take the spreadsheet that [I.G.] has and insert new files columns for the files to reverse (sic) the stale date cheques into. Once that is done, then we will on one line debit across (sic) the total, thereby eliminating all of those os balances in all files. Once that is done we will write one cheque for fees... (emphasis added)

41. On March 25, 2009 (1:50 pm), Mr. Siebenga sent Ms. King an email attaching a template for preparing invoices. The email includes instructions on how to use the template to create invoices for “earlier dates” and warns to use the appropriate tax rate for the putative date of the invoice:

The attached is a word document and has an in bedded excel sheet in it. It automatically calculates the invoice amount. A couple of things, if you are using it for earlier dates, you need to manually type in the date as Word tries to use the current date all of the time. Secondly, depending on the date of the invoice, you need to use either 5% of 6%. This is changed by adjusted in the invoice in the excel formulae in the spreadsheet. If this is complicated, then I can prepare one invoice for each and send it to you. (emphasis added)

42. Over the next few weeks, between March 30 to April 27, 2009, there was ongoing email communication between Mr. Siebenga and Ms. King about the preparation of client invoices.

43. On April 29, 2009 (3:05), Ms. King emailed Mr. Siebenga with a subject line “invoices” and stating:

heres (sic) what I’ve done so far – can u see if this works for you before igo (sic) much further?

44. On May 1, 2009, Ms. King emailed Mr. Siebenga with the subject line “here are the invoices”. Attached to the email are five documents that include draft invoices to clients. The five document attachments are as follows:
 - a. “accounts.doc”, including 72 statements of account with no dates;
 - b. “accounts td abby.doc”, including 26 statements of account with no date;
 - c. “accounts td newton.doc”, including one statement of account with no date;
 - d. “accounts td chwk.doc”, including 25 statements of account with no date; and
 - e. “accounts prospera red.doc”, including 72 statements of account with no dates.
45. On May 2, 2009 (1:04 am), Ms. King emailed I.G. and Mr. Siebenga saying that she provided printouts of the trust liabilities and bank reconciliations that she had completed.
46. On May 3, 2009 (12:18 am), Ms. King emailed Mr. Siebenga with the subject line “accounts updated”. Attached to the email are five documents that were updated versions of the 2009 Invoices.
47. The 2009 Invoices were backdated to create the appearance that they were prepared previously.
48. The 2009 Invoices were not delivered to the clients to whom they were addressed before the withdrawal of client trust funds to pay the accounts, or at all.
49. The fees and disbursements set out in the 2009 Invoices had not actually been incurred and were not properly charged to the clients.
50. The 2009 Invoices were created for the purpose of misleading the Law Society auditor for the 2009 Audit.
51. The Initial Misappropriations were not discovered during the 2009 Audit.

2009-2013 – Further Misappropriations, 2012 Compliance Audit and Producing Further False Invoices

52. After the 2009 Compliance Audit had concluded, the process of reversing stale-dated cheques and transferring those trust funds into S&K's general account continued as well as transferring unresolved Residual Balances from trust to general without entitlement (the "Further Misappropriations").
53. The Further Misappropriations occurred throughout the period of 2009 to 2013, for a total sum of \$50,858.01 in 257 instances, as follows:
 - a. On June 11, 2009, a total of \$1,077.17 was misappropriated in 25 instances, the details of which are set out in the Citation at Schedule A, nos. 221-245;
 - b. On April 18, 2010, a total of \$787.76 was misappropriated in 8 instances, the details of which are set out in the Citation at Schedule A, nos. 163-170;
 - c. On November 30, 2011, a total of \$41,742.50 was misappropriated in 182 instances, the details of which are set out in the Citation at Schedule A, nos. 1-12; 57-124; 171-178; and Schedule B, nos. 1-51; 74-107; and 117-125; and
 - d. On February 28, 2013 and March 14, 2013, a total of \$7,250.58 was misappropriated in 42 instances, the details of which are set out in the Citation at Schedule A, nos. 13-15; 125-141; and Schedule B, nos. 52-73.
54. On February 29, 2012, Mr. Siebenga and Ms. King completed their trust report for the period ending November 30, 2011 and submitted it to the Law Society (the "2012 Trust Report"). [**].
55. The 2012 Trust Report asked the following question:
 7. At any time during the reporting period, did the practice have outstanding stale-dated cheques issued from the Trust account? If yes, use the note function to advise the number of cheques issued and outstanding for periods that exceed 6 months and total dollar value only of such stale-dated cheques at the end of the reporting period.

