

In the Matter of Joseph Antonio Sciacca

Case Number: SCT/89
Date of Hearing: 10 January 2003
Appearing Before: Mr G C Fox (Presiding Member/Practitioner Member)
Mr M Conroy (Practitioner Member)
Ms I Vallin-Thorpe (Lay Member)
In Attendance: Mr J Nimmo (Legal Ombudsman)
Mr J W Broadley (Clerk)
Penalty: Fined \$4,000

The Council of the Queensland Law Society Incorporated requires the Practitioner of Level 1, Gold Coast Financial Centre, 128 Bundall Road, Bundall, Queensland to answer the following charges namely:

1. Conflict

The Practitioner failed to make full and frank disclosure to clients of the interest that the Practitioner had in a matter where such interest was in conflict with or potentially in conflict with the interest of the client.

Particulars

Unit 10 "Aristocrat", 9 Aubrey Street, Surfers Paradise

- (a) The Practitioner acted for Q Pty Ltd ("Q") when it purchased this unit from GJ&MA W for \$100,000.00 on 21 April 2001.
- (b) The Practitioner acted for G&RC ("C"), the purchasers of the unit when it was sold by Q for \$150,000.00 on 4 May 2001.
- (c) The sale of the unit by Q and the purchase of the unit by C were settled contemporaneously on 6 July 2001.
- (d) The Practitioner failed to inform C of the fact that he, the practitioner, had acted for Q when it purchased the unit.
- (e) The Practitioner failed to inform C of the fact that his clients were buying the unit at a significantly higher price than had been paid by Q when it purchased the unit. In doing so the Practitioner favoured his own interest and the interest of Q.
- (f) The Practitioner failed to refer C to another Solicitor to act in the transaction or to an independent valuer.
- (g) The Practitioner continued to act for C in the transaction to its completion notwithstanding that there was a conflict between the interest of C and the interests of Q.
- (h) The Practitioner benefited from so acting by charging C and being paid fees and outlays.

Unit 11 "Central Heights" 21 Usher Avenue, Labrador Qld 4215

- (i) The Practitioner acted for Q when it purchased this unit from JC for \$80,000.00 on 22 March 2001.
- (j) The Practitioner acted for LDT ("T") the purchaser of the unit, when it was sold by Q for \$110,000.00 on 19 April 2001.
- (k) The sale of the unit by Q was settled on 22 May 2001 and the purchase of the unit by T was settled on 23 May 2001.
- (l) The Practitioner failed to inform T of the fact that he had acted for Q when it purchased the unit.
- (m) The Practitioner failed to inform T of the fact that T was buying the unit at a significantly higher price than had been paid by Q when it purchased the unit. In doing so the Practitioner favoured his own interest and the interest of Q.
- (n) The Practitioner failed to refer T to another Solicitor to act in the transaction or to an independent valuer.
- (o) The Practitioner continued to act for T in the transaction to its completion notwithstanding that there was a conflict between the interest of T and the interest of Q.
- (p) The Practitioner benefited from so acting by charging T and being paid fees and outlays.

Unit 46 "Emerald Lagoon" 24 Ron Penhaligon Way, Robina Qld

- (q) The Practitioner acted for Q when it purchased this unit from JM Chartier for \$170,000.00 on 4 August 2001.
- (r) The Practitioner acted for VBR ("R") the purchaser of the unit, when it was sold by Q for \$215,000.00 on or about 4 August 2001.
- (s) The sale of the unit by Q and the purchase of the unit by R were settled contemporaneously on 6 September 2001.
- (t) The Practitioner failed to inform R of the fact that he had acted for Q when it purchased the unit.
- (u) The Practitioner failed to inform R of the fact that R was buying the unit at a significantly higher price than had been paid by Q when it purchased the unit. In doing so the Practitioner favoured his own interest and the interest of Q.
- (v) The Practitioner failed to refer R to another Solicitor to act in the transaction or to an independent valuer.
- (w) The Practitioner continued to act for R in the transaction to its completion notwithstanding that there was a conflict between the interest of R and the interest of Q.
- (x) The Practitioner benefited from so acting by charging R and being paid fees and outlays.

