

In the Matter of Paul John Crowley

Case No: SCT/44
Date of hearing: 29 November 2000
Appearing before: Mr G C Fox (Chair)
Mrs C C Endicott
Ms D A Wilson (Lay Member)
Penalty: Struck off

Charges

On 4 May 2000, the practitioner, having entered a plea of guilty, was convicted on charges –

- (i) that he misappropriated property between 1 September 1994 and 7 February 1996,
- (ii) that he uttered forged documents with circumstances of aggravation on 7 June 1996.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr B Bartley, solicitor, Brian Bartley & Associates, solicitors
- (b) For the practitioner:
Ms JA Schafer, solicitor, Thynne & Macartney, solicitors

Findings & Orders

The tribunal found the charge set out in the Notice of Charge dated 13 October 2000 proved and that the charge constituted professional misconduct. The tribunal found the practitioner guilty of professional misconduct.

The tribunal ordered that the practitioner's name be struck from the Roll of Solicitors of the Supreme Court of Queensland.

The tribunal further ordered that the costs of and incidental to the application be paid by Paul John Crowley, and that the amount of those costs be as agreed, or, failing agreement, as assessed by Monsour Legal Costs Pty Ltd.

Reasons

The charges to which the practitioner pleaded guilty in the District Court were inconsistent with any concept of continuing fitness to practice, and in the circumstances the only option open to the tribunal was to find the charge proved and that it amounted to professional misconduct.

In the Matter of Practitioner X

Case No: SCT/38
Date of hearing: 13 February 2001
Appearing before: Ms C C Endicott (Chair)
Mr P L Cooper
Ms D A Wilson (Lay Member)
Penalty: Fined \$15,000.00

Charges

1. That the practitioner is guilty of professional misconduct or alternatively unprofessional conduct or practice in that he did, in breach of his duty as a solicitor, act in breach of Rule 85 of the Queensland Law Society Rules in that the practitioner, having been engaged by a person (not being an "excepted person" as defined in Rule 85) to negotiate or otherwise act in respect of a contract or mortgage under or upon which that person had provided or agreed to provide credit to another person did, during the course of such engagement, act for such other person in respect of a matter in which the credit (or part of it) had been or was intended to be applied.

Particulars

In or about February - July 1998, the practitioner acted:

- (i) for ERW, RJC and DMC in respect of an advance of \$118,500.00 to DFB; and
 - (ii) for DFB in respect of the matter of the purchase by him of properties in respect of which purchases the advance of \$118,500.00 was applied.
2. That the practitioner is guilty of professional misconduct, or alternatively unprofessional conduct or practice in that the practitioner did:
 - (i) by letters dated 2 July 1998 and 11 August 1998, write to the Queensland Law Society Incorporated ("the Society") during the course of the Society's investigation of the matter of a complaint against the practitioner by RJC & DMC and
 - (ii) by letter dated 12 June 1998, write to Messrs J, the newly appointed solicitors for RJC & DMC.

which letters contained representations which were recklessly made, uncaring as to their accuracy.

Particulars

- (a) By contract dated 29 January 1998, RJC & DMC, as mortgagees exercising power of sale, contracted to sell a property of which LEM was

