

THE LAW SOCIETY OF BRITISH COLUMBIA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, C. 9

AND

GERALD EDWARD PALMER

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On July 12, 2024, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Gerald Edward Palmer (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. Under the proposal, the Lawyer admitted that he committed the following misconduct, and that it constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*:
 - i. between approximately June 2017 and August 2021, he caused trust shortages on one or more of the 22 occasions (i.e. “Trust Shortages”) by improperly withdrawing client trust funds from his pooled trust account when his trust accounting records were not current and/or there were insufficient funds on deposit to the credit of the clients on whose behalf he made the withdrawals, contrary to one or both of Rule 3-63 and Rule 3-64(3) of the Law Society Rules (the “Rules”);
 - ii. between approximately July 2020 and May 2022, he did not:
 - (a) immediately eliminate the Trust Shortages, upon discovery of the shortages, contrary to Rule 3-74(1) of the Rules; and
 - (b) did not immediately report trust shortages greater than \$2,500 to the Executive Director, contrary to Rule 3-74(2) of the Rules;
 - iii. between approximately October 2019 and September 2021, he failed to maintain accurate accounting records in accordance with Part 3, Division 7 of the Rules, in one or more of the following ways:

- (a) on one or more of 23 occasions, he failed to accurately record trust transactions of his pooled trust account promptly, or in any event, within seven days after a trust transaction, contrary to Rule 3-72 of the Rules; and
 - (b) on one or more of 23 occasions, he failed to prepare accurate monthly trust reconciliations for each of his three pooled trust accounts within 30 days of the effective date of the reconciliation, contrary to Rule 3-73 of the Rules;
 - iv. between approximately December 15, 2020 and October 17, 2021, and May 25, 2022 and February 2, 2023, in relation to his clients AB and BB, the sellers in a real estate matter, he failed to honour a trust condition imposed by the buyer's notary on December 15, 2020 and accepted by him on approximately December 15, 2020, when he did not use diligent and commercially reasonable efforts to obtain the Releases in a timely manner and upon his receipt of the Releases, attend to the registration of the same in the Land Title Office and provide the buyer's notary with registration particulars in due course, contrary to one or more of rules 2.1-4(b), 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia* (the "Code");
 - v. between approximately April 2021 and September 2021, in relation to his clients AB and BB, the sellers in a real estate matter, he failed to answer with reasonable promptness, or at all, one or more communications from the buyer's notary (i.e. CC) that required a response, contrary to rule 7.2-5 of the *Code*; and
 - vi. between approximately January 2021 and September 2021, in relation to his clients DE and EE, he failed to serve his clients in a timely, conscientious, diligent and efficient manner so as to provide the quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, when he did not file an executed Form C with the Land Title and Survey Authority of BC to discharge a mortgage registered against the client's property, contrary to one or both of rules 3.1-1 and 3.2-1 of the *Code*.
3. As part of the consent agreement, the Lawyer has provided an undertaking that he will:
- (a) not engage in the practice of law for a period of five years, from August 1, 2024 to July 31, 2029, with or without the expectation of a fee, gain or reward, whether directly or indirectly;
 - (b) not apply for reinstatement to the Law Society of British Columbia or elsewhere in Canada, for a period of five years, which date is July 31, 2029;

- (c) not 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, for a period of five years, which date is July 31, 2029; and
 - (d) not 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 prior written consent of the Discipline Committee of the Law Society, for a period of five years, which date is July 31, 2029.
4. The Lawyer has resigned and his membership in the Law Society of British Columbia terminates on August 1, 2024.
 5. In making its decision, the Chair of the Discipline Committee (the “Chair”) considered an Agreed Statement of Facts dated June 27, 2024, and a letter to the Chair containing the Lawyer’s consent agreement proposal. The Chair also considered the Lawyer’s professional conduct record, which included a 1986 admission of misconduct, recommendations made by the Competency Committee between 1989 and 1995, a condition limiting the Lawyer’s practice in wills and estates since 1995, five conduct reviews between 2002 and 2018, recommendations made by the Practice Standards Committee in 2015, two concurrent administrative suspensions from October 2021 to May 2022, determinations of professional misconduct in 2022 and a resulting one month suspension in 2023 (served until July 1, 2024), and the failure to pay costs, when due, resulting from that hearing.
 6. This consent agreement will now form part of the Lawyer’s professional conduct record.
 7. Pursuant to Rule 3-7.1(5) of the Rules, and subject to Rule 3-7.2 of the Rules, the Law Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
 8. The admitted facts set out in the Agreed Statement of Facts are summarized below.

