

In the Matter of Michael Gerard Robinson

Charge No: 5
Date of Findings: 27 May 1998
Appearing Before: Mr J S P O’Keeffe
(Chairperson/practitioner
Member)
Mr G A Murphy (practitioner
Member)
Mr G Campbell-Ryder (Lay
Member)

Charges

As set out in the Notice of Charge dated March 13, 1998:

1. That the practitioner, being a solicitor and trustee of property, namely 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, intermingling or alternatively causing the intermingling of the property with his own property and thereby applied the same to his own use and benefits.

Particulars

- (a) On December 4, 1996, the practitioner withdrew or alternatively caused the withdrawal of the sum of \$370.09 the property of his clients, J A & S A Chad, from the trust account to the general account without the client’s authority and without having any other lawful entitlement thereto;
- (b) On December 4, 1996, the practitioner withdrew or alternatively caused the withdrawal of the sum of \$207 the property of QMM Industries Pty Ltd from the trust account to the general account without the authority of QMM Industries Pty Ltd and without having any other lawful entitlement thereto;
2. That the practitioner did, on diverse occasions as particularised hereunder, 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 exempted 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

- (a) In or about May – June 1995, the practitioner acted:
 - (i) for Presho Bros Pty Ltd with respect to an advance of \$300,000 to J Mete; and
 - (ii) for J Mete with respect to a purchase from Martin Place Investments Pty Ltd in respect of which purchase part of the advance (\$250,000) was applied.
- (b) In or about March 1997, the practitioner negotiated, or otherwise acted:
 - (i) for the contributory lender, one Horner and, or alternatively, for R & R Funds Management Pty Ltd with respect to an advance of \$188,000 to J Mete; and
 - (ii) for J Mete with respect to a purchase from Martin Place Investments Pty Ltd in respect of which purchase the advance was applied.
- (c) In or about February 1997, the practitioner negotiated, or otherwise acted:
 - (i) for the contributory lenders, and, or alternatively, for R & R funds Management Pty Ltd and Samantha Nominees Pty Ltd with respect to an advance of \$1M to Bridgemark Pty Ltd; and
 - (ii) for Bridgemark Pty Ltd with respect to purchases from Atkinson Investments Pty Ltd; N F & R B Murphy; and Aviva Overbeec, in respect of which purchases the advance was applied.
- (d) In or about March – April 1997, the practitioner negotiated, or otherwise acted:
 - (i) for the contributory lenders, and, or alternatively, for R & R Funds Management Pty Ltd with respect to an advance of \$108,000 to Maclaren Management Services Pty Ltd; and
 - (ii) for Maclaren Management Services Pty Ltd with respect to a purchase from S & R M Scaloa in respect of which purchase the advance was applied.
- (e) In or about April – May 1997, the practitioner negotiated, or otherwise acted:
 - (i) for the contributory lenders, and, or alternatively, for R & R Mortgages Pty Ltd with respect to an advance of \$265,000 to F P & S V Milla;
 - (ii) for F P & S V Milla with respect to a purchase from Queensland Government in respect of which purchase the advance was applied.
3. That the practitioner, in breach of his duty as a solicitor, has sought to avoid the application of Rule 85 of the Rules of the Queensland Law Society Incorporated to his firm’s mortgage lending practice in transactions where:
 - (a) Clients of the practitioner have contributed funds for the purpose of advances to third parties;

- (b) The practitioner has negotiated or otherwise acted in respect of the making of advances of clients funds to third parties through the practitioner's nominee mortgagee company; and
- (c) The practitioner has acted for the third party borrowers in respect of the application of the moneys advanced;

by an arrangement whereby following and consequent upon the negotiation by the practitioner of such advances, the practitioner's nominee mortgagee company has instructed another firm of solicitors to act for it in the documentation and settlement of the transaction. The arrangement is for the express purpose of circumventing the application of Rule 85 and not for the purpose, nor does it have the effect, of ensuring independent representation of the interests of the lenders and the borrower in such transactions.

Particulars

- (a) Upon an examination of the accounts of the practitioner's firm in December 1990 by an accountant employed by the Society, the firm was found to be acting in transactions in breach of Rule 85 of the Rules of the Society;
- (b) Upon that matter being drawn to the attention of the practitioner, as senior partner of the firm, the practitioner advised the Society that:
 - (i) the firm had been unaware of Rule 85;
 - (ii) all partners and staff were then aware of the requirements of the Rule and would not breach it in the future.
- (c) Subsequently, in transactions where:
 - (i) clients of the practitioner or the practitioner's firm contributed funds to the firm or to the firm's nominee mortgagee company for the purpose of loans to third parties;
 - (ii) the practitioner negotiated advances between his firm's nominee mortgage company and such third parties; and
 - (iii) the practitioner acted for the third parties in respect of the application of the moneys advanced;

the practitioner has arranged with Messrs Shakespeare & Haney, solicitors, to act for the nominee mortgage company in the documentation and settlement of the transaction (the arrangement).

