

In the Matter of David Anthony Lobbezoo

Case No: SCT/61
Date of Hearing: 19 February 2002
Appearing Before: Ms C C Endicott (Chairperson)
Mr P Cooper (practitioner Member)
Ms E Jordan (Lay Member)
Penalty: Suspended for a period of 6 months.

Charge 1

On or about 22 November 1999 the solicitor, when acting for CWN and ANN in relation to a possible claim against Westpac Banking Corporation, knowingly and falsely represented to the clients that the barrister he had briefed on their behalf had been too busy to provide his opinion when, in truth that was not correct and no barrister had ever been briefed by him as the solicitor well knew.

Particulars

- 1.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 1.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.
- 1.3 On 22 November 1999 ANN inquired by telephone of the solicitor as to the progress of the barrister's opinion and the solicitor told her that the reason he had not received the opinion was that the barrister he had briefed had been too busy to do the opinion.
- 1.4 In truth, the statement was false and at the time of making it, the solicitor had not even briefed a barrister both of which facts the solicitor well knew.
- 1.5 At no time during the entire retainer period of 12 April 1999 to 26 February 2000 did the solicitor brief a barrister as instructed.

Charge 2

On or about 21 December 1999, when acting for CWN and ANN in relation to a possible action against Westpac Banking Corporation, the solicitor knowingly and falsely advised the clients that the barrister he had briefed on their behalf had not provided an opinion because he had been in court and would attend to the matter when he returned from court when in truth that was not correct and no barrister had ever been briefed as the solicitor well knew.

Particulars

- 2.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 2.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.
- 2.3 On 21 December 1999 ANN inquired by telephone of the solicitor as to the progress of the barrister's opinion and the solicitor told her that the reason he had not received the opinion was that the barrister was in court and would attend to the matter when he returned from court.
- 2.4 In truth, that statement was false and, at the time of making it, the solicitor had not even briefed a barrister, both of which facts the solicitor well knew.
- 2.5 At no time during the entire retainer period of 12 April 1999 to 26 February 2000 did the solicitor brief a barrister as instructed.

Charge 3

On or about 24 February 2000 when acting for CWN and ANN in relation to a possible action against Westpac Banking Corporation, the solicitor knowingly and falsely represented to the clients that the barrister he had briefed on their behalf was named PS when, in truth, that was not correct and no barrister had ever been briefed as the solicitor well knew.

The Solicitors Complaints Tribunal

Particulars

- 3.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 3.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.
- 3.3 On or about 25 February 2000 ANN inquired by telephone of the solicitor as to the name of the barrister whom he had briefed and the solicitor told her that the barrister's name was PS
- 3.4 In truth at the time of advising the client of the name of the barrister the name PS was fictitious and the solicitor had not briefed a barrister, both of which facts the solicitor well knew.
- 3.5 At no time during the entire retainer period of 12 April 1999 to 26 February 2000 did the solicitor brief a barrister as instructed.

Charge 4

By letter dated 16 May 2000 the solicitor in answer to an inquiry by Queensland Law Society Incorporated on behalf of his clients CWN and ANN falsely represented to the society that he had briefed a barrister on behalf of his clients when no barrister had been briefed as the solicitor well knew.

Particulars

- 4.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 4.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.

- 4.3 At no time during the entire retainer period of 12 April 1999 to 26 February 2000 did the solicitor brief a barrister as instructed.
- 4.4 By letter dated 4 May 2000 the secretary of Queensland Law Society Incorporated wrote to the solicitor on behalf of the solicitor's clients in pursuance of a complaint lodged by them against the solicitor.
- 4.5 By letter of response to the law society dated 16 May 2000, the solicitor made the following statements:

- (a) page 4 – 'the position in June 1999 was that I had been instructed to obtain an opinion in relation to a dispute over an adverse notation on the N's credit history (although not on their CRL record) which had resulted in a refusal of a credit facility. **My intention in referring it to a barrister** was to explore the possibility of setting aside the April 1998...'
- (b) page 4 'in retrospect I should have obtained a payment in advance from the Ns on account of the barrister's fees to be incurred';
- (c) page 4 – 'on 27 January 2000 the Ns sent a further fax to me outlining points they wanted to raise with the barrister. Several of the points related to the conduct prior to April 1998 which could only be actionable if the April 1998 agreement was set aside in full. **Subsequent to that I discussed with a barrister again the matter.** I made it clear that my intention was to obtain a second opinion.');
- (d) page 4 – 'on 24 February 2000 Mrs N contacted me again requiring an update as to the opinion from a barrister. **I advised I would contact him again...**'

(All above emphasis added)

- 4.6 The above statements, when read together do create, and were intended by the solicitor to create, the impression that he had, during the course of the retainer with the clients, briefed a barrister on their behalf when in truth the solicitor, contrary to his clients' instructions, had never briefed a barrister.

The Solicitors Complaints Tribunal

Charge 5

By letter dated 27 June 2000 the solicitor in answer to an inquiry by Queensland Law Society Incorporated on behalf of his clients CWN and ANN, falsely represented to the society that he had briefed a barrister on behalf of his clients when no barrister had been briefed as the solicitor well knew.

