[2005] LPT 005

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MS S PURDON
MS A DUTNEY

No S3383 of 2005

LEGAL SERVICES COMMISSION Applicant

and

GIOVANNI PIETRO BUSSA Respondent

BRISBANE

..DATE 04/10/2005

REASONS FOR FINDING

THE CHIEF JUSTICE: The respondent is a local legal practitioner admitted to practice as a solicitor in July 1984. He is 45 years of age.

The charges against him: One of failing to comply with a requirement under section 5(G)(a) of the Queensland Law Society Act 1952 to provide an explanation upon request. Another of failing to comply with a notice under section 5(H)(2) of the Act for a period of 14 days; a failure which creates a situation of deemed professional misconduct in the absence of a reasonable excuse for the non-compliance. A charge under section 269 subsection 2 of the Legal Profession Act 2004 that he failed to comply with a requirement to produce his client file. Another charge of failure to comply with a notice under section 269 subsection 3 of the Legal Profession Act which, again, would give rise to a situation of deemed professional misconduct in the absence of a reasonable excuse. And, finally, and most significantly, an allegation of serious neglect and undue delay and failure to meet reasonable standards of competence while as acting as a solicitor over the period 1997 to the year 2004.

It suffices for present purposes to focus on the allegation of delay. The complainant instructed the respondent to act for him in a property claim and a third party claim for damages for personal injuries arising out of a motor vehicle accident. The instructions were given in about August 1993; the accident had happened in July that year.

The respondent negotiated a satisfactory settlement of a property claim but it is in respect of the personal injuries claim that the problems arose.

After some work was done on the file, it was in May 1998 that the respondent briefed counsel to prepare an application to extend or renew the plaint and to provide an advice on quantum. He contacted the barrister in February and May of the year 2000 but otherwise, took no particular steps to protect the interests of the client.

As is implicit in what I have said, counsel did not properly respond to the brief. In October 2003, the respondent uplifted the brief and briefed another counsel for advice in the matter. Again, nothing was done by the counsel apparently and in January 2004, the respondent arranged for the brief to be forwarded to yet a third counsel for advice.

The complainant client tired of the matter and in September 2004, instructed other solicitors to act on his behalf. They brought an application to the District Court seeking an order renewing the claim which was refused.

In the tragic end result, the complainant's personal injury claim can not be pursued in the orthodox way. We are informed that proceedings in negligence have been commenced against the respondent in respect of all of these things.

As will emerge later, also, there is a claim for compensation pursued now in respect of costs ordered against the complainant upon his failure in the application in the District Court and also, in respect of an amount of costs due from him to the solicitors, Marino Moller, who acted for him in respect of that application.

It is plain that the delay, substantial and not satisfactorily explained, amounts to professional misconduct; that is, in the traditional formulation, conduct which would reasonably be regarded as disgraceful by solicitors of good repute and competency.

Indeed, it was a tag which was advanced by the learned District Court Judge who dealt with the application for extension.

The response which has been made by the respondent focuses on stresses and other health problems to which he was subject during the relevant period and they also are advanced as the reason why he did not respond in a timely way to the Law Society's various requests for cooperation. That in the end, I'm afraid, cannot prevail as a satisfactory explanation for what occurred.

It is essential that where delay of this character is encountered by a solicitor through the neglect of counsel that the matter be promptly uplifted in the absence of a reliable assurance that the matter will be attended to expeditiously.

As said during the submissions, there would be any number of other counsel who would be able to apply themselves properly to the matter. It is simply completely out of order and unacceptable that delay of this extent should have occurred and, as I say, tragically in the end, that it should have led almost in this case inexorably to a complete loss of the client's right to pursue the personal injuries claim in the usual way.

The other point which I think should be made is that we are here not just looking at the delay in the processing of the client's claim through the barristers and so on but another complexion is lent to that, I think, by the lack of response on the part of the respondent to the Law Society requests. In other words, it joins together in the end or melds together to show a pattern of neglect which is unacceptable.

Mr McLean, who appears for the Commission, points out that there are features which work in the respondent's favour. He has no previous adverse finding from a disciplinary body. The conduct appears to be a one-off type aberration. The inaction could be characterised as the-head-in-the-sand variety. There is no allegation of dishonesty. The respondent has not contested this matter in any substantial sense and he has taken steps to alleviate his present situation.

Those steps are set out in paragraph 15 of his affidavit. In particular, he has taken measures to cut down the amount of work he assumes. He has chosen not to renew the lease on his

office premises and is currently on a month-to-month tenancy. He has reduced the number of current files from over 150 down to approximately 30. He has adopted a stricter attitude towards counsel by fixing strict time limits on work to be undertaken and so on. He has refused to take on any further personal injury claim matters because of the complexity of the legislation. And he has taken a number of other administrative approaches which should prove beneficial if followed through.

