In the Matter of Gregory John Barry

Case No: SC/372
Date of Hearing: 30 October 1996
Appearing Before: Mr GA Murphy – Chairman
Mr JSP O'Keeffe
Mr TM Treston
Penalty: Struck Off

Charges

On 30 October 1996, the Statutory Committee heard charges laid against **GREGORY JOHN BARRY** by the Council of the Queensland Law Society by Application filed 15 January 1996.

The practitioner pleaded guilty to the following charges:

The first charge (as amended) was that on 23 July 1993, the practitioner misappropriated the sum of $50,000 from his trust account and applied same or alternatively caused the application of same to his own benefit, or alternatively to the use and benefit of an entity associated with, or controlled by him, and in which he had a substantial beneficial interest, without the proper authority or consent of his client and in circumstances where he had no lawful entitlement to the said sum.

The second charge was withdrawn.

The third charge was that on or about 11 October 1994, the practitioner fraudulently produced or procured production of a form of bill of mortgage bearing the date 23 July 1993 for the purpose of representing that mortgage security had been provided on 23 July 1993 for an alleged loan of $50,000 (the misappropriation in respect of which the first charge was brought) which representations the practitioner knew to be false in that the practitioner knew that in fact no such mortgage had been provided.

The fourth charge was that on or about 11 October 1994, the practitioner fraudulently produced or procured the production of a form of bill of mortgage bearing the date 5 July 1994 for the purpose of representing that mortgage security had been provided on 5 July 1994 for an alleged loan of $55,320 (the sum of $50,000 in respect of which the first charge was brought plus interest thereon), which representations the practitioner knew to be false in that the practitioner knew that in fact no such mortgage had been provided.

The fifth charge was that on 23 July 1993, the practitioner breached a personal undertaking given by him in writing on 4 September, 1993 to another firm of solicitors.

The sixth charge was that communications made by the practitioner were deliberately false or misleading. Details are as follows:

1. By letter dated 23 July 1993, the practitioner wrote to a bank stating, *inter alia*:

   'Because our client is obliged by an Order of the Family Court to make a certain payment forthwith to his estranged wife, we hold instructions to request the return to our trust account the sum of $50,000 from the investment, today.'

   The above statement was deliberately false or misleading in that the practitioner knew on 23 July 1993 that:

   (a) his client was not obliged by an Order of the Family Court to make a payment forthwith to his estranged wife;

   (b) he did not have instructions to request the return to the trust account of the sum of $50,000 from the investment that day; and

   (c) he intended to apply or alternatively to procure the application of the sum of $50,000 to his own use or to the use of an entity associated with him and not to pay the sum, or any part thereof, to the client's estranged wife.

2. By letter dated 24 August 1993, the practitioner wrote to the estranged wife's solicitors concerning the investment of funds stating, inter alia:

   (a) that a sum of $95,394.04 was invested by the practitioner on 29 October 1992;

   (b) that the investment matured on 24 August 1993 having the value of $100,460.65; and

   (c) that interest earned on the sum invested was in the amount of $5,066.61.

   The above statements were deliberately false or misleading in that the practitioner knew on 24 August 1993 that:

   (a) the sum of $90,000 only had been invested on 30 October 1992;

   (b) the sum of $50,000 had been redeemed on 23 July 1993 and the balance investment (including interest) of $43,690.97 had been redeemed on 24 August 1993; and

   (c) the interest earned on the investment was $3,690.97.

3. By letter dated 17 June 1994, the practitioner wrote to the estranged wife's solicitors concerning the investment of funds stating, inter alia:

   (a) the interest earned on the investment was $4,148.20 not $5,066.61 as indicated in the practitioner's letter of 24 August 1993;

   (b) the amount in the investment account including interest totalled $99,542.24;

   (c) the investment of funds by the practitioner on behalf of his client had resulted in proceeds of $99,542.24 which was some $2,000 in excess of the proceeds of $97,543.76 achieved by the estranged wife's solicitors in respect of the investment of funds by them on behalf of their client; and

(d) in view of the $2,000 disparity between the results of the respective investments, the practitioner's client had instructed the practitioner that he was not prepared to pay an additional sum of $726.38 claimed by the estranged wife.

