

CITATION: *Legal Services Commissioner v Redmond*
[2015] QCAT 212

PARTIES: Legal Services Commissioner
(Applicant/Appellant)
v
William Hanron Redmond
(Respondent)

APPLICATION NUMBER: OCR158-13

MATTER TYPE: Occupational regulation matters

HEARING DATE: 26 March 2015

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Ms Megan Mahon (Legal Panel Member)
Ms Julie Cork (Lay Panel Member)

DELIVERED ON: 9 June 2015

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The Respondent is to be publicly reprimanded.**
- 2. The Respondent is fined \$9,000.00, to be paid over a period of 14 months by equal monthly instalments.**
- 3. The Respondent is to pay the Applicant's costs fixed in the sum of \$4,000.00, to be paid over a period of 14 months by equal monthly instalments.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – DUTIES AND LIABILITIES – SOLICITOR AND CLIENT – CONFLICTS OF INTEREST – DISCLOSURE OF INFORMATION – where Respondent failed to disclose a relevant business interest – whether conduct amounts to unsatisfactory professional conduct or professional misconduct

Legal Profession Act 2004 (Qld) ss 215, 244, 245

Legal Profession Act 2007 (Qld)

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 32

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498

Commissioner v Pointon [2008] LPT 16

Kennedy v Council of the Incorporated Law Institute of NSW (1939) 13 ALJ 563

Legal Services Commissioner v Mullins [2006] LPT 012

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)* (QCAT Act).

REASONS FOR DECISION

Charge

- [1] The Legal Services Commissioner asserts that, between August 2005 and 13 November 2006, Mr William Redmond was guilty of professional misconduct in that, as the solicitor for Mr Eu and the appointed power of attorney for Villinger Group Ltd and Goldwealth Group (Mr Eu's companies), he did not properly disclose his interest in the company Logic Economics Pty Ltd or the company Business Acquisitions Australia Pty Ltd in circumstances where Logic Economics and Business Acquisitions Australia received a benefit from Villinger and Goldwealth's loans to third parties.

Background

- [2] The parties have filed an agreed statement of facts.
- [3] Mr Redmond was a partner of the legal practice Redmond Van der Graaff, and the sole director of Logic Economics.
- [4] Redmond Van der Graaff was a paid consultant to Business Acquisitions Australia (a company controlled by Mr Lazar).
- [5] Mr Eu was a Singaporean business man who retained Mr Redmond as his solicitor in a conveyancing matter.
- [6] Villinger and Goldwealth, companies controlled by Mr Eu, appointed Mr Redmond as attorney so that he could facilitate the registering of mortgages and transfers in New South Wales. Business Acquisitions

Australia was the company through which the loans from Villinger and Goldwealth were brokered.

- [7] Mr Redmond introduced Mr Eu to Mr Lazar so that Mr Eu could participate in a business of investing in distressed mortgages. Funds were provided by Villinger and Goldwealth for the acquisition of various properties, and Business Acquisitions Australia managed the properties and used investment funds to prepare the properties for resale.
- [8] Mr Lazar instructed Mr Redmond to establish a company to manage the funds invested for the purposes of the investments by Mr Eu. Mr Redmond incorporated Logic Economics, with himself as the sole director. Mr Redmond was not retained by Mr Eu to act as solicitor for Goldwealth or Villinger, each of which was separately represented throughout the transactions.
- [9] Mr Redmond did not make any disclosure to Mr Eu regarding his association with Business Acquisitions Australia or Logic Economics.
- [10] A dispute arose between Mr Eu, Mr Lazar and Mr Redmond as a result of the transactions, and civil proceedings were initiated in the Supreme Court of Queensland by Mr Eu (and his companies) against Mr Redmond and Logic. The matter was defended and settled on a confidential basis prior to hearing.
- [11] The Legal Services Commissioner alleges that Mr Redmond failed to properly disclose his relationship with Logic, and his firm's relationship with Business Acquisitions Australia.

Discussion

- [12] The statement of agreed facts records the party's agreement that the conduct outlined constitutes professional misconduct.¹
- [13] As the Legal Services Commissioner correctly submits, even though there may be a consensus between the parties concerning whether the conduct amounted to professional misconduct, the first issue to be determined is whether the conduct of Mr Redmond amounts to professional misconduct or unsatisfactory professional conduct.²
- [14] Section 244 of the *Legal Profession Act 2004 (Qld)*³ provides:

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

¹ Statement of agreed facts filed 6 May 2014, paragraph 6.

