

In the Matter of Vincent Pennisi

Case Number: SCT/84

Date of Hearing: 17 December 2002

Appearing Before: Mr G Fox (Presiding member/Practitioner member)

Mr M Conroy (Practitioner member)

Dr J Lamont (Lay member)

Penalty: Fined \$10,000.00 and suspended for twelve months but suspension not to become operative unless practitioner defaults in the performance of terms of the Order

Charges

1. That the practitioner, being a solicitor and trustee of property, namely clients' trust moneys:

(a) dealt with that property in breach of the terms of the trust and in breach of section 8 of the Trust Accounts Act by, without authority, or any other lawful entitlement, intermingling trust moneys in the sum of \$7,169.30, the property of the estate of G, with his own moneys and thereby applied the same to his own use and benefit; and

(b) knowing, from on or about 29 August 2001 that his trust account was deficient in the sum of \$5,116.66, being moneys which he had, in breach of section 8 of the Trust Accounts Act paid from his trust account and applied to his own use, in breach of his duty as a trustee, failed, until 19 October 2001, to restore the said trust deficiency.

Particulars

(c) The practitioner acted in the administration of the Estate of G deceased.

(d) On 14 June 2001 the practitioner produced a statement of account to the executrix of the estate for costs and outlays in the sum of \$18,715.27. As at 14 June 2001, the practitioner had transferred from his trust account to his general account on account of costs and outlays the sum of \$12,334.57 and had paid outlays of \$250, a total of \$12,584.57, leaving a balance of \$6,130.70 payable to the practitioner in respect of costs and outlays.

(e) On 2 July 2001 the practitioner transferred from his trust account to his general account the sum of \$6,300 for costs and outlays. The practitioner was lawfully entitled to receive the sum of \$6,130.70, being the balance of his account of 14 June 2001, but had no lawful entitlement to the balance payment of \$169.30, which was transferred in breach of section 8 of the Trust Accounts Act.

(f) On 10 July 2001 the practitioner transferred from his trust account to his general account the further sum of \$4,000 for costs and outlays, in breach of section 8 of the Trust Accounts Act and without having any lawful entitlement to his payment.

(g) On 13 July 2001, the practitioner transferred from his trust account to his general account the further sum of \$3,000 for costs and outlays, in breach of section 8 of the Trust Accounts Act and without having any lawful entitlement to this payment.

(h) By the payments particularised in paras (c)-(e) above, trust moneys in the sum of \$7,169.30 were mixed with the practitioner's own moneys, and applied to his own use and benefit.

(i) As at July 2001, the practitioner knew that the proceeds of the said estate were distributable:

(i) as to the sum of \$51,000, to various named specific legatees;

(ii) as to the sum of \$30,500, to a contesting beneficiary;

(iii) as to the sum of \$2,500, to the estate residuary beneficiary

(j) As at July 2001, the practitioner proposed that the balance proceeds of the estate, following the payment of the distributions referred to in paragraph 1.7 above, be applied in payment of his costs and outlays.

(k) As at 1 September 2001:

(i) the practitioner had made payments to specific legatees in the sum of \$43,000, leaving a balance of \$8,000 still payable;

(ii) the practitioner had made payments to the contesting beneficiary (\$30,500) and to the residuary beneficiary (\$2,500);

(iii) the practitioner, had, on or about 29 August 2001, received signed discharges from 2 specific legatees with respect to legacies in the sum of \$6,000;

(iv) the practitioner, as a consequence of the said payments of \$7,169.30 trust moneys for costs and outlays, in breach of section 8 of the Trust Accounts Act, retained a balance of \$983.34 in his trust account on behalf of the Estate;

(v) the said balance was, as the practitioner well knew, insufficient moneys to pay the sum of \$6,000 to the two said specific legatees.

(l) On 19 October 2001 the practitioner repaid the sum of \$5,116.66 to his trust account to enable a distribution of \$6,000 to the said legatees, thereby reducing the trust deficiency to \$2,052.64.

