

Waldman & Associates

BARRISTERS & SOLICITORS
IN ASSOCIATION FOR THE PRACTICE OF LAW

- Lorne Waldman LL.B., LL.M.
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August 31, 2009

VIA E-MAIL AND FACSIMILE

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Dear Mr. Benesch,

RE: Katarina Onuschak
CSIC Complaint No. 09-00098

Thank you for your letter of August 17, 2009. My client has asked me to respond on her behalf. I appreciate the detailed summary of the exchanges between my client and your office prior to my intervention. However, Ms. Onsuchak stated in her first response, and continued to state that she does not have the required information.

I do note that we did establish that the material you requested from the listserv was not available, but provided the best information we could provide. I gather that this was successful as the suspension for non-cooperation was lifted.

Ms. Onsuchak did not initially offer the listserv membership as of July 8, 2009, as this information was not requested and was not relevant to the investigation. It was your right to request the current membership list, which you choose not to do.

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In terms of your further requests I can reply as follows:

LOG OF LISTSERV

As I indicated in my previous correspondence, the listserv used by my client is a very rudimentary one and does not have a log. As a result, this is not available. I do not believe that you can require my client to provide something that does not exist as part of her obligation to assist in your investigation. We have submitted a sworn affidavit by an IT specialist that already established this fact:

“The listserv software used by the ISP is Mailman, the GNU Mailing List Manager. Mailman is free software for managing electronic mail discussion and e-newsletter lists. After a thorough review of the administrator GUI, to the best of my knowledge, by using the aforementioned GUI administration, I can establish that the system does not have a provision of reporting the subscriptions history of memberships or of forming reports in relation to past members. The list of the current members is the only membership newsletter report provided by the GUI.”

If you require further confirmation of this over and above what was already provided please advise, and I can arrange for your IT specialist to view the listserv at a mutually agreeable location to satisfy himself of the veracity of this statement.

WHY MY CLIENT BELIEVES THAT THE MEMBERS OF THE LIST SERVE WERE SUBSTANTIALLY THE SAME

Since the Notice of Complaint was filed against my client, the Steering committee agreed to monitor all new subscription and unsubscriptions. There were only a few changes since June 18, both new subscribers and those who wished to unsubscribe and the number of subscribers is 147 while on June 18, there were 144 subscribers.

HOW INFORMATION ABOUT THE INVESTIGATION WAS POSTED ON A WEBSITE

My client advises that she did not post or agreed to the posting of the information in question on this particular website. As you have indicated in your summary of the correspondence, in order to seek to comply with your order to provide a copy of the list serve my client had to consult with various members of the listserv and advise them of the investigation. This is noted in your

correspondence. Her disclosure, which was necessary in order to seek to comply with the investigation, cannot be considered a breach of the non-disclosure order.

In addition it is our view that the non-disclosure order is illegal and is a violation of my client's right to free speech. I wish to advise that any efforts to discipline my client over this issue will be vigorously challenged.

STEPS MY CLIENT TOOK TO COMPLY WITH THE SUSPENSION ORDER

I will review with you the sections of the Suspension Policy and Confirm Compliance:

SECTION I-YOU MAY:

1. See clients only for the limited purpose of assisting them in transferring their past or present immigration files or work to another Member of the Canadian Society of Immigration Consultants, Member of a Provincial Bar Association or a Member of the Chambre des notaires du Quebec;
2. Collect accounts receivable;
3. Provide an accounting to all of your clients for work completed on/or before the date of your suspension.