² Applicant's submissions filed 23 May 2014, page 4 paragraph 7.

³ At the time of the agreed conduct, the legal profession in Queensland was regulated by the *Legal Profession Act 2004 (Qld)*.

[15] Section 245 of the *Legal Profession Act 2004* (Qld) relevantly provides that:

- (1) *Professional misconduct* includes—
 (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence...

[16] In considering the question of whether conduct amounts to professional misconduct, Thomas J observed that “the test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”⁴

[17] In the submissions, the Legal Services Commissioner asserts:

- The breaches establish a course of conduct indicating that Mr Redmond is guilty of professional misconduct.⁵
- Whilst there is one charge, it relates to several separate and distinct transactions with the conduct occurring over a period of about 16 months.⁶
- Taken as a whole, the application shows a tendency on the part of Mr Redmond to prefer his own interests to those of his clients, and to routinely disregard his obligations under the relevant provisions of the *Legal Profession Act*.⁷
- Mr Redmond’s conduct strikes at the heart of a legal practitioner’s professionalism and demonstrates a clear disregard of his obligations under the *Legal Profession Act*.⁸

[18] Section 215 of the *Legal Profession Act 2004* (Qld) provides that the Governor in Council may make rules governing legal practice. The relevant solicitors rules are contained in the *Solicitors Handbook 2003* which prescribes that the practitioner should:

- treat the client fairly and in good faith, bearing in mind the client’s position of dependence upon the practitioner and the high degree of trust that a client is entitled to place in the practitioner,⁹
- always be completely frank and open with the client,¹⁰ and

⁴ *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498.

⁵ Applicant’s submissions filed on 23 May 2014, page 5 paragraph 8.

⁶ Applicant’s submissions filed on 23 May 2014, page 5 paragraph 9.

⁷ Applicant’s submissions filed on 23 May 2014, page 5 paragraph 10.

⁸ Applicant’s submissions filed on 23 May 2014, page 6 paragraph 1.

⁹ *Solicitors Handbook 2003*, chapter 7.

¹⁰ *Ibid*, chapter 7.

- at all times make a full and frank disclosure to the client of any interest the practitioner may have in any matter in which the practitioner is concerned for that client.¹¹

[19] Whether particular conduct amounts to professional misconduct or unsatisfactory professional conduct is a matter of degree and is determined by the particular facts of each case. This is accepted by the Legal Services Commissioner.¹²

[20] The respondent points to a number of factors which are relevant to the particular circumstances of this case, and they include:

- Mr Redmond was not retained by Mr Eu to act as a solicitor for his companies, which were separately represented throughout the relevant transactions.¹³
- The charge does not involve any element of dishonesty.¹⁴
- It is a case of Mr Redmond involving himself in the middle of a business relationship between two parties where he owed duties to each, and not having sufficient regard to the obligations of disclosure he owed to each.¹⁵ I would add that, in addition to the duties he owed to each of the parties, his firm also had an interest in the transaction which was not disclosed.
- The charge does not involve any allegation of Mr Redmond taking advantage of a vulnerable client or a third party and, in the context of his having been appointed as power of attorney for Mr Eu's companies, Mr Redmond did so not for profit but simply in furtherance of the business relationship.¹⁶ In addition, the power of attorney was not intended to be widely exercised, but rather was limited to executing loan documents which could not be registered in New South Wales unless they were executed by an attorney for the lender company.¹⁷
- In the course of dealings with Mr Eu, Mr Redmond believed Mr Eu was aware that Mr Redmond was involved in business dealings with, and on behalf of, Mr Lazar and Business Acquisitions Australia. Mr Redmond had introduced these two clients.¹⁸
- Mr Redmond's lack of disclosure to Mr Eu concerning his formal connections with Business Acquisitions Australia and Logic was not deliberate or ill motivated. Mr Redmond did not gain, and never

¹¹ Ibid, chapter 9.

¹² Applicant's submissions filed on 23 May 2014, page 6 paragraph 2.

¹³ Respondent's submissions filed on 19 June 2014, page 2 paragraph 10.

