

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MS B CUSHING-SULLIVAN
MS J CORK

No 7700 of 2005

LEGAL SERVICES COMMISSION

Applicant

and

TUNG NGUYEN

Respondent

BRISBANE

..DATE 29/11/2005

REASONS

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE CHIEF JUSTICE: The respondent is a 35 year old solicitor. His firm acted for Alisha Budd in her purchase of a residence. It was her first home purchase. The contract was successfully completed. The firm submitted a first home transfer concession form to the Office of State Revenue which was accepted and processed. The firm provided Ms Budd with a copy of that form. She noticed the signature on the form purporting to be hers was not. The respondent had witnessed that signature. When queried by the Law Society the respondent claimed it was Ms Budd's signature but later conceded that it must have been written by someone within his firm. There is no suggestion that the respondent himself wrote the signature. The respondent also concedes that he witnessed the so-called signature after the event and without checking with Ms Budd that it was in fact hers.

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Now, the respondent before this Tribunal accepts responsibility for the signature. He did not write it, as I have said, but he accepts responsibility for the circumstance that it was done within his firm.

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He is extremely remorseful. He is, as I have said, a 35 year old Vietnamese man who has established a busy suburban practice which services a substantial portion of the Vietnamese community. He also does a lot of community work, especially for Vietnamese people. This is his first ethical breach resulting in a disciplinary finding.

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There are in fact two charges. First, the respondent's having witnessed the false signature in circumstances where Ms Budd was not known to him and she was not present, and, second, his lodging the declaration to the Office of State Revenue thereby representing its due execution.

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He has not contested the charges. Each is obviously established. Each involves professional misconduct. See Law Society of New South Wales and Dimitrios (1993) NSW Legal Services Tribunal 2.

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Regardless of the exigencies of a busy practice and notwithstanding Ms Budd did not suffer financially, for a solicitor to purport to witness a signature not applied in his presence and without checking with the suggested signatory is a serious breach going to the integrity of the legal system, as is the presentation of such a document to a governmental authority. It is properly regarded as dishonourable and, in terms of section 245 of the Legal Profession Act 2004, is conduct which involves a substantial failure to reach a reasonable standard of competence and diligence.

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I appreciate that that section does not strictly apply to this matter because the breach occurred before the commencement of the Act. But nevertheless it is of some assistance in the interpretation of the concept of professional misconduct.

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As to penalty, it is significant that the respondent appears to recognise the unsatisfactory quality of his breach. He is

remorseful, he has committed isolated breaches in this instance and he gained no personal benefit from this. Further there is his good community work for the Vietnamese people.

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There will be an order under section 280 subsection 2 paragraph E of the Legal Profession Act 2004 publicly reprimanding the respondent. There will be an order under section 280 subsection 4 paragraph A that the respondent pay a penalty of \$4,000 within three months from today to the Legal Practitioners Interest on Trust Accounts Fund. There will also be an order under section 286 subsection 1 that the respondent pay the applicant's costs to be assessed unless agreed. Thank you.

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