(m) On 17 January 2002, the practitioner repaid the further sum of \$1,900 to his trust account to enable payment of the final estate distribution of \$2,000, thereby reducing the trust deficiency to \$152.64.

(n) The practitioner prepared a memorandum of costs and outlays dated 24 December 2001 in the amount of \$22,406.80 which he forwarded to the executrix in a letter dated 2 January 2002. On 18 January 2002 the practitioner rendered a statement of account to the executrix of the estate for costs and outlays in the sum of \$18,867.91, an increase of \$152.64 on the costs and outlays in the practitioner's statement of account of 14 June 2001, and thereby absorbed the balance trust deficiency of \$152.64.

2. The practitioner failed to maintain reasonable standards of competence or diligence in the conduct of the administration of the matters of the estate of G and the estate of D.

Particulars

(a) The practitioner acted in 2000/2001 in the administration of the estate of G and the estate of D respectively.

(b) In relation to the matter of the estate of G:

(i) the practitioner transferred moneys from his trust account to his general account for costs and outlays in July 2001 in breach of section 8 of the Trust Accounts Act, which moneys ought have been available, inter alia, for the purpose of the payment of a bequest of \$2,000 to a specific legatee, AH;

(ii) during the period July 2001 to December 2001 the practitioner failed to attend to the payment of the said bequest, or to apprehend that the bequest remained payable, or that he retained insufficient moneys in his trust account to permit the payment of same, such payment only being attended to upon the matter being brought to the practitioner's attention during the course of a section 31 examination of the practitioner's accounts in December 2001.

(c) In relation to the matter of the estate of D:

(i) the practitioner transferred moneys from his trust account to his general account for costs and outlays in November to December 2000 in breach of section 8 of the Trust Accounts Act, which moneys ought have been available for the purpose of the payment of a bequest of \$5,000 to a specific legatee, G D Association;

(ii) as a consequence, in December 2000, the practitioner retained insufficient moneys in his trust account to permit the payment of same;

(iii) notwithstanding that in or about March 2001, the practitioner knew of the said shortfall in trust funds and put the matter aside to be dealt with, he failed to make good the trust shortfall and to pay the said bequest until December 2001.

3. The practitioner, being a solicitor and trustee of property, namely clients' trust moneys, dealt with that property in breach of the terms of the trust and in breach of section 8 of the Trust Accounts Act by, without authority, or any other lawful entitlement, intermingling the property with his own property and thereby applied the same to his own use and benefit.

Particulars

(a) On the dates appearing in the schedule hereunder, the practitioner withdrew the sum of \$591, the property of the Estate of F, from the trust account to the general account for costs and outlays, in breach of section 8 of the Trust Accounts Act, and without having any lawful entitlement thereto.

Date	Amount
6 July 2001	402.00
27 July 2001	189.00

(b) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until in or about December 2001, when the practitioner caused the trust deficiency to be restored by paying the said moneys to the executrix of the estate.

(c) On the dates appearing on the schedule hereunder the practitioner withdrew the sum of \$12,334.57, the property of the Estate of G, from the trust account to the general account for costs and outlays, in breach of section 8 of the Trust Accounts Act and without having any lawful entitlement thereto.

Date	Amount
9 March 2000	595.00
22 November 2000	5,000.00
23 March 2001	5,500.00
24 April 2001	550.00
18 May 2001	689.57

(d) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until 14 June 2001 when the trust deficiency was restored upon the practitioner becoming lawfully entitled to the said moneys through the rendering of a statement of account to his client.

(e) On the dates appearing in the schedule hereunder, the practitioner withdrew the sum of \$1,925, the property of the Estate of D, from the trust account to the general account for costs and outlays, in breach of section 8 of the Trust Accounts Act, and without having any lawful entitlement thereto.

