

In the Matter of Michael John Miller

Case Number: SCT/97
Date of Hearing: 14 April 2003
Appearing Before: Mr P Short (Presiding Member/Practitioner Member)
Mr M Byrom (Practitioner Member)
Ms E Jordan (Lay Member)
In Attendance: Mr J Nimmo (Legal Ombudsman)
Mr J W Broadley (Clerk)
Penalty: Fined \$3,000.00

Charges

The Council of the Queensland Law Society Incorporated requires the Solicitor to answer the following charges:

Charge No. 1

1. The Solicitor failed, between 1 December 2000 and 26 July 2002, to restore a deficiency of \$2,000 in the account he held under the *Trust Accounts Act 1973* ('Act').

Particulars

- (a) At all material times the Solicitor carried on practice under the name Michael Miller at Level 15, Commonwealth Bank Building, 240 Queen Street, Brisbane, Queensland.
- (b) The Solicitor is and at all material times was a trustee within the meaning of that term in the Act and held a trust account styled 'Michael Miller Trust Account'.
- (c) Section 8 of the Act prescribes the purposes for which money may be withdrawn from a trust account held pursuant to the Act.
- (d) On 1 December 2000 the sum of \$2,000 was withdrawn from the trust account for purposes other than those authorised under section 8 of the Act ('trust account deficiency').
- (e) In breach of section 16 of the Act, the Solicitor failed to give the Society, as supervising entity, a copy of an audit report for years ended 31 March 2000 and 31 March 2001 until on or about 21 February 2002 when he provided an audit report prepared by K, Chartered Accountants ('K's audit report').
- (f) K's audit report stated that, on 1 December 2000, the sum of \$2,000 was withdrawn from the trust account and paid to the Solicitor's general account, and that the funds were in the process of being transferred back into the trust account.
- (g) By letter dated 26 February 2002 the Society sought from the solicitor:
 - (i) advice as to the date upon which the trust account deficiency had been restored;
 - (ii) if the trust account deficiency had not been restored, confirmation that the solicitor would restore the trust account deficiency immediately,and requested a response within 14 days.
- (h) By letter dated 22 April 2002 the Society requested a response to its letter of 26 February 2002.
- (i) By letter dated 23 April 2002 the Society requested the Solicitor to advise in writing whether or not he authorised the transfer giving rise to the trust account deficiency, and requested a reply within 14 days.
- (j) On 9 May 2002, in a phone call from the Society, the Solicitor was again asked if the trust account deficiency had been restored, and the Solicitor advised that he wanted to wind the trust account up and that he would reply the following day.
- (k) By letter dated 24 May 2002 the Society requested a response to its letters of 26 February, 22 April and 23 April 2002.
- (l) By letter dated 20 June 2002 the Society referred to its letters of 26 February, 22 and 23 April 2002 and 24 May 2002 and asked:
 - (i) whether or not the Solicitor had authorised the transfer which created the trust account deficiency;
 - (ii) the date the trust account deficiency was restored,and advised that if no satisfactory reply was received within 7 days the matter would be referred to the Council of the Society.
- (m) By letter dated 1 July 2002 the Society informed the Solicitor that the matter would be referred to the Council of the Society for consideration.
- (n) By letter dated 26 July 2002, the Society gave notice to the Solicitor pursuant to section 5G of the *Queensland Law Society Act*, calling upon him to explain his failure to reply to and address the issues raised in its letters within 21 days.
- (o) On about 20 August 2002 the Society issued to the Solicitor a Notice under section 5H of the *Queensland Law Society Act* calling upon the Solicitor to give an explanation in writing of the matters referred to in the Society's letters dated 26 February, 22 and 23 April, 24 May, 20 June, 1 July and 26 July 2002.

- (p) By letter dated 11 September 2002 the Solicitor responded to the section 5H Notice and advised that the trust account deficiency had been restored on 26 July 2002.

Charge No. 2

2. Between receipt of the Society's letter dated 26 February 2002 and 11 September 2002, the Solicitor failed to adequately respond to correspondence from the Society.

