

In the Matter of Paul Vivian Watts

Case No: SCT/72
Date of Hearing: 14 May 2002
Appearing Before: Mr P Short (Chairperson)
Mr M Conroy
Ms E Jordan (Lay Member)

Charge 1

The practitioner failed to act in accordance with his client's instructions to complete work on behalf of the client as soon as was reasonably possible.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Ms J A Schafer, solicitor, Dibbs Barker Gosling, Lawyers
- (b) For the practitioner:
Mr M P Quinn, solicitor, Gilshenan & Luton Lawyers

Findings and Orders

1. The tribunal finds the matters set out in the notice of charge filed 8 March 2002, as admitted by the practitioner, proved. The tribunal finds that those matters constitute unprofessional conduct and that the practitioner is guilty of unprofessional conduct.
2. Upon the undertaking of the practitioner not to charge any professional fees in relation to the completion of the matters referred to in the notice of charge, the tribunal orders that the practitioner undertake and satisfactorily complete the next available Practice Management Course conducted by the Queensland Law Society Incorporated.
3. The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated incidental to this application including the costs of the recorder and of the clerk, such costs to be agreed or, failing agreement to be assessed by Monsour Legal Costs Pty Ltd.

Reasons

Having regard to the practitioner's offer to waive the additional fees and the expense and inconvenience of doing the Practice Management Course and the likelihood that that will probably be more beneficial than a fine, we order that the practitioner undertake and complete the Practice Management Course next available.

In the Matter of Myles Anthony Kehoe

Case Number: SCT/68
Date of Hearing: 4th day of June 2002
Appearing Before: Mr P J Mullins (Chairperson)
Mr M Byrom
Dr J Lamont (Lay Member)
Penalty: Struck Off

Charge 1

That on 22 June 1999 the practitioner swore a false affidavit in connection with disciplinary proceedings brought against him by the Queensland Law Society Incorporated in the Solicitors Complaints Tribunal.

Particulars

- 1.1 By notice of charge filed with the Solicitors Complaints Tribunal on 29 April 1999, the society instituted disciplinary charges against the practitioner alleging that he had failed to maintain reasonable standards of competence and diligence and had been guilty of unprofessional conduct or practice in relation to a contributory mortgage loan to X Pty Ltd;
- 1.2 In response to the notice of charge, the practitioner swore an affidavit on 22 June 1999 in which he deposed to the effect:
 - (a) that the transaction had been conducted by his secretary, his secretary, entirely without reference to him (para.3);
 - (b) that he had "severely reprimanded (his secretary) for the obvious breach of normal office procedures" (para.7);

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- (c) that he had read an affidavit sworn by his secretary and that “to the extent that such affidavit refers to me or to my actions the contents of such affidavit are true and correct” (para.19); the affidavit sworn by his secretary on 22 June 1999 in relation to the proceedings before the Solicitors Complaints Tribunal deposed that “I did not advise Mr Myles Kehoe of the situation in relation to this transaction. I advise that I have learnt a very valuable lesson and I have been given a severe reprimand by Mr Kehoe. All new matters are brought to his attention immediately for his consideration, if notice of the transaction comes firstly to me rather than Mr Kehoe” (paras 6-7).

1.3 The practitioner’s affidavit was false in that:

- (a) his secretary had informed the practitioner of receipt of instructions to act in relation to the proposed loan to X Pty Ltd at about the time such instructions were first received;
- (b) the practitioner had supervised his secretary’s conduct of the transaction.

Charge 2

That on or about 22 June 1999, the practitioner procured his secretary to swear an affidavit which was false.

Particulars

- 2.1 By reason of the matters set out in para.1, his secretary’s affidavit sworn on 22 June 1999 was false.
- 2.2 The practitioner procured his secretary to swear that affidavit by:
- (a) tendering the affidavit to her;
- (b) saying to his secretary words to the effect that the fine which would be imposed on him by the disciplinary tribunal would be less if his secretary “took the wrap”;
- (c) on or about 22 June 1999, by telephone to his secretary at her home, advising her that it was necessary for her to sign the affidavit that day.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr B Bartley, solicitor of Brian Bartley & Associates, solicitors

- (b) For the practitioner:
There was no appearance on behalf of the practitioner.