Particulars

- 5.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 5.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.
- 5.3 At no time during the entire retainer period of 12 April 1999 to 26 February 2000 did the solicitor brief a barrister as instructed.
- 5.4 By letter dated 26 June 2000 the secretary of Queensland Law Society Incorporated wrote to the solicitor on behalf of the solicitor's clients in pursuance of a complaint lodged by them against the solicitor.
- 5.5 By letter of response to the law society dated 27 June 2000, the solicitor made the following statements:
 - (a) 'the barrister I spoke to about the matter was PW';
 - (b) '**there was no brief or documents returned to the N's because they did not ask for them.**' ;
 - (c) '**I did not receive a memorandum of advice from PW prior to the N terminating their retainer.**'(All above emphasis added)
- 5.6 The above statements, when read together create, and were intended by the solicitor to create, the impression that he had during the course of the retainer with the clients, briefed a barrister named Mr PW on behalf of his clients when in truth contrary to his clients' instructions, the solicitor had never briefed a barrister.

Charge 6

On or about 20 May 1999 to 26 February 2000, when acting for CWN and ANN concerning a possible action against Westpac Banking Corporation, the solicitor was guilty of serious neglect (undue delay) and a failure to maintain reasonable standards of competence or diligence.

Particulars

- 6.1 From on or about 12 April 1999 to 26 February 2000 the solicitor acted for CWN and ANN ('the clients') who sought advice in relation to a possible action against Westpac Banking Corporation (Westpac).
- 6.2 On 20 May 1999 ANN instructed the solicitor on behalf of both clients to retain a barrister to advise on their prospects of successfully claiming against Westpac and the solicitor told her he would proceed to obtain such an opinion.
- 6.3 Despite repeated requests on 1 July 1999, 2 July 1999, 5 July 1999, 3 August 1999, 6 August 1999, 22 October 1999, 22 November 1999, 14 December 1999, 16 December 1999, 21 December 1999, 24 January 2000, 25 January 2000, 21 February 2000 and 24 February 2000 from the clients as to the progress of the briefing of the barrister, the solicitor failed to deliver a brief to a barrister as instructed.
- 6.4 As a result of the solicitor's failure to carry out their instructions, the clients terminated the solicitor's retainer on 26 February 2000.

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 P Eardley, solicitor of Eardley Motteram Lawyers

Findings and Orders

1. The practitioner having admitted the charges, the tribunal is satisfied that the charges have been proven and finds the practitioner guilty on each of the 6 charges brought.

The Solicitors Complaints Tribunal

2. The tribunal further finds that the conduct of the practitioner constitutes professional misconduct.
3. The tribunal orders that the practitioner be suspended from practice for a period of 6 months such suspension to take effect from 19 April 2002.
4. The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated of and incidental to these charges and proceedings today, including the costs of the clerk to the tribunal and of the recorder, and orders that the costs be assessed by Mr Monsour of Monsour Legal Costs Pty ltd.
5. The tribunal further orders that the practitioner be allowed 12 months within which to pay costs.

Reasons

The practitioner is subject to 6 charges arising from the practitioner agreeing to accept instructions from a Mr and Mrs N.

The practitioner was instructed in May of 1999 to obtain an opinion from counsel in a banking matter, and the practitioner failed to take steps to obtain that opinion up until the time that the practitioner's instructions were terminated at the end of February 2000.

The practitioner compounded this failure to follow his client's instructions by falsely representing on at least 3 occasions to his client that counsel had been briefed, when this was not the case.

The client complained to the Queensland Law Society and the society asked the practitioner to explain his conduct. The practitioner falsely represented on two occasions to the society that he had sought an opinion from counsel, and this was not the case.

By making false representations to his clients and to the Queensland Law Society, the practitioner has shown that he was prepared to give any explanation other than the truth to account for the consequences of his delay.

The tribunal takes a very serious view of the practitioner's readiness to make false representations to protect his own interests, and the tribunal has reason to consider carefully the fitness of the practitioner to continue in practice as a solicitor in Queensland.

However, the practitioner has now been made aware of the serious consequences of his wrongdoing, and he has made significant changes to his practice as a result of these charges being brought.

The tribunal as a result is satisfied that the practitioner will be fit to practise as a solicitor at the expiration of the period of suspension in accordance with the standards expected by this profession.

In assessing penalty, the tribunal has considered the comparative decisions given to the tribunal by both the society and the practitioner. The comparative decisions relied on by the Queensland Law Society for striking off have been considered, but the facts in those cases reveal a level of misconduct more serious than appears in the present case.

The comparative decisions relied upon by the practitioner were also considered by the tribunal, but again, the tribunal has found that the facts of those cases were not directly comparable and again, in general, the conduct in those cases was less severe than the conduct in this present case.

In assessing penalty the tribunal takes into account the practitioner's conduct affected Mr and Mrs N, only. The practitioner did not benefit personally from his wrongdoing. His clients were not subject to any loss as a result of the practitioner's misconduct. The practitioner is a sole practitioner who apparently, from his affidavit material, has a clientele willing to support him, despite being aware of this lapse of conduct on the part of the practitioner which has resulted in these charges before the tribunal.

The tribunal does not consider that a monetary penalty is sufficient, however, in view of the seriousness of the misconduct proven against the practitioner.