Unit 29 “Monet Landing, 15 Money Street, Coombabah Qld

- (y) The Practitioner acted for T Pty Ltd (“TPL”) when it purchased this unit from HM & PO Griffin for \$117,500.00 on or about 19 January 2001.
- (z) The Practitioner acted for B&KG (“G”) the purchasers of the unit, when it was sold by TPL for \$155,000.00 on 14 February 2001.
- (aa) The sale of the unit by TPL and the purchase of the unit by G were settled contemporaneously on 13 March 2001.
- (ab) The Practitioner failed to inform the G of the fact that he had acted for TPL when it purchased the unit.
- (ac) The Practitioner failed to inform G of the fact that G was buying the unit at a significantly higher price than had been paid by TPL when it purchased the unit. In doing so the Practitioner favoured his own interest and the interest of TPL.
- (ad) The Practitioner failed to refer G to another Solicitor to act in the transaction or to an independent valuer.
- (ae) The Practitioner continued to act for G in the transaction to its completion notwithstanding that there was a conflict between the interest of G and the interest of TPL.
- (af) The Practitioner benefited from so acting by charging G and being paid fees and outlays.

2. No Client Agreements

In breach of section 48(2) of the *Queensland Law Society Act* 1952 the Practitioner failed to make a written agreement with his clients in terms of the section within a reasonable time after starting work for the client.

Particulars

Unit 10 “Aristocrat”, 9 Aubrey Street, Surfers Paradise

- (a) The Practitioner acted for G&RC (“C”), the purchasers of the unit, when it was sold by Q on 4 May 2001.
- (b) The Practitioner failed to make a written agreement with C expressed in clear and plain language and specifying the matters set out in section 48(2)(a) and (b) of the *Queensland Law Society Act* 1952 within a reasonable time after starting work for C which was shortly after the date of the Contract.
- (c) The work for C was not urgent and the amount charged to C as fees for the work exceeded \$750.00.

Unit 11 “Central Heights” 21 Usher Avenue, Labrador Qld 4215

- (d) The Practitioner acted for LDT (“T”), the purchaser of the unit, when it was sold by Q on 19 April 2001.
- (e) The Practitioner failed to make a written agreement with T expressed in clear and plain language and specifying the matters set out in section 48(2)(a) and (b) of the *Queensland Law Society Act* 1952 within a reasonable time after starting work for T which was shortly after the date of the Contract.
- (f) The work for T was not urgent and the amount charged to T as fees for the work exceeded \$750.00.

Unit 46 “Emerald Lagoon” 24 Ron Penhaligon Way, Robina Qld

- (g) The Practitioner acted for VBR (“R”), the purchaser of the unit, when it was sold by Q on or about 4 August 2001.
- (h) The Practitioner failed to make a written agreement with R expressed in clear and plain language and specifying the matters set out in section 48(2)(a) and (b) of the *Queensland Law Society Act* 1952 within a reasonable time after starting work for R which was shortly after the date of the Contract.
- (i) The work for R was not urgent and the amount charged to R as fees for the work exceeded \$750.00.

Unit 29 “Monet Landing, 15 Money Street, Coombabah Qld

- (j) The Practitioner acted for B&KG (“G”) the purchasers of the unit, when it was sold by TPL on 14 February 2001.
- (k) The Practitioner failed to make a written agreement with G expressed in clear and plain language and specifying the matters set out in section 48(2)(a) and (b) of the *Queensland Law Society Act* 1952 within a reasonable time after starting work for TPL which was shortly after the date of the Contract.
- (l) The work for G was not urgent and the amount charged to G as fees for the work exceeded \$750.00.

3. Overcharging

In breach of section 48I(c) of the *Queensland Law Society Act* 1952 the Practitioner grossly overcharged clients for work done.