¹⁴ Ibid, page 3 paragraph 17.

¹⁵ Ibid, page 3 paragraph 17.

¹⁶ Ibid, page 3 paragraph 18.

¹⁷ Ibid, page 3 paragraph 18.

¹⁸ Ibid, page 4 paragraph 19.

sought to gain, any personal financial benefit as a result of his conduct in not notifying Mr Eu.¹⁹

- The conduct of Mr Redmond was the result of his treatment of Mr Eu as a “friend” and “business associate”.²⁰
- Funds paid to Logic were applied in accordance with directions given by Mr Lazar in pursuance of the business venture and were not funds for the personal benefit of Mr Redmond, and never became so. Mr Redmond did not personally benefit from any of the investments made by Mr Eu, nor the money obtained by Logic.²¹

[21] The conduct was in breach of the relevant requirements of the Solicitor’s Handbook.

[22] Mr Redmond was under a duty to make disclosure of all relevant circumstances to Mr Eu.

[23] The conduct was in breach of Mr Redmond’s duty to his client.

[24] The conduct of Mr Redmond was conduct which happened in connection with his practice and fell short of the standard of confidence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

[25] The conduct clearly falls within the definition of unsatisfactory professional conduct as that term is defined in s 244 of the *Legal Profession Act 2004* (Qld).

[26] The question is whether the conduct is professional misconduct. Whether the conduct amounts to professional misconduct is a question which must be considered by reference to the particular facts of each case. Mr Redmond’s conduct occurred in relation to a particular individual transaction in which Mr Eu invested in distressed mortgages. In that sense, whilst the conduct may have occurred over a number of months, given that there is no assertion that the conduct occurred for other than this one client in the one business transaction, it is not a consistent failure.

[27] Having regard to the statement of agreed facts and the submissions by each party, the assertions made by the Legal Services Commissioner set out at paragraph [17] of these reasons are not made out. Mr Redmond’s conduct does not show a tendency on his part to prefer his own interests to those of his clients, or to routinely disregard his obligations under the relevant provisions of the *Legal Profession Act 2004* (Qld).

[28] In terms of his general approach to practice, when considered in the context of this one particular transaction, his conduct does not strike “at the heart of a legal practitioner’s professionalism” or demonstrate a

¹⁹ Ibid, page 4 paragraph 21.

²⁰ Ibid, page 4 paragraph 21.

²¹ Ibid, page 4 paragraph 22.

“previous regard of his obligations under the 2004 Act”, as is asserted by the Legal Services Commissioner.

- [29] The applicant refers to the case of *Kennedy*²² and submits that Mr Redmond’s conduct overall “was indicative of a failure either to understand or to practice the precepts of honesty or fear dealing in relation to ... his clients” and thus “be tokened unfit to be held out by the Court as a member of a profession in whom confidence should be placed”.
- [30] This submission has no basis or merit.
- [31] In the circumstances, Mr Redmond’s conduct demonstrated a clear lack of understanding of the care which must be taken by a legal practitioner in dealings with a client in circumstances where the practitioner has any interest (even a marginal interest) in the transaction. Because of the relationship of trust which exists between the legal practitioner and the client, it is imperative that the legal practitioner make full disclosure so the client can be totally confident that any advice provided by the legal practitioner is not influenced by any conflict of interest. In circumstances where the legal practitioner has any interest, it should be disclosed and the clients consent obtained to the practitioner continuing in the role in the transaction. It seems that Mr Redmond became too involved in the business side of the transaction and failed to pay sufficient attention to the professional standards of conduct required of him as a legal practitioner.
- [32] Whilst the submissions of the Legal Services Commissioner overstate the position and the conduct of Mr Redmond did not involve any element of dishonesty and was not deliberate or ill motivated, because of the importance of the relationship of trust between a legal practitioner and the client, the conduct did involve a substantial failure to reach or maintain a reasonable standard of competence and diligence and so falls within the definition of professional misconduct as that term is defined in s 245 of the *Legal Profession Act 2004* (Qld).
- [33] It is noted that Mr Redmond does not dispute the charge itself²³ and also has agreed that the conduct constitutes professional misconduct.²⁴

Penalty

- [34] The Legal Services Commissioner has referred to the case of *Legal Services Commissioner v Mullins*²⁵, in which a legal practitioner deliberately withheld information in the context of negotiations with an insurer in settlement of Court proceedings. In that case the respondent was found guilty of professional misconduct, received a public reprimand and a fine of \$20,000.00. The Legal Services Commissioner submitted

²² *Kennedy v Council of the Incorporated Law Institute of NSW* (1939) 13 ALJ 563.