Date	Amount
20 October 2000	1,000.00
3 November 2000	750.00
15 December 2000	175.00

(f) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until 18 December 2000 when the trust deficiency was partially restored upon the practitioner becoming lawfully entitled to the sum of \$1,237.50 through the rendering of an account to his client. The balance trust deficiency of \$687.50 was restored on 12 December 2001 upon the practitioner repaying the said sum to his trust account to enable the final estate distribution of \$5,000 to the GD Association.

(g) On the dates appearing in the schedule hereunder the practitioner withdrew the sum of \$18,500, the property of his client C, from the trust account to the general account for costs and outlays in breach of section 8 of the Trust Accounts Act, and without having any lawful entitlement thereto.

Date	Amount
8 March 2001	5,000.00
19 July 2001	5,500.00
26 July 2001	8,000.00

(h) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit until 30 December 2001 when the trust deficiency was restored upon the practitioner receiving his client's written retrospective authorisation for the said payments.

4. The practitioner, being a solicitor and trustee of property, namely clients' trust moneys, dealt with that property in breach of the terms of the trust and in breach of sections 7 and 8 of the Trust Accounts Act by, without authority, or any other lawful entitlement, intermingling the property with his own property and thereby applied the same to his own use and benefit.

Particulars

(a) On 5 diverse occasions during the period August 2000/October 2001, as particularised in the schedule hereunder, the practitioner withdrew moneys the property of his client BC Pty Ltd, from the trust account to the general account for costs and outlays, in breach of section 8 of the Trust Accounts Act, and without having any lawful entitlement thereto.

(b) Further, on 4 January 2001 and 4 December 2001, as particularised in the schedule hereunder, trust moneys the property of his client BC Pty Ltd were wrongfully paid directly into the practitioner's general account in breach of section 7 of the Trust Accounts Act, and without the practitioner having any lawful entitlement thereto.

(c) In consequence of the said withdrawals in breach of section 8 of the Trust Accounts Act, and the said payments in breach of section 7 of the Trust Accounts Act, during the period August 2000 to December 2001, moneys the property of his client BC Pty Ltd were mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit. From time to time during this period the trust deficiency was restored or reduced, as particularised in the schedule hereunder, upon the practitioner becoming lawfully entitled to moneys through the rendering of accounts to his client.

(d) As and from 19 October 2001, clients' trust moneys in the sum of \$4,203, increasing as and from 4 December 2001 to the sum of \$8,703, have been applied by the practitioner to his own use and benefit without the practitioner having any lawful entitlement thereto. The said trust deficiency of \$8,703 has not been restored.

Schedule – BC Pty Ltd

Date of Payment to general account	Amount paid to general account	Nature of payment	Amount of practitioner's lawful entitlement at time of payment	Amount of Breach of trust deficiency	Trusts Accounts Act	Period of Trust Deficiency
11.08.00	1,700.00	Trust to general	Nil	1,700.00	section 8	11.08.00 – 20.09.00
18.08.00	3,300.00	Trust to general	Nil	5,000.00	section 8	18.08.00 – 20.09.00
04.01.01	5,000.00	Direct to general	Nil	5,000.00	section 7 – 05.03.01	04.01.01
30.04.01	5,000.00	Trust to general	197.50	4,802.50	section 8	30.04.01 – 01.07.01 (deficiency reduced to \$2,581.50 on 01.07.01)
*02.07.01	2,221.50	Trust to general	Nil	4,803.00	section 8	02.07.01 – 04.10.01
19.10.01	8,871.51	Trust to general	4,668.51	4,203.00	section 8	19.01.01 – **
04.12.01	4,500.00	Direct to general	Nil	8,703.00	section 7	04.12.01 – **

* As between 12.07.01, the trust deficiency of \$4,803 reduced by \$660 to \$4,143.

** Deficiency has not been restored.

5. The practitioner, being a solicitor and trustee of property, namely clients' trust moneys, dealt with that property in breach of section 7 of the Trust Accounts Act by, without any lawful entitlement, permitting the intermingling of the property with his own property, and thereby applied the same to his own use and benefit.

