QCAT
Queensland Civil and Administrative Tribunal

CITATION:	*Legal Services Commissioner v Penelope Ann Corbett* [2018] QCAT 36
PARTIES:	Legal Services Commissioner (Applicant) v Penelope Ann Corbett (Respondent)
APPLICATION NUMBER:	OCR072-15
MATTER TYPE:	Occupational regulation matters
HEARING DATE:	15 February 2018
HEARD AT:	Brisbane
DECISION OF:	**Justice Daubney, President** Assisted by: **Mr Scott Anderson and Dr Julian Lamont**
DELIVERED ON:	15 February 2018
DELIVERED AT:	Brisbane
ORDERS MADE:	**1. The name of respondent be removed from the roll of solicitors** **2. The respondent is to pay the applicant's costs of and incidental in this proceeding, such costs to be assessed on the standard basis according to the Supreme Court scale**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT OR UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLECT AND DELAY – where respondent was charged with failure to drawdown moneys and attend settlement – where the respondent admits the charge – where the respondent failed to appear at settlement – where the respondent had been declared bankrupt and transferred file to the Queensland Law Society – whether the

[3] The application has particularised two charges. The first is that during the period 26 November 2013 to 11 December 2013, the respondent committed unsatisfactory professional conduct or professional misconduct, the particulars of which relate to the respondent's handling or, more correctly, non-handling of a conveyancing transaction on behalf of the Middletons. The second charge is that on the 6th of November 2013 she committed unsatisfactory professional conduct or professional misconduct arising from a trust account defalcation to the extent of $18,945.55.

[4] The respondent filed a response to the application. In that response, the respondent largely admitted the allegations made by the applicant in relation to the two charges. The only matter not admitted by the respondent related to an incidental particular concerning her conduct of the conveyance on behalf of the Middletons. At the end of the day, not a great deal turns on her having taken issue with that particular alone. Beyond that, the respondent practitioner has admitted the particulars of the two charges preferred against her.

[5] In relation then to the first charge, it is sufficient to note that the respondent had been engaged to act for purchasers by the name of Middleton in relation to a particular conveyance. Full details of the progress of the conveyance are set out in the affidavit of Dominique Murphy filed by the applicant. It is sufficient for present purposes to note that there had been several extensions for settlement of that conveyance. On the 26th of November 2013, the vendor requested a further extension from the 27th of November 2013 to the 11th of December 2014. The respondent then on 26 November 2013 sent an email to Mr Middleton saying:

> *We have received that fax this morning. We advise that our office will be closed on the proposed settlement date. We will need to instruct agents to appear on our behalf. We enclose our interim account. The settlement agent's fee is covered in the account. We will be monitoring the emails and faxed and coordinating with the agents. We will advise you are agreeable to the extension to 11 December 2013.*

[6] An interim account was rendered by the respondent practitioner which included an item for "Gold Coast settlement fee" of $30. Settlement day came about. The respondent did not appear at the settlement nor did anyone else on behalf of the purchasers. It is clear that no arrangements had been made whatsoever for there to be representation for the purchasers and the settlement did not proceed on that date. Settlement subsequently occurred but only after the Middletons had been put to further cost and expense, amongst other things, by reason of having to make further borrowings in order to fund the settlement, given that money that they had previously deposited into the respondent's trust account had been tied up.

[7] The respondent, who appears for herself on the hearing of this application, said that on the 28th of November 2013, at the time she was being declared bankrupt, she delivered her active files to the Queensland Law Society together with notes of the status of those files and what was to occur. The Middleton's file, she says, was one of the files that was delivered to the Queensland Law Society. She informed the Tribunal today that she had put her trust in the Law Society to action the files and, by inference, to attend to settlement for the Middletons on her behalf (or arrange for someone to attend to settlement for the Middletons on her behalf), and she informed the Tribunal that she had only become aware, subsequently, that the Law Society had not attended to the Middleton settlement. I note, in passing, that this information was provided to the Tribunal from the bar table. The respondent has not filed any sworn material in relation to either of the charges presently before the Tribunal.

[8] Mr Rice of Queen's Counsel, who appeared for the applicant, also drew our attention to a handwritten letter that the respondent wrote to the Queensland Law Society dated 30 April 2014. In that letter she referred to having delivered the file to the Law Society. Her letter of the 30th of April 2014 is less than completely accurate in terms of the way she described the advice that she had given to Mr Middleton at the time. In her letter of 30 April 2014 she said:

> *Mr Middleton was advised at the time of being notified that the sellers required another extension of the settlement date to 11 December 2013, that Cost Effective Lawyers office will be closed due to shut down for holidays from 29 November 2013 until the new year 2014.*

[9] She then averred in that letter that no trust funds were dishonestly or fraudulently used, as alleged by the Middletons.

[10] Be all that as it may, the letter of 30 April 2014 does not accurately reflect the advice that she had actually given the Middletons by her email of the 26th of November 2013, in which a clear and unequivocal representation was made to the clients, consistent with a solicitor's duty to the client to attend to the client's best interests, that arrangements would be made for agents to appear on the client's behalf at settlement. No such arrangements were made at all.