Findings and Orders:

1. The tribunal finds the matters set out in the notice of charge dated 30 October 2001, proven and those matters constitute professional misconduct. The tribunal finds the practitioner guilty of professional misconduct.
2. The tribunal orders that the name of the practitioner be struck from the Roll of Solicitors kept by the registrar of the Supreme Court of Queensland.
3. The tribunal orders that the costs of the Queensland Law Society Incorporated be assessed by Monsour Legal Costs Pty Ltd and that Myles Anthony Kehoe pay those costs, including the costs of the recorder and the clerk and including the amount charged by Monsour Legal Costs Pty Ltd for the assessment.

Reasons

Mr Bartley has referred us to the decision of the High Court in *Weaver v the Law Society of New South Wales*, 142 CLR 201 and, in particular, to the judgment of Mr Justice Mason at the bottom of p205 where he was dealing with a matter somewhat similar to this one.

In those circumstances, His Honour found that the complaint of false swearing in earlier civil proceedings was a new complaint and that no issue of estoppel arose, given that the earlier proceedings were civil in nature, as were the later proceedings.

In those circumstances, and given that the earlier proceedings in this matter before this tribunal were civil in nature and that these proceedings are also civil in nature, we take the view that no issue of estoppel arises.

The other issue that is important is that the earlier conviction of the practitioner is not being re-litigated in these proceedings, but the charges that are before us relate only to his swearing a false affidavit in the earlier proceedings and the allegation that he procured another person to swear a false affidavit for the purposes of those proceedings.

So, having said that, the tribunal takes the view that no issue of estoppel arises and we are free to deal with the charges that are before us.

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We have considered the material in the affidavit material filed and the exhibits before us. We've heard the submissions from Mr Bartley and we propose to find the practitioner guilty of both charges, and we further find that the matters referred to in both charges constitute professional misconduct.

Myles Anthony Kehoe, the practitioner, stands charged before the tribunal of 2 charges, namely:

1. That on 22 June, 1999, the practitioner swore a false affidavit in connection with disciplinary proceedings brought against him by the Queensland Law Society Inc., ("the society"), in the Solicitors Complaints Tribunal, ("this tribunal").
2. That on or about 22 June, 1999, the practitioner procured his secretary to swear an affidavit which was false.

The practitioner has not appeared at the hearing of these charges today.

We are satisfied that the practitioner knew that today had been set for the hearing of the charges and that a copy of the notice of charge had been properly served on him.

In that regard, exhibit 2 before us today is a copy of a letter from the practitioner to the clerk of the tribunal, dated 27 May, 2002. In that letter, the practitioner says that he "does not intend contesting the charges".

It is apparent from the letter that the practitioner does not admit the charges. He says: 'Please note that I in no way accept the charges nor the evidence gathered against me by the Queensland Law Society. I believe the charges have no foundation in truth. I am innocent of these charges.'

The practitioner says that he cannot afford the cost of legal representation before the tribunal and that he has no experience in litigation himself to enable him to adequately defend himself.

The practitioner has filed no affidavit in the tribunal answering the charges or answering the facts deposed to in the various affidavits which are before us. In particular, the practitioner has not filed an affidavit denying the matters deposed to in the affidavit of his former secretary, filed in the tribunal 12 March, 2002.

In that affidavit, his former secretary admits that an affidavit she swore dated 22 June, 1999, which was filed before this tribunal in relation to other charges, was false in certain respects, namely:

1. That she departed from usual office procedure relating to mortgage lending matters in that, for a reason she cannot explain, she did not advise the practitioner of the situation relating to the transaction.
2. That she had learned a very valuable lesson and had been severely reprimanded by the practitioner.
3. That she had read the contents of the practitioner's affidavit previously filed before the tribunal and that she deposed to the fact that, to the extent that such affidavit referred to her or her actions, the contents of that affidavit were true and correct.

