

LEGAL PRACTICE TRIBUNAL

LPT 002

de JERSEY CJ

MS CUSHING-SULLIVAN
MS PACHECO

No. 5115 of 2006

LEGAL SERVICES COMMISSIONER

Applicant

and

MICHAEL GEOFFREY JOHNSTON

Respondent

BRISBANE

.. DATE 18/04/2007

REASONS

THE CHIEF JUSTICE: The respondent solicitor, admitted in July 2000 and now 34 years of age, is subject to eight charges arising from the operation of his trust account. At material times he was the principal of the law practice, Johnston Lawyers. He is subject to no previous adverse finding by a disciplinary body.

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The first charge concerns his client, Reeftye Pty Ltd, a land developer. In the second half of 2004, the respondent received 10 holding deposits from prospective purchasers from Reeftye. They totalled \$48,000. The respondent deposited those amounts into his trust account.

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On the 27th of September 2004, in breach of section 8 subsection 1 of the Trust Accounts Act 1973 and section 24 of the Land Sales Act 1984, the respondent withdrew \$6,000 from his trust account on account of fees. Then on the 3rd of December 2004, in breach of the same provisions, he withdrew \$24,000 for payment to a third party.

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Following an audit of the respondent's accounts which disclosed these irregularities, the respondent restored the requisite sums to the trust account by mid-April 2005 although his accounting records incorrectly recorded the payments as having been received back into the trust account on the 12th of March 2005.

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The second charge concerns misleading correspondence with the Queensland Law Society. The respondent was asked to comment

on the results of the audit. In the first place, he represented that the funds had been returned to the trust account by mid-March whereas \$24,000 of them was not returned until mid-April. Second, he claimed to have set up separate ledgers in accordance with directions from the auditor whereas that had not been done by the time the representation was made.

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The third charge concerns his clients, Mr Jordan and Mr Masters. In the first place, on the 9th of August 2004, the respondent received \$728.70 from those clients, deposited into his general account in payment of costs and outlays. The deposit was irregular in that the amount included \$26 for unexpended outlays. Second, when on the 18th of August 2004, the respondent received almost \$4,000 as the balance settlement moneys, he did not issue a trust account receipt and was dilatory in depositing the moneys into his trust account, delaying for approximately 12 days.

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The fourth charge concerns the respondent's clients, Brennan, Symonds and Fitzpatrick. On the 13th of July 2004 the respondent received \$690 into his general account in payment of costs and outlays although he had not rendered an account. Second, that amount received included a sum of \$57.47 which the respondent was not entitled to receive and deposited into his general account in breach of section 7 of the Trust Accounts Act 1973. He repaid that sum to his clients on the 29th October 2004.

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The fifth charge concerns his client, Ms Felt. On the 14th of October 2004 the respondent received \$690 although he had not rendered an account and paid that amount into his general account in payment of costs and outlays. Further, he had not expended outlays to the extent of \$153.64 of that sum.

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The sixth charge concerns his client, Mr Christophi. Of a sum of \$820 paid into his general account, a component of \$91.30 represented moneys he was not entitled to receive, thereby breaching section 7 of the Trust Accounts Act.

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The seventh charge concerns his client, Mr Sharpe. On the 15th of February 2005, the respondent transferred \$600 from his trust account into his general account for costs and outlays without lawful entitlement and contrary to section 8 of the Trust Accounts Act. According to an account rendered on the 16th of March 2005 the respondent was entitled to \$555 only. On the 1st of April 2005 the respondent repaid the difference, \$45, to his clients.

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The final eighth charge relates to the respondent's failure to operate his trust account in a professional manner. It relates to the period July 2002 to June 2005.

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In summary, the respondent failed to undertake monthly trust account reconciliations as soon as practicable after the end of each month. Contrary to section 12 subsection 1 of the Trust Accounts Act he caused two payments to be made from his trust account in late 2004 by direct debit to the trust bank

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account without the issue of a trust account cheque. In breach of regulation 4 of the Trust Account Regulation 1999 he failed to maintain a register of trust account receipt forms to record the serial numbers of all trust account receipt forms supplied to him.

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In breach of regulations 5 sub regulation 1 and 10, sub regulation 3, the respondent failed to record sufficient information and particulars on receipts and the cheque butts.

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In breach of section 12 he failed to ensure that all trust account cheques were drawn payable to order. In breach of regulations 11 sub regulation 1 paragraph b and 15, he did not, in his trust account cash book and trust ledger particularise details of trust receipts and payments on a daily basis on or within two days after the moneys were received or paid. In breach of section 6 subsection 1 he didn't keep trust account records which sufficiently explain the transactions or recorded the true position in relation to them.

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In breach of regulation 21 he failed to maintain a trust account journal to record particulars of various trust funds transferred between trust ledger accounts and failed to sign each entry in the journal authorising the transfer of trust funds. In breach of regulation 14 he failed to record sufficient particulars of descriptions of matters and receipt and cheque numbers for individual trust account ledgers; and in breach of rule 91 of the Queensland Law Society Rules he failed to issue receipts over a period of some five months

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recording the particulars of all payments of money made to his general account.

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The importance of reliable trust accounting by solicitors was emphasised in Queensland Law Society v. Cummings [2004] QCA 138 paragraph 19 endorsing a view expressed elsewhere in the following terms:

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"Reliability and integrity in the handling of trust funds are fundamental pre-requisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities belonging to a solicitor. Members of the public, many of whom are wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of moneys on their behalf. The court must ensure that this trust is not misplaced."

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It is the extent of the irregularity in this case, extending over a not insubstantial period, which warrants the conduct being characterised as professional misconduct. There is no suggestion of dishonesty or the respondent seeking any personal benefit. On the other hand, his conduct involved poor management of an important financial system and lack of diligence in his attention to a wide series of matters over approximately 12 months.

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The factors which impact in his favour in the determination of this Tribunal's response are that he indicated early in the piece that he would not be contesting the matter in any substantial way, he has cooperated with the Society and the Commission, he is not burdened by any previous adverse finding

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and he has streamlined his processes with the last audit report confirming his trust account, "well maintained".

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The appropriate order in the circumstances is the administration of a public reprimand and the imposition of a penalty. Also, the respondent should be required to submit to an educative process. The charges are established and the Tribunal finds they involved in the aggregate professional misconduct. There will be an order that the respondent is publicly reprimanded.

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There will be an order that he pay a penalty in the amount of \$4,000 to the Legal Practitioner Interest on Trust Accounts fund by the 18th of June 2007 and that in default of payment the matter be re-listed before the Tribunal for the consideration of further orders. There will be an order that the respondent complete the trust account module of the Practice Management Course offered by the Queensland Law Society to be commenced within the next six months.

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Further, the respondent is ordered to pay the applicant's costs to be assessed on the Supreme Court scale on the standard basis if not-----

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THE CHIEF JUSTICE: Have they been agreed?

MR JOHNSTON: If it could be agreed at \$2,000, thank you, your Honour.

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THE CHIEF JUSTICE: Pay the applicant's costs agreed in the sum of \$2,000. Hope not to see you again in circumstances like this, Mr Johnston.

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