

In the Matter of Ole Schroll Andersen

Case Number: SCT/74

Date of Hearing: 13 August 2002

Appearing Before: Mr P Cooper (Presiding Member/Practitioner Member)

Mr M Byrom (Practitioner Member)

Ms E Jordan (Lay Member)

Penalty: Struck Off

On 13 August 2002 the Solicitors Complaints Tribunal heard the following charges brought by the Council of the Queensland Law Society:

Charges

1. Borrowing from a client

In breach of Rule 86 (1) of the Queensland Law Society Rules the practitioner borrowed money from a client.

Particulars

First loan/investment

(a) In August 1998, at the request of the practitioner, Mrs K engaged the practitioner to act on her behalf in a testator's family maintenance application in respect of the state of her late mother, Mrs G who died on 4 June 1998.

(b) In August 1998, the practitioner sent to Mrs K a client agreement in which the practitioner agreed to charge costs in accordance with the Supreme Court Scale.

(c) In August 1998 Mrs K paid to the practitioner the sum of \$18,000.00 in cash on account of costs and outlays in relation to the said application.

(d) The practitioner requested Mrs K that he permitted to treat the said sum as a loan from Mrs K to the practitioner, for use in his business venture NYF.

(e) Mrs K agreed to the practitioner's request.

(f) Despite demand made by and on behalf of Mrs K, the practitioner has not repaid the said sum to Mrs K.

Second loan

(g) On 31 May 1999, the practitioner borrowed the sum of \$7,500.00 in cash from Mrs K.

(h) The loan was made upon terms that the said amount would be repaid to Mrs K, with interest at the rate of 15% per annum within 120 days of the loan.

(i) Despite demand made by and on behalf of Mrs K, the practitioner has not repaid the said sum nor any interest to Mrs K.

(j) The practitioner remains indebted to Mrs K in respect of the said loan in an amount of \$7,000.00 plus interest thereon.

Third loan

(k) On 1 July 1999, the practitioner borrowed a further sum of \$22,500.00 in cash from Mrs K.

(l) The loan was made upon terms that the said amount would be repaid to Mrs K, with interest at the rate of 10% per annum within 90 days of the loan.

(m) Despite demand made by and on behalf of Mrs K, the practitioner has not paid the said sum nor any interest to Mrs K.

(n) The practitioner remains indebted to Mrs K in respect of the said loan in an amount of \$22,500.00 plus interest thereon.

Fourth loan/investment

(o) In or about the month of January 2000, the practitioner recommended to Mrs K that she invest funds in his business venture NYF through NYF Australia Pty Ltd of which the practitioner was a Director and shareholder.

(p) Mrs K agreed to make the loan/investment and the following sums were paid to the practitioner. However no shares in the said company were ever issued to Mrs K, nor has she received any return on the investment.

24 January 2000	-	\$10,000.00 in cash
27 January 2000	-	\$7,000.00 in cash
15 February 2000	-	\$4,000.00 in cash
2 April 2000	-	\$16,455.59 by cheque proceeds
	Total	\$37,455.59

2. Practising without practising certificate

In breach of section 38 of the Queensland Law Society Act 1952 as amended the practitioner acted or practised without a practising certificate.

Particulars

(a) The practitioner held a practising certificate from 1976 until 30 June 2000.

(b) The practitioner did not renew his practising certificate from or at any time after 1 July 2000.

(c) By letter dated 17 October 2000 from the practitioner to L and R WH, ("the WHs") the practitioner represented that he had instructions to act for Mrs K in relation to recovery of a debt owed to Mrs K by the WHs. The practitioner required of the WHs repayment of the debt in full care of his office within 10 days, failing which proceedings would be issued in the Magistrates Court against the WHs.

3. Acting without instructions

The practitioner acted on behalf of a client when, to his knowledge, he did not hold instructions to do so from the client.