In her affidavit, filed before this tribunal on 12 March, 2002, his former secretary deposes to the following relevant facts:

1. She had noted a difference between the contract price and the valuation figure in relation to the X Pty Ltd transaction (para.3).
2. She drew Mr Kehoe's attention to the discrepancy in the figures (see para.8).
3. The practitioner had approved her sending blank firm letterhead to another firm in relation to the subject X Pty Ltd transaction (para 9(a)).
4. That the practitioner telephoned the principal of the other firm to check that authorities had been obtained from all the contributory lenders (para 9(b)).
5. That Mr Kehoe had been consulted by her in relation to the amount of the bill (para.10).

Although his former secretary's previous affidavit referred to her having sighted the final affidavit of Myles Anthony Kehoe, sworn 22 June, 1999, when she received her own affidavit from Mr Kehoe, he did not send a copy of his affidavit to her (para.20).

We have before us, as exhibit B to the affidavit of Mr Franklin, filed 31 May, 2002, a copy of the practitioner's affidavit, filed before this tribunal, dated 22 June, 1999.

We accept the truth of the matters deposed to by his former secretary in her affidavit, filed 12 March, 2002.

We are satisfied on the Briginshaw Test that the following matters deposed to by the practitioner in that affidavit were false as at 22 June, 1999:

1. The statement in para.3 of the affidavit that his secretary had not followed the usual office procedures whereby the practitioner was to be notified of any new mortgage lending transaction at the earliest time possible and that his secretary

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conducted the matter, the subject of the charge then before the tribunal, 'entirely without reference' to the practitioner.

2. The statement in para.5 of the affidavit that his secretary unilaterally sent the bill in respect of the matter.
3. The statement in para.5 of the affidavit that, had the practitioner known about the transaction and if he had acted in respect of the transaction, the normal fee would have been charged by him.
4. The statement in para.7 that his secretary 'was severely reprimanded for the obvious breach of normal office procedures.'
5. The statement in para.8 that 'in this case I would have highlighted the discrepancy between the valuation and the contract price had I known of it.'
6. The statement in para.19 'I have read the contents of the affidavit of his secretary and say that, to the extent that such affidavit refers to me or to my actions, the contents of such affidavit are true and correct.'

We are therefore satisfied that on 22 June, 1999, the practitioner swore a false affidavit in connection with the disciplinary proceedings then pending against him in this tribunal.

As to the second of the charges, we have already referred to the relevant content of the affidavit of his secretary, sworn 22 June, 1999.

In her own affidavit, filed 12 March, 2002, his secretary refers to the matters in the original affidavit which were false as at the date she swore that affidavit.

We accept the truth that the matters deposed to in the affidavit of his secretary, filed 12 March, 2002, and we are satisfied on the Briginshaw Test, that the affidavit of his secretary, sworn 22 June, 1999, was false in the respects referred to and we are satisfied that at the time the practitioner procured the swearing of that affidavit by his secretary, he knew that those matters were false.

We therefore find charge 2 proven against the practitioner.

We are satisfied that both offences which we have found proven constitute professional misconduct. We say that because it is clear that both offences involve dishonesty on the part of the practitioner.

For a practitioner to be involved in proffering to a statutory tribunal 2 affidavits, one sworn by him and one procured by him, knowing both of them to contain falsehoods, demonstrates unfitness to practise as a solicitor.

Courts and tribunals are entitled to expect that the practitioners appearing before them take their duties seriously and, for the proper administration of justice, it is clear that no practitioner should put before a tribunal, material that the practitioner knows to be false.

In the particular matter that was pending before this tribunal, the matter had very serious potential consequences for the practitioner.

In an unacceptable way, the practitioner put his own interests before the duty which he owed to the tribunal. By failing to tell the truth, he committed serious breaches of duties the practitioner owes as a solicitor.

In filing the false affidavits, the practitioner has demonstrated an unfitness to practise as a solicitor. This constitutes a serious breach of duty by the practitioner.

It is necessary for this tribunal to protect the people of Queensland from a practitioner who is prepared to submit false sworn affidavits to the tribunal in an attempt to defend his own interests.

We are not satisfied that a practitioner who is capable of such disreputable behaviour is fit to practise as a solicitor in Queensland.

Given that view, we have no option but to order that the practitioner's name be struck from the Roll of Solicitors kept by the registrar of the Supreme Court of Queensland and we make an order in those terms.