Summary of Facts

Member Background

9. The Lawyer was called and admitted as a member of the Law Society of British Columbia on May 12, 1981. He practises in the areas of residential and commercial real estate (30%), wills and estates (25%), corporate (15%), commercial lending transactions and other (10%), creditors’ remedies (10%), and civil litigation (5%).
10. In 2014, the Lawyer opened his own firm in Abbotsford, British Columbia.

Background Facts

11. During a compliance audit in 2021, the Trust Assurance Department (“TAD”) advised the Lawyer that his firm was required to recreate its accounting records for the audit. The Lawyer was then suspended in relation to the production of the TAD records. The Lawyer’s firm retained a new bookkeeper to complete reconstruction of the firm’s accounting records and his suspension was lifted once the records required to commence the audit were received by TAD.
12. In May 2022, the TAD made a referral to the Professional Conduct Group for concerns that the Lawyer breached numerous trust accounting rules including improperly withdrawing trust funds on 22 occasions when there were insufficient funds being held in trust, resulting in trust shortages. In October 2022, the TAD made another referral to the Professional Conduct Group for concerns that the Lawyer had failed, in 2021, to register a Form C to discharge a mortgage on title.
13. In January 2023, CC, a notary, submitted a complaint regarding the Lawyer’s handling of a real estate transaction, in which the Lawyer breached an undertaking to CC and failed to respond to communications from CC inquiring about the status of fulfilling the undertaking.

Improper Withdrawals, Failure to Report Trust Shortages, and Maintenance of Accounting Records

14. Between October 1, 2019 and May 19, 2022, the Lawyer caused trust shortages on one or more of 22 occasions (the “Trust Shortages”).
15. Of the Trust Shortages, one shortage was due to a bank error, one shortage was due to service charges, two shortages were due to trust funds erroneously deposited into general, and 18 shortages were due to improper trust withdrawals authorized by the Lawyer.
16. The Trust Shortages remained undiscovered until the accounting records were fully reconstructed by the direction of the TAD in May 2022.
17. The Lawyer did not immediately eliminate the Trust Shortages when they were discovered in May 2022. On May 20, 24, and 25, 2022, the Lawyer issued general account cheques to transfer funds from general to trust to eliminate the Trust Shortages. However, the cheques were not deposited to the trust account until June 23, 2022. The Lawyer explains that this delay was due to his efforts in arranging a mortgage with a line of credit on his residence to cover the trust shortages.
18. The Lawyer did not provide written reports to the Executive Director for the nine Trust Shortages greater than \$2,500 immediately after they were discovered.

19. Between October 2019 and September 2021, the Lawyer did not keep accurate and current accounting records.
20. The Lawyer failed to accurately record trust transactions of his pooled trust account promptly, or within seven days after a trust transaction, on one or more of 23 occasions.
21. The Lawyer failed to prepare accurate monthly trust reconciliations for all three of his pooled trust accounts within 30 days of the effective date of reconciliation on one or more of 23 occasions for each account.

Failed to Honour Trust Condition and Failure to Answer Communications from CC

22. The Lawyer acted for the sellers and CC acted for the buyers in a real estate transaction completed December 15, 2020. That day, the Lawyer accepted the following trust condition in relation to the transaction:

Pay to ... (the "Lender") the amount required by its written payout statement to payout and legally obligate the Lender to provide the Release of its Mortgage registered against the Property under number CA[XX] and on the trust condition that the Lender provide you with a release of its charge in registrable form (the "Release") within a reasonable period of time...

Use diligent and commercially reasonable efforts to obtain the Releases in a timely manner and upon your receipt of the Releases, attend to the registration of same in the Land Title Office and provide us with registration particulars in due course.