²³ Respondent’s submissions filed on 19 June 2014, paragraph 2.

²⁴ Statement of agreed facts filed 6 May 2014, page 1 paragraph 6.

²⁵ [2006] LPT 012.

that Mr Redmond's conduct was "equally reprehensible" so sought a similar sanction and fine.

- [35] Mr Redmond refers to a number of factors.
- [36] There is an issue of delay. Mr Redmond notes that the relevant conduct occurred between August 2005 and November 2006 - almost a decade ago.
- [37] Despite delays, Mr Redmond cooperated fully and in a timely way with the Legal Services Commission and also the Queensland Law Society, including providing an undertaking in 2009 which limited ways in which Mr Redmond would deal with monies in his firm's trust account. A condition was imposed upon Mr Redmond's practising certificate. As a result of the disciplinary matter, Mr Redmond's partnership has been dissolved and in operating his new legal practice, Mr Redmond has been required to do so without trust facilities which has impacted upon his firm's business and also his income.
- [38] In that sense, the delays in prosecuting the matter have impacted significantly upon his business and livelihood and Mr Redmond submits that this should be taken into consideration.
- [39] Mr Redmond also submits that, on the positive side, the time which has passed has provided him with the opportunity to learn, and he is far more cognisant of the caution needed when engaging in business relationships with clients and the care and candour needed in that regard.
- [40] He has amended his business arrangements to avoid joint ventures with clients and maintains clarity of position in terms of who he is acting for and the disclosures required to be made. He now dedicates time to ensuring that there are no potential conflicts. Mr Redmond regrets his actions but has learnt from the experience.
- [41] Mr Redmond submits that the case of *Mullins* was not comparable, in that Mr Mullins was found to have knowingly misled and intentionally deceived. Mr Redmond refers to the case of *Commissioner v Pointon*²⁶, where the respondent failed to disclose information which was material to a number of clients' decisions to enter into property contracts. The agreed statement of facts in Pointon's case revealed that the respondent "did not consider it his duty or responsibility to inform purchaser clients that a sum of money would be paid to the marketing company by way of a fee" Mr Redmond submits that the facts of the current case are more similar to those involved in Pointon's case.
- [42] In Pointon's case, Byrne SJA ordered a public reprimand as well as a fine of \$10,000 with costs to be paid.

²⁶ [2008] LPT 16.

- [43] It is well accepted that the object of the imposition of a sanction is not to penalise the respondent but to protect the public.
- [44] In this case, a considerable time has passed since the events in question and there have been no further incidents of a similar kind. Mr Redmond's conduct involved no personal gain, concealment or dishonesty and he did not knowingly mislead or intentionally deceive Mr Eu. He has shown remorse and has cooperated at all times with the Legal Services Commission including indicating, at an early time, his agreement that his conduct should be characterised as professional misconduct.
- [45] In the context of the protection of the public, it is also well accepted that the imposition of a fine has a deterrent effect upon other members of the legal profession so as to deter similar behaviour. The protection of the public does not require more severe sanctions than is necessary to meet this objective.
- [46] In the circumstances, it is ordered that:
1. Mr Redmond be publicly reprimanded.
 2. Mr Redmond pay a fine of \$9,000.00 to be paid over a period of 14 months by equal monthly instalments.

Costs

- [47] The Legal Services Commissioner seeks an order for costs fixed in the amount of \$4,000.00 pursuant to s 462(5) of the *Legal Profession Act 2007 (Qld)*. There are no exceptional circumstances which would suggest that an order for costs should not be made.
- [48] Mr Redmond consents to such an order.²⁷
- [49] It is ordered that Mr Redmond pay the Legal Services Commissioner's costs fixed in the sum of \$4,000.00, such sum to be paid over a period of 14 months by equal monthly instalments.

²⁷ Respondent's submissions filed on 19 June 2014, paragraph 44.