The above statements were deliberately false or misleading in that the practitioner knew at all material times that:

(a) the interest earned on the investment was $3,690.97, not $4,148.20;

(b) the amount of the client's investment account including interest did not total $99,542.24; and

(c) the investment on behalf of the client had not resulted in proceeds of some $2,000 in excess of the investment on behalf of the client's estranged wife.

4. On 10 October 1994, the practitioner made statements to the Queensland Law Society concerning the matter to the effect:

(a) that the sum of $50,000 had been borrowed from the practitioner's client with the client's approval;

(b) that the borrowing was secured by a bill of mortgage held at the practitioner's office; and

(c) that the said moneys had not been misappropriated from the client.

The above statements were deliberately false or misleading in that the practitioner knew on 10 October 1994 that:

(a) the practitioner's client had not approved the borrowing;

(b) the borrowing had not been and was not secured by a bill of mortgage;

(c) no bill of mortgage was then held by the practitioner at his office; and

(d) the said moneys had been misappropriated by the practitioner and applied to his own use or to the use of an entity associated with the practitioner.

5. On 11 October 1994, the practitioner produced to an officer of the Queensland Law Society Incorporated, copies of two bills of mortgage bearing the dates 23 July 1993 and 5 July 1994 respectively in response to a request therefore and thereby represented that:

(a) on 23 July 1993, a bill of mortgage had been granted to secure a loan of $50,000 from his client; and

(b) on 5 July 1994, a further bill of mortgage had been granted to his client to secure a loan of $55,230.

The above representations were deliberately false or misleading in that the practitioner well knew the said bills of mortgage had been created by, or at the direction of, the practitioner on or about that day and bills of mortgage had not been granted on 23 July 1993 or 5 July 1994.

6. By letter dated 2 May 1995, the practitioner wrote to the Queensland Law Society stating, to the effect:

(a) that his client had instructed the practitioner that his client agreed to lend $50,000 to a third party upon the provision of suitable security;

(b) that suitable security was obtained from a third party; (c) that his client thereupon loaned the sum of $50,000 in accordance with the security documentation; and (d) the proceeds of the loan were subsequently directed by the third party to the benefit of a company associated with the practitioner.

The above statements were deliberately false or misleading in that the practitioner knew at all material times that:

(a) the practitioner's client had not agreed to lend $50,000 to the third party upon the provision of suitable security, or at all;

(b) no suitable security had been provided by the third party for the borrowing;

(c) the practitioner's client did not loan the sum of $50,000 to the third party in accordance with the security documentation; and

(d) the third party had not directed the proceeds of a loan to him by the practitioner's client to the benefit of interests associated with the practitioner.

The seventh charge (as amended) was that on each of eight occasions, the practitioner misappropriated trust moneys in the total sum of $14,155.75 by causing, procuring or permitting the payment of trust moneys for unexpended outlays direct into his firm's general account, where the said moneys were mixed with the practitioner's own money and applied to his own use in circumstances where at the time of such payments, the practitioner had no lawful entitlement to the said moneys.

The eighth charge (as amended) was that on each of 29 occasions, the practitioner misappropriated trust moneys in the total sum of $32,598.58 by causing, procuring or permitting the payment of trust moneys from his trust account to his general account, where the said moneys were mixed with the practitioner's own money and applied to his own use, in circumstances where at the time of such payments, the practitioner had no lawful entitlement to the said moneys.

