

CITATION: *Legal Services Commissioner v Bussa* [2011] QCAT 388

PARTIES: Legal Services Commissioner
(Applicant)
v
Giovanni Pietro Bussa
(Respondent)

APPLICATION NUMBER: OCR151-10

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers, 18 July 2011

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**
Assisted by:
Mr M Woods
(Practitioner Panel Member)
Dr J Lamont
(Lay Panel Member)

DELIVERED ON: 11 August 2011

DELIVERED AT: Brisbane

ORDERS MADE:

1. That the respondent be publicly reprimanded.
2. That the respondent pay a penalty of \$10,000 within 90 days.
3. That the respondent pay the sum of \$7,500 by way of compensation under s 464 of the *Legal Profession Act 2007* to Wayne Malcome Allerton of 12 Honeyeater Place, Lowood, Qld 4311 within 90 days.
4. That the respondent engage the services of Peter Lynch to provide advice as to the improvement and implementation of appropriate management systems of his practice to enable the provision of legal services by the respondent in accordance with the professional obligations of Australian Legal Practitioners under the *Legal Profession Act 2007*.
5. That the respondent provide to the Legal Services Commissioner a report by Peter Lynch within 12 months.

6. That the respondent pay the applicant's costs fixed in the sum of \$1,500 within 30 days.

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – COMPENSATION – where the respondent faced three charges of: delay and failure to prosecute a criminal compensation claim, failure to respond to requirements of the Law Society, and failure to respond to requests of the Legal Services Commission – where the respondent has previously been the subject of professional discipline – whether the respondent's actions amount to professional misconduct or unsatisfactory professional conduct – appropriate penalty

Legal Profession Act 2007, ss 418, 419, 443, 464

Legal Services Commission v Busa [2005] LPT 005, cited

Legal Services Commissioner v Smith [2011] QCAT (6 April 2011), cited

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers, with the consent of the parties, pursuant to s 32 of *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act). The Tribunal met to consider written submissions from the parties on 18 July 2011.

REASONS FOR DECISION

- [1] The Commissioner is proceeding with three charges against Mr Busa, a solicitor who was admitted to practice in 1984 and who is now aged 51.
- [2] The first charge is that between September 2005 and October 2007 Mr Busa delayed, and failed to prosecute, a criminal compensation claim for his client Mr Wayne Allerton. The second charge is that he failed to respond to requirements from the Law Society that he provide a chronology of his representation of Mr Allerton, and his file in the matter. The third charge is that he failed to respond to a similar request from the Legal Services Commission in 2009 in respect of another matter, involving different clients.
- [3] Mr Busa's misconduct, which he admits, is to be assessed by reference to the statutory definitions of *unsatisfactory professional conduct* and *professional misconduct* in ss 418 and 419 respectively of the *Legal*

Profession Act 2007. Unsatisfactory professional conduct is defined to include conduct happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

- [4] *Professional misconduct* is defined to include *unsatisfactory professional conduct* to a degree which involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and conduct, whether in the practice of law, or otherwise that justifies a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [5] The two charges involving Mr Allerton arise from his instructions to Mr Bussa in the year 2000 to act on his behalf for a claim for criminal compensation and the practitioner's failure to pursue that matter competently or diligently – followed, in 2007, by his advice to his client that he could do nothing further. When Mr Allerton took the matter up with the Commissioner it was referred to the Law Society which, initially, wrote to Mr Bussa and later gave him a notice under s 443(3) requiring a response within 14 days. He responded to neither.
- [6] Nor did he comply with a notice sent to him, after a similar course of events concerning payments made from his Trust account in the course of administration of the estate of a deceased person. Through no fault of Mr Bussa these cheques were not met initially when presented for payment, but he failed to respond to correspondence from the solicitor acting for the beneficiary payees.
- [7] The two failures to respond to notices are deemed under s 443(4) of the Act to be professional misconduct. The Commissioner and Mr Bussa disagree, however, about whether his delay in the Allerton matter is *professional misconduct*, or *unsatisfactory professional conduct*. What moves it into the more serious category here is the fact that Mr Bussa had previously been disciplined for much the same kind of conduct, in proceedings before this Tribunal's predecessor in 2005, reported in *Legal Services Commission v Bussa* [2005] LPT 005.
- [8] On that occasion the discipline application alleged serious neglect, undue delay and failure to meet reasonable standards of competence while Mr Bussa was acting as a solicitor over a period between 1997 and 2004. Mr Bussa had struck some problems with the failure of barristers to attend to his briefs in the particular matter that gave rise to the charges, but by the time his client took his file away and instructed other solicitors the client's action was out of time and an application to renew it had failed.
- [9] In his Reasons in the LPT proceedings the Chief Justice categorised Mr Bussa's substantial and unsatisfactorily explained delay as *professional misconduct* (according to definitions in previous legislation which are not dissimilar to those applying under the 2007 Act). This was