Particulars

(a) On 5 March 2001 trust moneys in the sum of \$935, the property of the practitioner's client, C were paid directly into the practitioner's general account, in breach of the provisions of section 7 of the Trust Accounts Act, and without the practitioner having any lawful entitlement thereto.

(b) The said moneys were thereby mixed with the practitioner's own moneys and applied to the practitioner's own use and benefit.

(c) By e-mail dated 16 May 2001, the said client requested the practitioner to account for the said trust moneys by paying same at the client's direction. The practitioner failed or refused to do so.

(d) Following an examination of the practitioner's accounts by the Society in December 2001, the practitioner accounted to his client for the said sum in or about February 2002, thereby restoring the trust deficiency.

6. The practitioner, being a solicitor and trustee of property, did, during the period October 2000 to November 2001, in the respects particularised hereunder, engage in breaches of the Trust Accounts Regulation 1999.

Particulars

(a) For each month during the period January 2001 to November 2001, in breach of section 12(1)(a) of the Trust Accounts Regulation 1999, the practitioner failed to balance and reconcile the trust account cash book balance with the trust account ledger.

(b) For each month during the period October 2000 to December 2000, in breach of section 12(4) of the Trust Accounts Regulation 1999, the practitioner failed to keep the reconciliations of his trust account cash book, trust account ledger and trust account bank balance securely in the trustees' records.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr R G Perrett, Solicitor of Messrs Clayton Utz Solicitors

(b) For the practitioner:
Mr M J Byrne of Queens Counsel instructed by Messrs Dearden Lawyers

Findings and Orders

1. The Tribunal grants leave to the Queensland Law Society Incorporated to amend the Notice of Charge.
2. The Tribunal orders that the practitioner pay a penalty to the Fund of \$10,000.00.
3. The Tribunal further orders that the practitioner attend and satisfactorily complete the next available trust account module of the Practice Management Course conducted by the Queensland Law Society Incorporated.
4. The Tribunal further orders that reports on the practitioner's practice be provided to the Queensland Law Society and the practitioner by a practitioner appointed by the Queensland Law Society Incorporated at the practitioner's expense, the first report to be furnished within three (3) months of today and thereafter at six (6) monthly intervals for a period of three (3) years from today.
5. The Tribunal further orders that the practitioner be suspended from practice for a period of 12 months, such suspension not to become operative unless the practitioner defaults in the performance of any of the terms of this order, or is convicted by this Tribunal of any charge relating to the administration of trust accounts within three years from today.
6. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Inc, including the costs of the Clerk and the recorder, of and incidental to this application including costs up to and including 1 November 2002, together with the costs of the day of the hearing of 17 December 2002, as agreed between the parties or failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
7. The Tribunal further orders that the practitioner be allowed 18 months to pay the monetary penalty and costs.

Reasons

The practitioner has been charged with a number of charges relating generally to the administration of trust accounts. The charges are admitted. We find the charges proved. We find the charges amount to professional misconduct. We find the practitioner guilty of professional misconduct.

The practitioner is a senior solicitor of many years standing. He has made valuable contributions to his community and his profession. Medical evidence has been provided to the effect that while he is currently fit to practise, his ability to do so has been seriously impaired during the period to which the charges relate. Indeed the offences could only be explained by the matters referred to in the medical reports. The offences, serious in themselves, must have been uncovered to the practitioner's knowledge by subsequent Law Society audits. Having said this, the fact remains that the practitioner has resumed a course of conduct – that is transferring funds where accounts have not been delivered to the client and in some cases not raised – of which he was warned against in 1995. The total deficiency at one stage amounting to \$32,685.80 has been rectified, and it is conceded that there has been no deficiency since August 2002.

No person has suffered loss and there is no claim for compensation before this Tribunal. We feel the public is best protected by the orders made.

This Tribunal strongly recommends that the practitioner avail himself of a computerised trust account system to minimise the prospects of these problems occurring again; and further that he give serious thought to the taking in of a partner in the next few years. The pressures on sole practitioners are well known and are not likely to be reduced in the next few years.