The ninth charge (as amended) was that on each of three occasions, the practitioner misappropriated trust moneys in the total sum of $5,085 held by him on behalf of other clients of his firm, by causing, procuring or permitting the wrongful withdrawal of the said moneys from his trust account when at the time of such withdrawals, the practitioner knew or ought to have known that he held no money in his trust account on behalf of the particular clients for whom such payments were made. The said moneys were paid to the practitioner's general account where they were mixed with the practitioner's own moneys and applied to his own use or to the use of a third party to the benefit of the practitioner. The payments were made in circumstances where the practitioner had no lawful entitlement to the said moneys.

The tenth charge was that on each of nine occasions, the practitioner misappropriated trust moneys in the total sum of $15,867.27 held by him on behalf of other clients of his firm, by causing, procuring or permitting the wrongful withdrawal of the said moneys from his trust account when at the time of such withdrawals, the practitioner knew or

ought to have known that he held no money in his trust account on behalf of the particular clients for whom such payments were made. The said moneys so withdrawn were applied by the practitioner to the use of third parties to pay disbursements. In all but one instance, the practitioner had been previously provided with sufficient funds by the client concerned to pay the disbursement, but, prior to effecting such payment, the funds had been wrongfully deposited to the practitioner's general account, or alternatively paid from the trust account to the practitioner's general account.

The eleventh charge was that on 25 March 1994, the practitioner caused, procured or permitted trust funds in the sum of $1,000 to be wrongfully paid from his trust account to his general account in breach of the provisions of Section 8 of the *Trust Accounts Act* and thereby misappropriated the said sum.

The twelfth charge was that during the period August 1993 to October 1994, the practitioner failed to keep or cause to be kept such accounting or other records of all trust moneys and of the disbursement or disposal therefore or dealing therewith as to sufficiently explain the transactions and the true position in regard thereto.

The thirteenth charge was that during the period August 1993 to October 1994:

1. The practitioner caused or procured a practice within the firm whereby the accounting and bookkeeping records of the firm were maintained in such a manner as to:
   (a) facilitate and justify the payment of trust moneys to the general account; and
   (b) facilitate and justify the payment of trust moneys to third parties;

   in circumstances where there was no lawful entitlement for the making of such payments.
2. The purpose of the said practice was to produce such accounting and bookkeeping records as would:
   (a) indicate an entitlement for the payment of trust moneys to the practitioner's general account in circumstances where the practitioner was not in truth entitled to receive such trust moneys; and
   (b) indicate the existence of trust funds in trust ledger accounts and thereby an entitlement to pay moneys from the trust account to third parties in circumstances where in truth such trust funds did not exist and the practitioner was not entitled to make such payments.

The fourteenth charge was that communications made by the practitioner concerning irregularities in the conduct of the trust account were deliberately false and misleading. In a letter dated 2 May 1995, the practitioner wrote to the Queensland Law Society concerning certain irregularities in the conduct of the practitioner's trust account and stated, inter alia:

> 'As to the matters involved in Items C and H above (being matters concerning delays in banking to the trust account, general account cheques drawn for the purpose of the payment of anticipated disbursements) I believe that these are perhaps the worst examples of mismanagement. In each case, I was not personally involved.'

The above statement was deliberately false or misleading in that the practitioner at all material times knew that the withholding from banking in each instance of the general account cheques (to indicate that money was held in the trust account when in fact it was not) was as a consequence of his direction to his accounts staff.

Submissions:

The Queensland Law Society and the practitioner were represented by Counsel.

Both the practitioner and the Queensland Law Society tendered medical evidence. The Society asked the Committee not to make any finding with respect to the opinions expressed therein. The Society submitted that it accepted that the offences occurred in an environment of personal and financial pressure. The practitioner's Counsel made no separate submissions.

The Society and the practitioner jointly submitted that the removal of the practitioner's name from the Roll was the only appropriate order No other formal submissions were made on behalf of the practitioner.

Findings & Orders:

The Committee found that the counts to which the practitioner had pleaded guilty constituted professional misconduct. The Committee ordered that the practitioner's name be struck from the Roll and that the practitioner pay the Society's costs, the costs of the shorthand writers and the costs of the Clerk to the Statutory Committee.