56. Mr. Siebenga answered “No” to Question 7. This answer was incorrect.
57. Mr. Siebenga ought to have known that his answer to Question 7 was incorrect given that the monthly trust liability reports prepared by I.G. showed the existence of stale-dated cheques throughout the period ending November 30, 2011.
58. From December 10 to 14, 2012, the Law Society’s Trust Assurance Department carried out another compliance audit of S&K’s practice for the audit period of October 1, 2011 to November 30, 2012 (the “2012 Audit”).
59. The 2012 Audit identified numerous exceptions to compliance with Part 3, Division 7 of the Law Society Rules. Mr. Siebenga and Ms. King were required to respond to the concerns identified in the course of the 2012 Audit, including the issue of reversing stale-dated cheques and paying client trust funds into S&K’s general account to which S&K was not entitled.
60. On February 27, 2013, Mr. Siebenga and Ms. King provided a letter to the Law Society addressing various concerns raised by the 2012 Audit (the “February 2013 Letter”), including the issue of reversing stale-dated cheques and appropriating client trust funds to which S&K was not entitled.
61. [**].
62. In the February 2013 Letter, Mr. Siebenga and Ms. King referred to the 2009 Invoices and relied on them to justify the Initial Misappropriations.
63. On or around February 27, 2013, 214 false statements of account bearing dates between September 26, 2008 and November 30, 2011, were also provided to the Law Society in order to justify and conceal the Further Misappropriations (the “Later Invoices”).
64. [**].

65. Mr. Siebenga knew or ought to have known that:
- a. The Later Invoices were backdated to create the appearance that they were prepared before their actual date of creation;
 - b. The Later Invoices were not delivered to the clients to whom they were addressed before the withdrawal of client trust funds to pay the accounts, or at all; and
 - c. The Later Invoices included fees and disbursements which had not actually been incurred and were not properly charged to the clients.
66. The Later Invoices were created for the purpose of misleading the Law Society auditor in the course of the 2012 Audit.
67. In response to the results of the 2012 Audit, Mr. Siebenga and Ms. King acknowledged to the Law Society that they were not entitled to some of the funds that they had withdrawn from trust.

Rule 4-43 (now Rule 4-55) Forensic Audit and Law Society Investigation

68. On May 22, 2013, Eva Milz, Team Leader with the Law Society's Trust Assurance Department, sent a Referral Memo to the Law Society's Professional Regulation Department. [**].
69. On July 8, 2013, the Chair of the Discipline Committee of the Law Society ordered an investigation of the books, records, and accounts of S&K pursuant to Rule 4-43 [now Rule 4-55] of the Law Society Rules (the "Rule 4-43 Investigation").
70. Andrea Chan, CFE, CPA, CGA, a forensic auditor in the Law Society's Trust Assurance Department, was designated by the Executive Director to conduct the Rule 4-43 Investigation.
71. Ms. Chan conducted the Rule 4-43 Investigation of S&K for the audit period July 1, 2008 to June 30, 2013.