because, the Chief Justice said, the conduct would ‘... *reasonably be regarded as disgraceful by solicitors of good repute and competency*’.¹

- [10] As has previously been observed in this Tribunal, the question whether or not a practitioner’s misconduct in a particular case amounts to *unsatisfactory professional conduct* or *professional misconduct* is generally a matter of degree and each case will be determined on its own facts. Gross neglect and delay, particularly if it is part of a pattern, can attract a finding of *professional misconduct*.² In the present case Mr Bussa’s previous misconduct was addressed in strongly critical terms by the Chief Justice in the LPT decision handed down on 4 October 2005.
- [11] Notwithstanding what was said on that occasion, however, the practitioner failed to do anything to advance Mr Allerton’s claim between 30 September 2005, and 6 October 2007 – that is, the period of two years immediately following the Chief Justice’s decision.
- [12] The unavoidable conclusion is that, for whatever reason, the solicitor failed to heed or take any useful instruction from what the Chief Justice said on that earlier occasion.
- [13] The delay in the present case, occurring immediately after those Reasons were handed down, compels the view that the solicitor’s conduct now involves (in the words of s 419(1)) a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence. For these reasons, the first charge ought to be categorised as *professional misconduct*.
- [14] The Commissioner does not seek a finding, or submit that the solicitor’s conduct demonstrates unfitness to practise. Rather, it is submitted that he ought be made the subject of supervision, and reprimanded and fined. The supervision would involve, it is suggested, engaging the services of a nominated practitioner for advice about the improvement and implementation of appropriate management systems in his practice, with a report to the Legal Services Commissioner within six months.
- [15] It is to be noted that a supervisory order was also made in the previous proceedings involving inspection of the solicitor’s practice by the nominee of the Queensland Law Society every six months, for two years.
- [16] The solicitor has not sought to justify his activity and has admitted the charges and, since these disciplinary proceedings were brought, cooperated with the Commissioner. It is said that he has faced extraordinarily difficult personal and professional circumstances in the relevant period and he has filed an affidavit about those matters. It is to be observed, however, that he made a submission in 2005 to the effect that he had been subject to stresses and other health problems to which he had previously been subject which were advanced as the reason why he had not responded in a timely way to the Law Society’s request for cooperation. As the Chief Justice observed there those things cannot

¹ *Legal Services Commissioner v Bussa* [2005] LPT 005 at 4.

² *Legal Services Commissioner v Smith* [2011] QCAT (6 April 2011).

prevail as a satisfactory explanation for what occurred. This practitioner's repeated conduct involving delay and his failure to respond to notices gives rise to real questions of protection of the public and his personal history emphasises the importance of ensuring he does not re-offend.

- [17] He has agreed to pay compensation of \$7,500 to Mr Allerton and it is appropriate to make an order to that effect. He has also agreed to pay the Commissioner's costs, fixed at the amount it seeks of \$1,500.
- [18] The parties effectively make a joint submission that the nature of the offending and all of the material circumstances, and the need for both personal and general deterrence, and the need to ensure the protection of the public point to the imposition of a public reprimand. The Commissioner also contends for a fine, in a sum between \$5,000 and \$10,000. For the solicitor it is said that his financial position is poor and that in light of his agreement to pay compensation, any fine should be 'modest'. Again, however, it is to be observed that a fine of \$6,000 was imposed in 2005. In light of the practitioner's subsequent re-offending the imposition of a fine of \$10,000 now is not inappropriate. Acknowledging, however, the practitioner's personal difficulties a period of 90 days should be allowed for payment.
- [19] It is also accepted that supervision is called for but in light, again, of the fact that this is an instance of, in effect, re-offending a report from Mr Lynch within 12 rather than 6 months is likely to be more effective.