I might say that his preparedness to take those steps has ameliorated somewhat the position the Tribunal would otherwise have adopted in dealing with this matter. I should say finally, before I pronounce the orders, that the amount of the legal costs to which I referred earlier is $7,347.60. During the submissions, the issue arose whether this Tribunal should order compensation in that amount or some of it or whether that should be left to be dealt with as a potential item of damages in the extant but as yet undetermined negligence proceeding.

The first point about it is that the amount has not yet been paid to the solicitors Marino Moller or the defendant in the District Court proceeding. I do not consider that that means that a compensation order could not be made under section 288 of the Legal Profession Act 2004. It still amounts, in my view, to a pecuniary loss. It is certainly a liability and I consider that the legislature would have intended that a beneficial construction be placed on those words in the

statute. "Beneficial" in that the objective must have been proper compensation to those who are the victims of the default of the practitioner.

As to the other question, I confess that I was inclined during the submissions to take the view that the disposition of that sum could conveniently be dealt with in the negligence proceeding because of the possibility that contributory negligence on the part of the client may have contributed to the incurring of those liabilities such that it should be taken into account in reducing arguably the amount which should be allowed in respect of damages concerning those sums.

But taking a realistic approach to this, the reality is that the liability to pay those sums was overwhelmingly the consequence of the negligence of the solicitor which, in these proceedings, takes on the character of professional misconduct. As I pointed out during the submissions, the issue here, that is the dereliction of the solicitor in terms of his professional duty, is different from the issue which will arise in the negligence proceedings although there are obviously common threads. But I consider that compensation should be ordered now, obviously enough, that order having been made and the amount paid to the former client, that will not feature any more as part of the damages claimed in the negligence proceeding or part of the damages which could be awarded in the negligence proceeding.

As to the other orders that we propose, they have been ventilated during submissions so there's no need to go into them any further. I should say, finally, that in so far as the charges concerned, failure to respond to notices and the like, where there could have been a deeming of professional misconduct, my inclination would be to find that because of the explanations which have been given for the failure to respond in a timely way, and bearing in mind that a response was ultimately made, we could proceed on the basis that a reasonable excuse was offered and make a finding of unprofessional conduct in respect of those matters.

There will therefore be a finding that, in respect of all of the charges except number 5, the charges are established and the respondent is found guilty of unprofessional conduct.

In respect of charge 5, the charge is established and the respondent is found guilty of professional misconduct.

In respect of all charges, there will be an order publicly reprimanding the practitioner under section 280 subsection (2) paragraph (e) of the Legal Profession Act 2004.

There will be an order that the respondent pay a penalty in the amount of $6,000 to be paid within three months of today to the Legal Practitioner Interest on Trust Accounts Fund established under section 208 subsection (1) of the Legal Profession Act 2004, care of the Department of Justice and

Attorney-General, care of Partner One Financial Services, GPO Box 149, Brisbane 4001.

There will be an order that the respondent's legal practice be subject to inspection on a six-monthly basis by a person nominated by the Queensland Law Society. Those inspections are to continue for a period of two years from today and that the respondent pay any costs reasonably incurred by the Society in that regard.

There will be an order that the respondent identify, in consultation with the Queensland Law Society within 14 days from today, a more senior practitioner with whom he may consult from time to time as necessary in relation to the management of his practice.

There will be an order that the respondent pay to the complainant, Peter Davidson, pursuant to part 6 of the Legal Profession Act 2004, the sum of $7,347.60 by way of compensation, that sum comprising an amount payable by the complainant to his solicitors, Marino Moller, in respect of the proceedings in the District Court referred to in the affidavit material, and a sum payable by the complainant to the defendant in those proceedings in accordance with the order of the District Court made on the 16th of December 2004.

Finally, there will be an order that the respondent pay the applicant's costs to be assessed if not agreed.

I intimate that the amount of the pecuniary penalty should be paid under section 209 of the Legal Profession Act to the Fidelity Fund and the Supreme Court Library.

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THE CHIEF JUSTICE: We will vary the order in respect of the $7,347.60 compensation and it will provide that the compensation be paid to Marino Moller on behalf of the complainant for disbursement forthwith to those entitled to it under the orders made in the District Court on that date, the 16th of December 2004, and in satisfaction of the entitlement to fees of Marino Moller in respect of their having acted for the complainant in those proceedings.

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THE CHIEF JUSTICE: The order will be that the $7,000-odd be paid within three months also.