Particulars

- (a) By letter dated 26 February 2002 the Society sought from the solicitor:
- (i) advice as to whether or not the trust account deficiency had been restored;
 - (ii) if the trust account deficiency had not been restored, confirmation that the solicitor would restore the trust account deficiency immediately,
- and requested a response within 14 days.
- (b) By letter dated 22 April 2002 the Society requested a response to its letter of 26 February 2002.
- (c) By letter dated 23 April 2002 the Society requested the Solicitor to advise in writing whether or not he authorised the transfer giving rise to the trust account deficiency and requested a reply within 14 days.
- (d) On 9 May 2002, in a phone call from the Society, the Solicitor was again asked if the trust account deficiency had been restored, and the Solicitor advised that he wanted to wind the trust account up and that he would reply the following day.
- (e) By letter dated 24 May 2002 the Society requested a response to its letters of 26 February, 22 April and 23 April 2002.
- (f) By letter dated 20 June 2002 the Society referred to its letters of 26 February, 22 and 23 April 2002 and 24 May 2002 and asked:
- (i) whether or not the Solicitor had authorised the transfer which created the trust account deficiency;
 - (ii) the date the trust account deficiency was restored,
- and advised that if no satisfactory reply was received within 7 days the matter will be referred to the Council of the Society.
- (g) By letter dated 1 July 2002 the Society informed the Solicitor that the matter would be referred to the Council of the Society for consideration.
- (h) By letter dated 26 July 2002, the Society gave notice to the Solicitor pursuant to section 5G of the *Queensland Law Society Act*, calling upon him to explain his failure to reply to and address the issues raised in its letters within 21 days.
- (i) On about 20 August 2002 the Society issued to the Solicitor a Notice under section 5H of the *Queensland Law Society Act* calling upon the Solicitor to give an explanation in writing of the matters referred to in the Society's letters dated 26 February, 22 and 23 April, 24 May, 20 June, 1 July and 26 July 2002.
- (j) The Solicitor failed to adequately respond to the Society's letters until 11 September 2002 when the Solicitor responded to the section 5H Notice.

Charge No. 3

3. The Solicitor failed to respond within 14 days to a notice dated 20 August 2002 given to him by the Council of the Society pursuant to section 5H of the *Queensland Law Society Act*.

Particulars

- (a) At all material times Nicholas Francis Masinello was:
- (i) the Director of Professional Standards of the Society;
 - (ii) authorised by the Council to call upon the Solicitor to give an explanation pursuant to section 5G, and to give a notice pursuant to section 5H to the Solicitor on its behalf
- (b) By letter dated 26 July 2002 the Council required the Solicitor, pursuant to section 5G of the *Queensland Law Society Act*, to give an explanation within 21 days for his failure to reply to the Society's letters of 26 February, 22 and 23 April, 24 May, 20 June and 1 July 2002 and to address the issues raised in those letters.
- (c) On 20 August 2002 the Council caused a notice pursuant to section 5H of the *Queensland Law Society Act* (section 5H Notice) to be given to the Solicitor.
- (d) The Solicitor failed to respond to the section 5H Notice within 14 days of it being given to him.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr I Hughes, Solicitor of Messrs McCullough Robertson, Solicitors
- (b) For the Practitioner:
Mr M J Burns of Counsel instructed by Messrs Crimmins Kerwin and Burns, Solicitors

Findings and Orders

1. The Tribunal finds the facts and matters set out in the Notice of Charge, as admitted by the practitioner, proved and that those matters together constitute professional misconduct.
2. The Tribunal finds the practitioner guilty of professional misconduct.
3. The Tribunal orders that the practitioner pay a penalty of \$3,000.00 to the Fund.
4. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated and the costs of the Clerk and the Recorder, such costs to be agreed, or failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
5. The Tribunal further orders that the practitioner be allowed fourteen (14) days to pay the penalty imposed by the Tribunal.

Reasons

Nil