72. On October 28, 2014, Ms. Chan provided an interim investigation report to the Law Society with respect to the Rule 4-43 Investigation (the “Interim Audit Report”).
73. [**].
74. The findings made by Ms. Chan in her Interim Audit Report were affected by her limited access to the electronic records of S&K as all relevant information had not been discovered in a forensic search conducted based upon parameters that had been agreed to between the Law Society and counsel for S&K.
75. Ms. Chan subsequently asked that the search parameters be broadened. As a result, further documentation was obtained. On November 27, 2017, Ms. Chan provided a final investigation report to the Law Society with respect to the Rule 4-43 Investigation (the “Final Audit Report”).
76. [**].
77. The Interim and Final Audit Reports set out the details of the Initial and Further Misappropriations. The “Ref No.” column in the Schedules to the Citation refer to the corresponding Schedules attached to the Interim and Final Audit Reports.

Admissions of Misconduct

78. Mr. Siebenga admits that between approximately February 2009 and February 2013, client trust funds totalling \$25,575.93 were misappropriated on the 290 occasions identified in Schedule “A” of the Citation, by the reversing of stale-dated trust cheques and subsequent withdrawal of the funds in payment of purported fees and disbursements, when he knew or ought to have known that those fees or disbursements were not properly charged to the clients.

Mr. Siebenga admits that his conduct in doing so constitutes professional misconduct.

79. Mr. Siebenga admits that between approximately March 2009 and February 2013, client trust funds totalling \$38,253.59 were misappropriated on the 125 occasions identified in Schedule “B” of the Citation, by the withdrawal of the funds in payment of purported

fees and disbursements, when he knew or ought to have known that those fees or disbursements were not properly charged to the clients.

Mr. Siebenga admits that his conduct in doing so constitutes professional misconduct.

80. Mr. Siebenga admits that between approximately April 27, 2009 and May 3, 2009, the following statements of account were created that he knew or ought to have known were false or misleading:

- a. 73 statements of account dated February 6, 2008 to February 27, 2009, created and saved as “accounts.doc” in connection to one or more withdrawals from Westminster Savings Trust Account No. [**];
- b. 26 statements of account dated July 30, 2008, February 24, 2009, and February 27, 2009 or no date created and saved as “accounts td abby.doc” in connection to one or more withdrawals from TD Canada Trust Account No. [**] (Abbotsford Account);
- c. one statement of account dated February 24, 2009 created and saved as “accounts td newton.doc” in connection to one or more withdrawals from TD Canada Trust Account No. [**] (TD Delta Account);
- d. 25 statements of account dated between September 11, 2008 and February 27, 2009 (or no date) created and saved as “accounts td chwk.doc” in connection to one or more withdrawals from TD Canada Trust Account No. [**] (Chilliwack Account); and
- e. 72 statements of account with no date, created and saved as “accounts prospera red.doc” in connection to one or more withdrawals from Prospera Credit Union Trust Account No. [**] (Cloverdale Account).

Mr. Siebenga admits that his conduct in doing so constitutes professional misconduct.

81. Mr. Siebenga admits that, on or about February 28, 2009, he and Ms. King represented to the Law Society in the trust report for the period ending November 30, 2008, which they

certified to be “true and correct”, that Siebenga & King Law Offices did not have outstanding stale-dated cheques issued from their trust account when he knew or ought to have known that the answer was not true.

Mr. Siebenga admits that his conduct in doing so constitutes professional misconduct.

82. Mr. Siebenga admits that, on or about February 29, 2012, he represented to the Law Society in the Siebenga & King Law Offices trust report for the period ending November 30, 2011, that Siebenga & King Law Offices did not have outstanding stale-dated cheques issued from their trust account when he knew or ought to have known that the answer was not true.

Mr. Siebenga admits that this constitutes professional misconduct.

83. On September 9, 2018, Mr. Siebenga directed a letter to the investigator Mr. Forstrom, responding to a number of questions. In that letter, Mr. Siebenga advised that although he did not have an independent recollection of all of the circumstances given that the alleged incidents occurred in 2009, he accepted various findings of the Interim and Final Reports and the facts outlined in this Agreed Statement of Fact and acknowledged that there were a number of errors and deficiencies in the Firm’s accounting and trust practices that had taken place for which he had some responsibility.

84. [**].