Particulars

(a) By letter dated 17 October 2000 from the practitioner to the WHs, the practitioner represented that he had instructions to act for Mrs K in relation to recovery of a debt owed to Mrs K by the WHs. The practitioner required of the WHs repayment of the debt in full care of his office within 10 days, failing which proceedings would be issued in the Magistrates Court against the WHs.

(b) to his knowledge, the practitioner did not hold instructions from Mrs K to act to seek recovery of the debt due from the WHs, nor to send to the WHs the letter dated 17 October 2000.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:

Mr P Ryan, solicitor of Messrs Biggs & Biggs, Solicitors

(b) For the Practitioner:

The practitioner appeared in person.

Findings and Orders

1. The Tribunal granted leave to the applicant to amend the Notice of Charge as follows:

(a) in paragraph 1(d) by deleting reference to 'NYF';

(b) in paragraphs 2(c), 3(a) and (b) by referring to Mr and Mrs "WH" not "W"; and

(c) in paragraphs 3(a) and (b) by including reference to the letter of 14 February 2000 written by the practitioner to Mr and Mrs WH.

2. The Tribunal finds, in relation to the first charge, loans 1 and 4, and charge 3 not proved.

3. The Tribunal finds in relation to charge 1, the second and third loans, proved and charge 2 proved. The Tribunal further finds the practitioner guilty of those charges.

4. The Tribunal further finds that those charges proved amount to professional misconduct and that the practitioner is guilty of professional misconduct.

5. The Tribunal orders that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.

6. In relation to the costs of the previous adjournment, the Tribunal ordered that those costs be paid by the practitioner. In relation to the costs of 13 August 2002, the Tribunal ordered that one half of the costs of the Queensland Law Society Incorporated should be paid by the practitioner, together with the full costs of the recorder and the Clerk.

7. The Tribunal orders that the costs ordered should be determined by agreement and, failing agreement to be assessed by Monsour Legal Costs Pty Ltd.

8. The Tribunal allows Mr Andersen eight (8) months within which to pay the costs.

Reasons

In relation to the first charge, the first loan, the Tribunal finds it not proved. The tribunal finds that there is a conflict between the evidence in the affidavits of Mrs K and the practitioner. The Tribunal is not satisfied on the Bringinshaw test that the charge is proved.

In relation to the second loan, which forms part of the first charge, the loan is admitted by the practitioner in his affidavit material.

In relation to the third loan, the same position applied. The practitioner admits the loan in his own affidavit material.

In relation to the fourth loan, this loan is stated to be in breach of rule 86(1). The Society has submitted that, because no shares in NYF Australia Pty Ltd were ever issued to Mrs K, and she has not received any return on her investment, that the funds were in fact a loan. However, in referring to the material filed by the Society in the affidavit of Mrs K in paragraphs 23 to 28 of her affidavit dated 12 June 2002, the reference is in fact to an "investment." The practitioner in paragraph 7 of his affidavit dated 13 August 2002, also claims it to be an investment. The Tribunal finds that there is a conflict in the submissions and the charge is not proved.

Regarding charge no. 2, practising without a certificate, the evidence from the Society is that the practitioner did not have a Practising Certificate, which is accepted by the Tribunal, and the practitioner has stated that he was acting on behalf of Mrs K at the relevant time in relation to this charge.

In relation to charge no. 3, the Tribunal finds the charge not proved. The Tribunal finds there is conflict in the evidence between the affidavits of Mrs K and the practitioner. The Tribunal is not satisfied on the Briginshaw test that the charge is proved. In making the findings, the Tribunal has not had the benefit of having key witnesses tested under oath. In addition, the Tribunal wishes to state that the Tribunal does not perceive that its prime function is to run the case for either party.

The Tribunal has accepted that the practitioner tendered part payment to Mrs K and that an arrangement has been reached in relation to the repayment of the balance of funds owing to Mrs K.

The Tribunal finds the practitioner not to be a fit and proper person to practise as a solicitor.

It is clear from the evidence that Mrs K relied on the practitioner to her own detriment. The practitioner's conduct falls short of what the public can reasonably expect of a practising solicitor.