- the registered proprietor, to DFB for a purchase price of \$51,001.00;
- (b) By contract dated 29 January 1998, ERW as mortgagee exercising power of sale contracted to sell a property of which LEM was the registered proprietor, to DFB for a purchase price of \$67,501.00;
- (c) The said RJC, DMC and ERW as lenders advanced \$118,500.00 to the said DFB as borrower, to enable the said purchases to be completed;
- (d) On 31 July 1998 the Society wrote to the practitioner requesting copies of the practitioner's trust ledger accounts relating, inter alia, to the loan to DFB and the transfer of the LEM properties;
- (e) By letter dated 11 August 1998 the practitioner replied to the Society stating, inter alia:
"You have asked for the trust ledger accounts relating to the transfer of the property from LEM to DFB which, of course, do not exist because we did not act for either LEM or DFB in that situation. The transfers from LEM to DFB were by the mortgagees exercising power of sale and the purchase price was the amount of the mortgage".
- (f) The statement by the practitioner to the Society that his firm did not act for DFB in relation to the said transfers was recklessly made, uncaring as to its accuracy in that:
- (i) the transfer from RJC & DMC, as mortgagees exercising power of sale, to DFB was executed by the practitioner on 30 June 1998 as solicitor for the transferee (DFB);
- (ii) the transfer from ERW as mortgagee exercising power of sale, to DFB was executed by the practitioner on 6 February 1998 as solicitor for the transferee (DFB);
- (iii) the settlement notices in respect of each transaction, prepared by the practitioner's firm, identify the practitioner's firm as the solicitors for the transferee (DFB);
- (iv) the settlement notice in respect of the transfer of one property identifies the practitioner's firm as the address for service of notices for DFB;
- (v) stamp duty on the contracts, which was expressed in each contract to be payable by the purchaser, DFB, was paid by the practitioner.
- (g) The statement by the practitioner to the Society in the letter of 2 July 1998 that the mortgage was retained unregistered because that was part of an agreement between RJC & DMC and DFB was recklessly made, uncaring as to its accuracy in that:
- (i) RJC & DMC did not give instructions to the practitioner that they had an agreement with DFB to retain the mortgage unregistered;
- (ii) RJC & DMC did not give instructions to the practitioner to retain the mortgage unregistered.
- (h) By letter dated 12 June 1998 in reply to a letter from Messrs J, the then solicitors for RJC and DMC, requiring the immediate registration of the mortgage, the practitioner stated, inter alia:
"The non-registration was entirely within the agreement of your clients for reasons which were canvassed at that time. If they now require registration we shall attend to the same."
- (i) The statement by the practitioner that the non-registration was entirely within the agreement of RJC & DMC for reasons which were canvassed at that time was recklessly made, uncaring as to its accuracy in that:
- (i) RJC & DMC did not give instructions to the practitioner that they had an agreement for the non-registration of the mortgage;
- (ii) RJC & DMC did not give instructions to the practitioner not to register the mortgage.
3. That the practitioner is guilty of professional misconduct, or alternatively unprofessional conduct or practice in that the practitioner, in breach of his duty as a solicitor failed to maintain reasonable standards of competence or diligence in relation to his practice.

Particulars

- (a) In February 1998 the practitioner acted for:
- (i) RJC & DMC as mortgagees exercising power of sale to DFB of one property;
- (ii) ERW as mortgagee exercising power of sale to DFB of another property.
- (b) The said purchases by DFB were financed by advances from the RJC & DMC and ERW which advances were to be secured by a first registered bill of mortgage granted by DFB;
- (c) The purchases settled on or about 7 February 1998. By letter to the mortgagees dated 20 February 1998, the practitioner advised the mortgagees of the settlement of the transactions, and enclosed an epitome of

mortgage which provided, inter alia, "SECURITY: First Registered Bill of Mortgage".

- (d) The practitioner failed to register the bill of mortgage;
 - (e) On 7 April 1998 DFB defaulted under the mortgage by failing to pay interest then due and owing;
 - (f) By search undertaken on 27 May 1998, RJC & DMC ascertained that the said bill of mortgage was not registered and by letter dated 27 May 1998 their then solicitors, Messrs J, required the practitioner to arrange for immediate registration of the mortgage;
 - (g) Notwithstanding further correspondence from Messrs J and from the Society to the practitioner concerning the non-registration of the said mortgage, and the practitioner's written advice to Messrs J of 12 June 1998 that he would attend to registration of the mortgage, the mortgage was not lodged for registration until 20 July 1998;
 - (h) By the practitioner's conduct as particularised in paragraphs A-G above, the practitioner failed to maintain reasonable standards of competence or diligence in relation to his practice;
4. The practitioner is guilty of professional misconduct, or, alternatively, unprofessional conduct or practice in that in breach of his duty as a solicitor he failed to maintain reasonable standards of competence or diligence in relation to his practice, in that, in certain proceedings, being conducted in the District Court held at Southport, Queensland, he carelessly swore two affidavits the contents of which were incorrect and misleading.

Particulars

- (a) The practitioner acted for the plaintiff, ERW in proceedings against DFB in the District Court held at Southport.
- (b) On 4 September 1998, in support of an application for summary judgment on behalf of the plaintiff, the practitioner swore an affidavit in which he deposed:

"I, as the plaintiff's solicitor, carried out legal work for the mortgagee arising from the mortgagor's default, particulars of which are contained in a bill of costs rendered to the plaintiff for the amount of \$4,328.00."
- (c) As at September 1998, the true position was that no bill of costs had been rendered to the

plaintiff, whether for the amount of \$4,328.00 or at all.