- (d) The arrangement was for the express purpose of avoiding, or attempting to avoid the application of Rule 85 to the transaction, and the breach thereof by the practitioner;
- (e) Notwithstanding the arrangement:
 - (i) the practitioner continued to act for the contributory lenders with respect to their making

- available funds for loans to third parties;
 - (ii) such funds were received into an retained in the practitioner's trust account until at or about the time of settlement of the transaction, at which time the funds were paid to Shakespeare & Haney to effect settlement;
 - (iii) the practitioner continued to negotiate the making of such loans by the firm's nominee mortgagee company;
 - (iv) the practitioner remained a director and controlling mind of the firm's nominee mortgagee company;
 - (v) the practitioner continued to act for the borrower in the matters in respect of which the funds advanced were intended to be applied;
 - (vi) the loan application fee payable by the borrower was paid to the practitioner's firm
 - (vii) a significant component of the professional fees of the solicitor for the mortgagee, payable by the borrower to Shakespeare & Haney upon settlement of the advance, were refunded by Shakespeare & Haney to the practitioner's firm following settlement; and
 - (viii) the contributory lenders were not always advised by Shakespeare & Haney or by the practitioner's firm that Shakespeare & Haney were acting, or had acted in the transaction for the lenders.
- (f) In consequence of the matters set out in particular (e) above, and notwithstanding the arrangement, the interests of the contributory lenders, the nominee mortgagee company and the borrower were not independently represented in such transaction.

Affidavits relied upon by Council of Queensland Law Society Incorporated

- Affidavit of David John Franklin sworn May 13, 1998.
- Affidavit of Grenville Rex Hughes sworn May 14, 1998.
- Affidavits relied upon by practitioner
- Affidavit of Michael Gerard Robinson sworn May 22, 1998.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
 - Mr J D McKenna of Counsel instructed by Clayton Utz, solicitors.
- (b) For the practitioner:
 - Mr A J H Morris of Queens Counsel instructed by Gilshenan & Luton, solicitors.

List of Exhibits

1. Certificate of Keith William Thompson dated May 27, 1998.
2. practitioner's file no. 970122 – R & R Funds Management Pty Ltd Re Loan to Bridgemark Pty Ltd.
3. Practitioner's file no. 961219 – MBFI Australia Limited Re Purchase of Unit Site.
4. Bundle of references – various dates.

Name of Witnesses Called

Nil.

Findings and Orders

1. The Tribunal finds the practitioner guilty of all charges set out in the Notice of Charge dated March 13, 1998.
2. The Tribunal finds that the charges, as admitted, constitute professional misconduct and that the practitioner is guilty of professional misconduct.
3. The Tribunal orders that the practitioner pay a penalty of \$20,000.
4. The Tribunal orders that the fine of \$20,000 be paid by equal monthly instalments commencing on June 30, 1998 and be paid in full by December 31, 1998.
5. The Tribunal orders that the practitioner pay the costs of the Queensland Law Society Incorporated and by consent it orders that those costs be reached by agreement and failing agreement to be assessed by Monsour Legal Costs Consultants.
6. The files surrendered by Robinson & Robinson and Shakespeare & Haney in compliance with the Attendance Notices issued pursuant to an Order of the Tribunal made on May 5, 1998 be released by the Clerk to the Tribunal to the practitioner's solicitors

and to Shakespeare & Haney save the files that are exhibits in these proceedings not be released until the expiration of the application appeal period.

Reasons

The practitioner has been charged with two breaches of the *Trust Accounts Act 1973* and with four breaches of Rule 85. In addition, there is a charge that in breach of his duty as a solicitor he sought to avoid the application of Rule 85. The practitioner has pleaded guilty to all charges. He has admitted all of the facts on which the charges are based. He has acknowledged the seriousness of the charges and that his conduct was reprehensible. He concedes that he is guilty of professional misconduct. It remains for the Tribunal to impose a penalty.

The practitioner and the Queensland Law Society Incorporated have both submitted that the appropriate penalty is a substantial fine. The Tribunal accepts that a fine is an appropriate penalty. By letter dated March 26, 1991, the practitioner signed a letter on behalf of his firm addressed to the Queensland Law Society Incorporated in which he confirmed that all partners and staff of his firm were now aware of the requirements of Rule 85 and stated that they would not act in breach of the Rule in the future. The practitioner is now before this Tribunal admitting breaches of Rule 85.

The practitioner's firm received significant financial rewards from the transactions involving the breaches of Rule 85. There is no suggestion of any dishonesty on the part of the practitioner and no person, whether a client or investor, has suffered financially or was in any way disadvantaged as a result of the breaches. The practitioner has admitted his guilt before this Tribunal and has expressed his regret. The Tribunal has taken into account the favourable references tendered on behalf of the practitioner.

The Queensland Law Society Professional Standards Committee

Censure Report

Unduly Abusive and Acrimonious Correspondence

On December 11, 1997, the Professional Standards Committee resolved to censure, pursuant to Rule 82 (4) of the Rules of the Queensland Law Society Incorporated, a practitioner for sending correspondence on June 4, 1997 which was unduly abusive and acrimonious to former clients.

Summary of Facts and Circumstances

1. The practitioner paid stamp duty of \$1,896.25 from his trust account on behalf of his former clients but did not hold money in his trust account on their behalf for that purpose and overdraw the relevant trust ledger

account. When the overdrawing was discovered the practitioner reimbursed his trust account from his own funds.

2. The practitioner wrote to the former clients on June 4, 1997 demanding that they reimburse him.
3. Included in the letter were the following excerpts:

"One of my greatest regrets in having run my law practice over the last several years is the way you have tried to get out of paying me the stamp duty money that you never paid me which I was forced to pay out of my own pocket.

Frankly, I couldn't sleep at night knowing that I had done that to another fellow small business person especially when remembering the assistance that I gave to M in particular over a period of time."