The "Trust Condition".

23. On December 15, 2020, the Lawyer caused a letter to be sent to the Lender with a request for the payout statement for CAXX. Later the same day, the Lawyer caused a revised letter to be sent to the Lender requesting payout statements for both CAXX and BAXX.
24. On December 16, 2020, the Lawyer received a payout statement for mortgage number 00XX (the "Mortgage"), indicating a payout amount of \$87,197.55 (the "Payout Statement"). The same day, the Lawyer issued a trust cheque to the Lender for \$87,207.55, which cleared trust on December 17, 2020.
25. The Payout Statement mistakenly did not indicate that further amounts were needed to discharge the Mortgage, and the Lawyer was unaware of those further amounts.
26. On April 2, 2021, the Lawyer received a letter from CC requesting the Mortgage release information. The Lawyer did not respond. On May 1, 2021, the Lawyer received the same April 2, 2021 letter from CC. The Lawyer did not respond. On September 11, 2021, the

Lawyer again received the April 2, 2021 letter from CC. The Lawyer did not respond. Each time the Lawyer received the letter, an additional “URGENT!” stamp had been applied and finally an added request for immediate attention was included.

27. In April 2022, after CC’s clients sold the property, it was apparent that the Mortgage had not been discharged. On May 11, 2022, the Lawyer’s office was contacted by CC over phone and email and informed that the Mortgage had not been discharged.
28. On April 20, 2022, the Lawyer’s office sent an email to the Lender requesting the Mortgage be discharged immediately.
29. On May 2, 2022, the Lender filed a Form C to discharge part of the Mortgage. On May 3, 2022, the Lawyer’s office emailed CC and advised that the Mortgage had been partially discharged and they were still waiting for the Lender to discharge the remainder of the Mortgage.
30. On January 26, 2023, the Lawyer was copied on an email CC sent to the Lender enquiring about the Mortgage discharge. The Lender replied to CC the next day, copying the Lawyer’s office, to advise that the remainder of the Mortgage was attached to a line of credit that remained active with an outstanding balance (the “LOC”). The Lender also advised that a payout statement had been issued May 3, 2022, but no funds had been received, and the statement had expired June 23, 2022.
31. The Lawyer was not aware of the LOC until informed of it by the Lender on January 27, 2023.
32. On January 27, 2023, after receiving the reply email from the Lender, the Lawyer sent a letter to the Lender requesting the payout statement for the remainder of the Mortgage. The Lender sent the payout statement to the Lawyer the same day, indicating a payout amount of \$90,954.21.
33. On February 2, 2023, the Lawyer was notified of CC’s complaint.
34. On February 2, 2023, the Lawyer issued a trust cheque to the Lender for \$91,079.30.
35. On February 22, 2023, the Lender’s charge CAXX (i.e. the LOC portion of the Mortgage) was cancelled.

Failure to Provide Quality of Service

36. The Lawyer represented the Es as borrowers in a refinancing of a real property in British Columbia (the “Property”).

37. The Lawyer was aware that, on July 8, 2020, M registered a mortgage and corresponding assignment of rents on the Property (the “M Mortgage”).
38. On January 5, 2021, the Lawyer received mortgage proceeds of \$1,024,700.00 into trust.
39. On January 6, 2021, the Lawyer issued a trust cheque for \$389,455.74 and deposited it to M’s counsel’s trust account in payment of the M Mortgage.
40. On January 7, 2021, the Lawyer received the executed Form C from M’s counsel, confirming that the M Mortgage was paid out (the “Form C”). The Lawyer did not file the Form C with the Land Title and Survey Authority of BC (the “LTO”) to discharge the M Mortgage registered against the Property.
41. The Lawyer’s client file contained a *State of Title Certificate* dated August 25, 2021 showing that the M Mortgage was still registered on title to the Property.
42. The Lawyer was administratively suspended from October 18, 2021 until May 25, 2022.
43. On July 5, 2022, the TAD auditor asked the Lawyer to provide a copy of the electronically filed Form C to discharge the M Mortgage and a current title search print for the Property.
44. On July 8, 2022, another Lawyer filed the Form C to discharge the M Mortgage.