

The Solicitors Complaints Tribunal

The tribunal is surprised that the complainants failed to inspect the properties in these circumstances. Had inspections been made, the tribunal is of the opinion that the loans would not have been made and the losses on the investment would not

have been incurred but, as the tribunal notes, that is not a matter that is before the tribunal in this application for compensation and is restricted only to any loss arising from the proven professional misconduct of the practitioner.

In the Matter of Practitioner X

Case No. SCT/48
Date of Findings and Orders: 20 February 2001
Appearing before: Ms C Endicott (Chairperson)
Mr P Cooper
Ms M Green (Lay Member)
Penalty: Fined \$3,500.00

Charges

On 20 February 2001 the Solicitors Complaints Tribunal heard the charges set out in the Notice of Charge dated 23 November 2000 that the practitioner –

In breach of s.5G of the *Queensland Law Society Act 1952* (as amended) (“the Act”) failed upon request to provide to the Council within a stated reasonable time an explanation of a matter being investigated by the Council namely a complaint by BG on behalf of CDO.

Particulars

By written complaint dated 14 March 2000 to the Queensland Law Society Incorporated (“the Society”) BG complained on behalf of CDO that despite several letters and a signed authority from CDO, the practitioner had not transferred CDO’s file to BG, nor had he replied to correspondence from BG.

By letter on behalf of the Council to the practitioner dated 24 March 2000 the practitioner was provided with a copy of the complaint and was requested pursuant to s.5G(a) of the Act to provide by 17 April 2000 a sufficient and satisfactory written explanation of the matters referred to in the letter of complaint dated 14 March 2000 from BG on behalf of CDO, failing which a Notice under s.5H(2) of the Act would be issued.

The practitioner did not reply to that letter by 17 April 2000 or at all.

By letter on behalf of the Council to the practitioner dated 18 April 2000 the practitioner was asked for a reply by 27 April 2000 failing which a Notice pursuant to s.5H of the Act would be issued.

The practitioner did not reply to that letter by 27 April 2000 or at all.

In breach of s.5H of the *Queensland Law Society Act 1952* (as amended) (“the Act”) the practitioner failed upon request to provide to the Council within 14 days an explanation in writing of matters referred to in a complaint by BG on behalf of CDO, the subject of a Notice issued to him by the Council pursuant to s.5H(2) of the Act dated 28 April 2000.

Particulars

By written complaint dated 14 March 2000 to the Queensland Law Society Incorporated (“the Society”) BG complained on behalf of CDO that despite several letters and a signed authority from CDO, the practitioner had not transferred CDO’s file to BG, nor had he replied to correspondence from BG.

By letter on behalf of the Council to the practitioner dated 24 March 2000 the practitioner was provided with a copy of the complaint and was requested pursuant to s.5G(a) of the Act to provide by 17 April 2000 a sufficient and satisfactory written explanation of the matters referred to in the letter of complaint dated 14 March 2000 from BG on behalf of CDO failing which a Notice under s.5H(2) of the Act would be issued.

The practitioner did not reply to that letter by 17 April 2000 or at all.

By letter on behalf of the council to the practitioner dated 18 April 2000 the practitioner was asked for a reply by 27 April 2000 failing which a Notice pursuant to s.5H of the Act would be issued.

The practitioner did not reply to that letter by 27 April 2000 or at all.

By Notice under s.5H of the Act on behalf of the Council to the practitioner dated 28 April 2000, which was forwarded by facsimile transmission to the practitioner that day and the original of which was posted that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters referred to in the Society’s letters dated 24 March 2000 (with attachments) and 18 April 2000 was a breach of s.5H(1) of the Act and that if such failure continued for a period of 14 days after the date of his receipt of such notification he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse

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for not complying with the requirements to provide an explanation in writing within the specified period.

The practitioner did not comply with the Council's requirement within 14 days or at all.

Findings and Orders

The tribunal finds the practitioner guilty of professional misconduct with respect to the two charges in the Notice of Charge.

The tribunal orders that the practitioner pay a penalty of \$3,500.00 to the fund.

The tribunal orders by consent that the practitioner pay the costs incurred by the Queensland Law Society Incorporated of and incidental to this application, as agreed between the parties or, failing agreement, as assessed by Monsour Legal costs Pty Ltd.

The tribunal further orders that the penalty and costs be paid by 6 equal calendar monthly instalments commencing on 31 March 2001.

Reasons

The practitioner through his counsel and in his affidavit sworn on 20th February 2001, admitted the charges and conceded he was guilty of professional misconduct in relation to the 2 charges brought against him.

The tribunal notes that the practitioner had ignored correspondence from the Queensland Law Society and a notice served under s.5H(ii) of the *Queensland Law Society Act*.

The tribunal regards the conduct of the practitioner as serious, as it indicates an unwillingness to adhere to the acceptable standards of professional practice expected from Queensland solicitors.

Without an adherence to the system of conduct arising from s.5G and s.5H of the Act, the regulation of the profession by the Queensland Law Society will be significantly impaired. The public has the right to expect practitioners to co-operate with the regulation of the profession in accordance with the dictate of the law of the land.

The tribunal notes that this is the second occasion that the practitioner has been disciplined and considers that the penalty imposed should take this fact into account.

The tribunal, however, also notes the material filed in mitigation by the practitioner and acknowledges that the practitioner's financial position is not strong, and that a penalty of \$3,500.00 plus the payment of costs, would in the circumstances be an appropriate penalty and would be a deterrent to other practitioners who attempt to fail to respond properly to correspondence from the Society.

In the Matter of Jonathan Paul Lancaster

Case No: SCT/45
Date of hearing: 28 February 2001
Appearing before: Mr J S P O'Keeffe (Chairperson)
Mr G C Fox
Mr G Campbell-Ryder (LayMember)
Penalty: Struck Off

Charges

Charge 1

- (a) The practitioner acted for PD in relation to a claim for damages for personal injury arising out of a motor vehicle accident which occurred on 24 February 1995.
- (b) The practitioner failed to give notice of claim to Suncorp General Insurance Ltd ("Suncorp") as the insurer of the proposed defendant pursuant to s.37

of the *Motor Accident Insurance Act* ("the Act") within the time prescribed or at all.

- (c) By letter dated 19 March 1999 addressed to Suncorp, the practitioner falsely asserted that notice of claim had been given to Suncorp and provided to Suncorp what purported to be copies of a letter from the practitioner to Suncorp dated 19 May 1995 and of the notice of claim.
- (d) In or about September 1999, the practitioner falsely represented to PD that his claim had been settled for \$60,000.00 and procured execution by PD of a form of release, discharge and indemnity recording such settlement when, in fact, PD's claim had not been settled.