- (d) On 1 October 1998, in support of an application for summary judgment on behalf of the plaintiff, the practitioner swore an affidavit in which he deposed:

"My legal firm rendered the plaintiff a bill for professional costs and outlays amounting to \$4,328.00. Such bill has been paid or satisfied. Now shown to me and marked with the letter A is a true copy of the said bill of costs."
- (e) Annexure "A" to the said affidavit of 1 October 1998, being a true copy of the bill of costs, contained an endorsement:

"NB: We note that his account has been paid."
- (f) As at 1 October 1998, the true position was that:
 - (i) no bill of costs had been rendered by the practitioner's firm to the plaintiff, whether for the amount of \$4,328.00 or at all;
 - (ii) the plaintiff ERW had not paid the said bill of costs;
- (g) The said affidavits were sworn by the practitioner with the intention that they be relied upon by the Court in awarding judgement for an alleged debt which included the sum of \$4,328.00 for legal costs.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:

Mr RG Perrett, solicitor of Clayton Utz, solicitors
- (b) For the practitioner :

Mr AJ Kimmins of counsel instructed by Price and Roobottom, solicitors
- (c) Complainants ERW, RJC & DMC appeared in person.

Findings and Orders

1. The tribunal finds the practitioner guilty of all charges.
2. The tribunal finds that the charges as admitted constituted professional misconduct and that the practitioner is guilty of professional misconduct.
3. The tribunal orders that the practitioner pay a penalty of \$15,000.00.
4. The tribunal orders that the penalty of \$15,000.00 be paid by equal monthly instalments over a period of six

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months, commencing on 1 March 2001 and that the penalty be paid in full within six months of that date.

5. The Tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated, including any reserved costs and by consent it orders that the amount of these costs be reached by agreement and failing agreement, the costs to be assessed by Monsour Legal Costs Consultants.

Reasons

The practitioner has been charged with one count of breach of Rule 85, one count of issuing letters containing representations recklessly made and two counts of failing to maintain reasonable standards of competence and diligence. The practitioner has pleaded guilty to all these charges. He has admitted all the facts on which the charges are based and he concedes he is guilty of professional misconduct.

The practitioner has misled his clients in his failure to register the mortgage from DFB immediately after the transaction that resulted in the transfer of the two properties in question.

The practitioner exercised insufficient diligence in that mortgage transaction. He did not satisfy himself that he had a current authority to sign documents for Mr DFB and failing to take care at that point in time, he found himself acting for Mr DFB in breach of his obligations under Rule 85.

The practitioner did not take any steps to register the mortgage in February 1998 to fulfil his obligations and his instructions from the complainants. He did not act to protect their interests in the loan transaction until June 1998. By that stage, RJC & DMC had terminated the practitioner's instructions and had instructed another solicitor to look after their interests.

The practitioner's failure to register the mortgage before July 1998 is a clear case of dereliction of his duties to his clients.

The practitioner's responses to the Queensland Law Society were not forthright. He obfuscated when clear and full disclosure would have been expected to fulfil his professional obligation to his clients and to his professional body, the Queensland Law Society.

Even after the fact that a problem existed with the complainants in May 1998, the practitioner still took inadequate care in his dealings with the complainants and particularly with ERW.

The practitioner swore an affidavit in the District Court proceedings, which he admits contained information recklessly given and inaccurate. He had not apparently learned by that stage at the end of 1998 that he had to take all care to ensure that no one else was misled by his actions.

The tribunal expresses disappointment that the practitioner took such a careless attitude to his duty to the court and to his clients in swearing an affidavit that was inaccurate after all that had transpired which caused him such concern from the middle of 1998 onwards.

The tribunal has considered the comparable decisions submitted to it. The Tribunal finds that these have been of assistance in assessing an appropriate monetary penalty to impose in this case. At the same time, the Tribunal recognises that each case must be decided on its own particular facts.

The tribunal considers the penalty of \$15,000.00 to be appropriate in this case.

The tribunal does not consider an order for suspension from practice is warranted and has taken into account the likely destruction of the practitioner's practice if he was suspended and the devastating impact that would have on his staff.

The tribunal takes into account that the practitioner has restructured his practice and no longer introduces clients to loan proposals and that he is not licensed under the ASIC Rules for private mortgage lending.

The tribunal also takes into account that the practitioner has not gained any financial advantage as a result of the conduct which is the subject of these four charges.

The tribunal has taken into account that the practitioner has admitted his guilt once the amended charges were formulated.

In relation to the application for compensation, the tribunal has had before it now, some evidence by ERW of costs he incurred after he terminated the instruction to the practitioner and instructed another firm of solicitors to act on his behalf.

Unfortunately, the other complainant, RJC & DMC, were unable to obtain such information, although they have estimated that there have been costs incurred by them since terminating the practitioner's instructions, in order to rectify the damage caused by the failure of the practitioner to register the mortgage promptly after the loan transaction in February, 1998.