[11] An explanation that delivery of the file to the Queensland Law Society was sufficient to engender an expectation in the respondent that the Law Society would attend to the settlement on her client's behalf, is simply not good enough. It betrays a lack of appreciation of the tenacity expected of a solicitor, regardless of their personal circumstances, in ensuring that a clients' interests are attended to. The respondent simply failed to attend to her client's interests in relation to the settlement and there can be no doubt, on the material before the Tribunal, that charge 1 has been made out.

[12] In relation to charge 2, it is clear on the material before the Tribunal that in early November 2013 the respondent effected a transfer from her trust account to her general account of $56,409.92, being for costs of outlays in respect of some 72 separate matters. In truth, the amount that she transferred exceeded the true costs and outlays then due to the firm by $18,945.55. That was because 29 of the costs and outlays contained within the $56,000 figure were duplicated. Consequently, $18,945.55 was wrongly withdrawn from the trust account and paid into the general account.

[13] As Mr Rice QC very properly conceded, it may conceivably be that the excessive transfer in that amount was the result of an error. In that circumstance alone, it may conceivably be regarded that the respondent then found herself in a situation where she ought to have known that the trust account had been wrongly overdrawn by the amount of some $19,000. But what then occurred really confirmed the egregious conduct committed by the respondent in relation to her handling of trust account moneys. On the 19th of November 2013 she issued 29 receipts for payments, totalling $18,945.55, in an apparent, but obviously futile attempt, to correct the accounting error.

[14] Today before the Tribunal, again in an unsworn statement, the respondent sought to explain away these transactions by reference to the particular trust account and firm account software that she was using at the time. She sought to explain to the Tribunal that on the 16th of November 2013 she saw the duplication online for the first time. She said that she was seeking to rectify the duplication and said effectively that the duplication arose from her double-clicking or repeatedly clicking within the system with the result that the duplication arose. She said that when she became aware of the duplication, that the process within the system to reverse the effective overpayment out of the trust account was for the system to create a receipt (or for some sort of receipt to be created) within the trust account system. She said she was not intending to falsify the records, but to correct the errors.

[15] I have to say for my own part that this explanation rings hollow. It simply does not make sense for any sort of accounting system to permit a reversal of a wrong trust account entry, such as occurred here, simply by the creation of a receipt when there is no corresponding actual deposit into the trust account itself.

[16] Beyond that, there is frankly not much that can sensibly be said in relation to the defalcation in respect of trust moneys, and it is quite clear again that the second charge brought by the Legal Services Commissioner is made out. Indeed, as I have previously noted, the respondent did not challenge or contest the particulars of the charge brought in that regard.

[17] I have already referred to the nature of the respondent's failure to attend properly to the client's interests as characterised under charge 1. In relation to charge 2 the extent of her default is obvious. The relationship between a solicitor and their client is founded upon trust. The ambit of

that responsibility finds abundant exemplar in the very onerous responsibilities which a solicitor has in protecting, maintaining and caring for property, ie money, entrusted into the care of the solicitor on trust. It is unnecessary for present purposes to rehearse the numerous authorities, including those to which reference was made in the course of argument, which highlight the degree of responsibility which solicitors have in terms of their care for moneys held in trust accounts.

[18] Moreover, the authorities make it clear that a solicitor's reliability and integrity in handling trust funds point directly to their fitness and propriety to be entrusted with the responsibilities attaching to the office of solicitor. In my view, the two charges which I would hold have been made out in the present case point to a lack of fitness and propriety in this practitioner to hold the office of solicitor. The egregious nature of the breaches have already been referred to. They are examples which strike at the heart of the relationship between a solicitor and their client. They go to the way in which not only the solicitor practices, but just as, if not more importantly, the way in which members of the community can rightly expect solicitors to practice and for whose benefit orders and appropriate orders need to be made by this tribunal in order to protect their interests.

[19] It will be clear from what I have said so far that I would hold that the practitioner has, in respect of the two charges before the tribunal, engaged in professional misconduct. It should also be clear from what I have said that I do not consider that this practitioner is a fit and proper person to engage in legal practice.

[20] The respondent pointed to her personal circumstances. She is a single woman now, aged 58 years of age. She is unemployed. She relies on social security benefits. She has not sought to practice since she was declared bankrupt, although she informed the tribunal that she has since been discharged from bankruptcy. She has no criminal history. She informed the tribunal that she has not practised since and that she does not intend to practice. Nevertheless, she submitted that a suspension for two years was the appropriate sanction to be imposed in the present case. She expressed remorse for what had occurred at the time.

[21] I do not agree with the respondent's submission that a suspension is appropriate in the present circumstances. Rather, the overall public interest, in my respectful view, calls for an order that the name of the respondent be removed from the roll.

[22] The tribunal orders that the name of the respondent be removed from the roll of solicitors.

[23] There will be a further order that the respondent pay the applicant's costs of and incidental in this proceeding, such costs to be assessed on the standard basis according to the Supreme Court scale.