My client advises that she had complied with this policy. She did not meet with any new clients or with any clients other than for the purpose of ensuring that they would be able to find other representation. She did not open any new files. She did not meet with new clients. The only fees she collected were in relation to accounts receivable

SECTION II - YOU SHALL NOT, CONTRARY TO SECTION 13.1 (1) OF THE REGULATIONS:

1. Hold yourself out in any express or implied manner or form to be a Member of the Canadian Society of Immigration Consultants;
2. Hold yourself out to be an "authorized representative" as defined by the Immigration and Refugee Protection Act Regulations;
3. Act as a "Phantom," "Shadow" or "Concealed" representative/agent for the purpose of consulting with, representing or advising any person who is the subject or potential subject of a proceeding or application before the Minister, an officer or the Immigration and Refugee Board, for a fee, gift, donation, or any other remuneration;
4. Accept any new clients on any potential immigration or refugee proceeding or application;
5. Accept any new immigration or refugee work for existing clients;
6. Give any immigration or refugee advice, represent or consult with any client, individual, corporation or other entity on an immigration or refugee matter;
7. Continue or commence any immigration or refugee matter for a client where the

- person is the subject or potential subject of an immigration or refugee proceeding or application before the Minister, an officer or the Immigration and Refugee Board;
8. Draft, revise and/or execute immigration or refugee documents of any type that services of a Member of the Canadian Society of Immigration Consultants, a Member of Provincial Bar Association or a Member of the Chambre des notaires du Quebec.

She did not work on any files other than to take whatever steps were necessary to ensure that the files could be properly transferred without prejudice to another consultant. She did not make any further submissions on any files. She did not share space with or work with any other consultant on files. She did not appear at any immigration hearings or make any new submissions on any other files. She did not give any advice or continue working on any files or attend at any hearings.

FURTHER TO THIS POLICY, YOU SHALL NOT:

In accordance with Rule 3.7 of the Rules of Professional Conduct, occupy or share office space with an Immigration Consultant without the written permission of the Society as obtained from the Registrar or Registrar delegate.

She complied with this requirement.

SECTION III- YOUR OBLIGATION TO YOUR CLIENTS REQUIRES THAT YOU:

1. Inform all your active clients, within 5 days, of the date on which you have been suspended, and advise them that you may no longer act as an authorized representative and, as such, you can no longer represent them;
2. Inform your clients in writing, within 5 days, that they may take their files to a Member of the Canadian Society of Immigration Consultants, to a Member of a Provincial Bar Association or to a Member of the Chambre des notaires du Quebec. You are required to provide the Society with a copy of the notice sent to your clients advising them that you are no longer an authorized representative and therefore can no longer represent them. While you may suggest a referral to a particular Member of one of the three listed groups, the ultimate choice of who is retained rests with the client and not with you;
3. Provide each of your active clients with her or his file or make arrangements to transfer the file to the person she or he has chosen as her or his Immigration Consultant, Member of a Provincial Bar Association or Member of the Chambre des notaires du Quebec;
4. Meet with clients only for the purpose of assisting them to transfer their past or present immigration work to a Member of the Canadian Society of Immigration Consultants, Member of a Provincial Bar Association or Member of the Chambre des notaires du Quebec;

5. Notify CIC that you are no longer acting as the authorized representative for each client or advise your clients to notify CIC about change of contact information for their authorized representative;
6. Render accounts for work completed on or before the date of your suspension.

She complied with these requirements. As the suspension was lifted within one week she did not have time to comply with sections 3-6, but was in the process of making the necessary arrangements to do so. Specifically with respect to item 3, she did make arrangements to transfer her clients to a member of the LSUC. New IMM5476 were prepared and the lawyer was aware that he would be receiving all client files over the weekend.

She never accepts money without invoicing the client – therefore there are never accounts that have to be billed. In other words, she first does the work, then bills the client, and then receives money.

In terms of the first two requirements, the notification of suspension was only received by her at 6:00 p.m. on Friday by email and hence she could only commence acting on it on Monday. In addition in further answer to your concerns:

1. She had no clients during the one week that needed representation. A letter was prepared for each client ready to be sent when the suspension was lifted on Friday, July 31, prior to the expiry of the five business days from the period when she understood she was required to notify them, in light of the late time of day when she received the notification after business hours on Friday.
2. The letters to clients contained all the information required by the Suspension Policy.

Please advise if you require anything further at this time.

Yours truly,


LORNE WALDMAN

Barrister & Solicitor