However, taking into account the information given to the tribunal by the complainants, the tribunal is not satisfied that, on that evidence, the complainants, RJC & DMC and ERW, have suffered any pecuniary loss because of the practitioner's proven professional misconduct.

When all the complainants were questioned as to their legal costs incurred in attempting to resolve the issue of non-registration of securities, all were unable to give evidence as to the exact amount arising from the particular breach of the practitioner's obligations. The other information given does not, in the tribunal's opinion, go to the issue of the conduct which is under scrutiny in these charges.

So as far as the compensation applications by the complainants are concerned, the tribunal does not make any order in relation to them as it is not satisfied that the complainants have suffered any pecuniary loss as required by s.6.R.4 of the *Queensland Law Society Act 1952*.

The tribunal notes that the loss that the complainants talk about in their evidence arises as a result of bad investments made by the complainants.

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The tribunal is surprised that the complainants failed to inspect the properties in these circumstances. Had inspections been made, the tribunal is of the opinion that the loans would not have been made and the losses on the investment would not

have been incurred but, as the tribunal notes, that is not a matter that is before the tribunal in this application for compensation and is restricted only to any loss arising from the proven professional misconduct of the practitioner.

In the Matter of Practitioner X

Case No. SCT/48
Date of Findings and Orders: 20 February 2001
Appearing before: Ms C Endicott (Chairperson)
Mr P Cooper
Ms M Green (Lay Member)
Penalty: Fined \$3,500.00

Charges

On 20 February 2001 the Solicitors Complaints Tribunal heard the charges set out in the Notice of Charge dated 23 November 2000 that the practitioner –

In breach of s.5G of the *Queensland Law Society Act 1952* (as amended) (“the Act”) failed upon request to provide to the Council within a stated reasonable time an explanation of a matter being investigated by the Council namely a complaint by BG on behalf of CDO.

Particulars

By written complaint dated 14 March 2000 to the Queensland Law Society Incorporated (“the Society”) BG complained on behalf of CDO that despite several letters and a signed authority from CDO, the practitioner had not transferred CDO’s file to BG, nor had he replied to correspondence from BG.

By letter on behalf of the Council to the practitioner dated 24 March 2000 the practitioner was provided with a copy of the complaint and was requested pursuant to s.5G(a) of the Act to provide by 17 April 2000 a sufficient and satisfactory written explanation of the matters referred to in the letter of complaint dated 14 March 2000 from BG on behalf of CDO, failing which a Notice under s.5H(2) of the Act would be issued.

The practitioner did not reply to that letter by 17 April 2000 or at all.

By letter on behalf of the Council to the practitioner dated 18 April 2000 the practitioner was asked for a reply by 27 April 2000 failing which a Notice pursuant to s.5H of the Act would be issued.

The practitioner did not reply to that letter by 27 April 2000 or at all.

In breach of s.5H of the *Queensland Law Society Act 1952* (as amended) (“the Act”) the practitioner failed upon request to provide to the Council within 14 days an explanation in writing of matters referred to in a complaint by BG on behalf of CDO, the subject of a Notice issued to him by the Council pursuant to s.5H(2) of the Act dated 28 April 2000.

Particulars

By written complaint dated 14 March 2000 to the Queensland Law Society Incorporated (“the Society”) BG complained on behalf of CDO that despite several letters and a signed authority from CDO, the practitioner had not transferred CDO’s file to BG, nor had he replied to correspondence from BG.

By letter on behalf of the Council to the practitioner dated 24 March 2000 the practitioner was provided with a copy of the complaint and was requested pursuant to s.5G(a) of the Act to provide by 17 April 2000 a sufficient and satisfactory written explanation of the matters referred to in the letter of complaint dated 14 March 2000 from BG on behalf of CDO failing which a Notice under s.5H(2) of the Act would be issued.

The practitioner did not reply to that letter by 17 April 2000 or at all.

By letter on behalf of the council to the practitioner dated 18 April 2000 the practitioner was asked for a reply by 27 April 2000 failing which a Notice pursuant to s.5H of the Act would be issued.

The practitioner did not reply to that letter by 27 April 2000 or at all.

By Notice under s.5H of the Act on behalf of the Council to the practitioner dated 28 April 2000, which was forwarded by facsimile transmission to the practitioner that day and the original of which was posted that day, the practitioner was notified that his failure to furnish an explanation in writing of the matters referred to in the Society’s letters dated 24 March 2000 (with attachments) and 18 April 2000 was a breach of s.5H(1) of the Act and that if such failure continued for a period of 14 days after the date of his receipt of such notification he would be liable to be dealt with for professional misconduct unless he had a reasonable excuse