

In the Matter of Bruce Graeme Da Costa

Case Number: SCT/82

Date of Hearing: 22 October 2002

Appearing Before: Mr P Cooper (Presiding Member)

Mr P M Conroy (Practitioner Member)

Ms E Jordan (Lay Member)

Penalty: Suspended from practice for two years

Charge

1. Between February 2002 and June 2002, the solicitor acted as a solicitor without having at the time, a practising certificate as required by section 38 of Queensland Law Society Act 1952.

Particulars

(a) At all material times, the solicitor was admitted to practise as a solicitor having been admitted on 6 May 1988 and carried out conveyancing work through a company B Pty Ltd under business name, UPTS.

(b) Between in or about February and March 2002, the solicitor acted for one M in the purchase by her from one D of a residential home unit situated at Ashmore, Gold Coast, Queensland.

(c) Between in or about May and June 2002, the solicitor further acted for one MK in the sale of property situated at Carrara, Queensland to one K.

(d) At the time of both transactions, the solicitor did not hold a practising certificate pursuant to section 38 of Queensland Law Society Act 1952 as he was required by law to do.

Appearances

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

Mr D G Searles, Solicitor of McCullough Robertson, Lawyers

(b) For the Practitioner:

Mr B G Da Costa appeared in person

Findings and Orders

1. The Tribunal found the matters set out in the Notice of Charge dated 5 August 2002 proved and that those charges constitute professional misconduct.

2. The Tribunal found the practitioner guilty of professional misconduct.

3. The Tribunal suspends the practitioner from practice for a period of two (2) years from today's date.

4. The Tribunal further ordered that the practitioner is not entitled to apply for any level of practising certificate until after he has satisfactorily completed a practice management course conducted by the Queensland Law Society Incorporated.

5. The Tribunal further ordered that the practitioner pay the costs of the Queensland Law Society Incorporated, the Clerk to the Tribunal and the Recorder, such costs as agreed between the parties or failing agreement as assessed by Monsour Legal Costs Pty Ltd.

6. The Tribunal allowed the practitioner six (6) months to pay the costs ordered from the date of agreement or assessment of those costs.

Reasons

These are the reasons:

1. If the practitioner did not know that he required a principal level practising certificate, he was under a professional obligation to make proper inquiries that his activities were legitimate.

2. The practitioner admitted that he made no inquiries, and conceded that ignorance of the law is no excuse.

3. The practitioner was aware as at 11 March 2002, that his activities were unlawful and contravened the provisions of the Queensland Law Society Act, section 38.

4. Notwithstanding that, the evidence established that the practitioner continued to act as a solicitor in current matters and accepted instructions in two further matters.

5. The conduct of the practitioner amounted to holding himself out as a solicitor when he did not hold a principal level practising certificate.

6. The Tribunal does not accept that he was permitted to accept instructions in the matters of MK and MT subsequent to 11 March 2002.

Regarding penalty, the Tribunal notes that the practitioner has previously appeared on 27 February 1997, before the former Statutory Committee, as then constituted under the Queensland Law Society Act, on five serious matters of professional misconduct, for which he was fined \$2,500 and ordered to pay the costs.

This Tribunal finds that the appropriate penalty is suspension for two years. Prior to the practitioner re-applying for any level of practising certificate, the practitioner must satisfactorily complete a Practice Management Course as conducted by the Queensland Law Society.

The practitioner is to pay the costs of the Queensland Law Society, the Clerk of the Tribunal, and the Recorder, such costs to be agreed and, failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.

The Tribunal notes that both parties have agreed to this procedure.