Particulars

Unit 10 “Aristocrat”, 9 Aubrey Street, Surfers Paradise

- (a) The Practitioner acted for G&RC, (“C”) the purchasers of the unit, when it was sold by Q Pty Ltd (“Q”) for \$150,000.00 on 4 May 2001.
- (b) The Practitioner charged C \$1600.00 professional costs plus GST for acting on their behalf in the purchase of the unit and \$165.00 including GST as a disbursement for telephone, postage, facsimile, photocopying and bank charges etc. as set out in the Practitioner’s tax invoice to C dated 6 July 2001 when a reasonable fee for professional costs would have been approximately \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.

- (c) The Practitioner acted for Q when it purchased this unit on 21 April 2001 and only charged Q professional costs of \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.

Unit 11 “Central Heights” 21 Usher Avenue, Labrador Qld 4215

- (d) The Practitioner acted for LDT (“T”) the purchaser of the unit, when it was sold by Q on 19 April 2001.
- (e) The Practitioner charged T \$1600.00 professional costs plus GST for acting on their behalf in the purchase of the unit and \$165.00 including GST as a disbursement for telephone, postage, facsimile, photocopying and bank charges etc. as set out in the Practitioner’s tax invoice to T dated 22 May 2001 when a reasonable fee for professional costs would have been approximately \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.
- (f) The Practitioner acted for Q when it purchased this unit on 22 March 2001 and only charged Q professional costs of \$400.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.

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- (g) The Practitioner acted for VBR (“R”) the purchaser of the unit, when it was sold by Q on 4 August 2001.
- (h) The Practitioner charged Robertson \$1200.00 professional costs plus GST for acting on their behalf in the purchase of the unit and \$165.00 including GST as a disbursement for telephone, postage, facsimile, photocopying and bank charges etc. as set out in the Practitioner’s tax invoice to R dated 6 September 2001 when a reasonable fee for professional costs would have been approximately \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.
- (i) The Practitioner acted for Q when it purchased this unit on 19 July 2001 and only charged Q professional costs of \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.

Unit 29 “Monet Landing, 15 Money Street, Coombabah Qld

- (j) The Practitioner acted for B&KG (“G”) the purchasers of the unit, when it was sold by T Pty Ltd (“TPL”) on 14 February 2001.
- (k) The Practitioner charged G \$1600.00 professional costs plus GST for acting on their behalf in the purchase of the unit and \$165.00 including GST as a disbursement for telephone, postage, facsimile, photocopying and bank charges etc. as set out in the Practitioner’s tax invoice to G dated 13 March 2001 when a reasonable fee for professional costs would have been approximately \$500.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.
- (l) The Practitioner acted for TPL when it purchased this unit on 19 January 2001 and only charged TPL professional costs of \$300.00 plus GST and \$55.00 including GST for telephone, postage, facsimile, photocopying and bank charges.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr P Ryan, Solicitor of Messrs Biggs & Biggs Solicitor.
- (b) For the Practitioner:
Mr A D Gray, Solicitor of Grays Solicitors

Findings and Orders

1. As admitted by the practitioner, the Tribunal finds the matters set out in the Notice of Charge dated 8 October 2002 proved and that the charges constitute professional misconduct.
2. The Tribunal orders that the practitioner pay a penalty of \$4,000.00 to the Fund.
3. The Tribunal further orders that the practitioner pay the costs of and incidental to these proceedings, including the costs of the recorder and the Clerk to the Tribunal, costs to be agreed and, failing agreement, to be assessed by Monsour Legal Costs Pty Ltd.
4. The Tribunal further orders that the practitioner be allowed six (6) months from today to pay the penalty and costs.

Reasons

The Practitioner has been charged with a number of charges arising out of a series of conveyancing transactions. In these, the Practitioner acted for purchasers, having previously acted for the vendor in the acquisition of these properties.

It is alleged that the Practitioner failed to make full and frank disclosure to the purchasers.

Secondly, that he failed to comply with section 48(2) of the *Queensland Law Society Act* which relates to failure to have a client agreement, and thirdly, it is alleged that he committed the offence of overcharging the purchasers in breach of section 481(1)(c) of that Act.

The essence of the first charge is that the Practitioner knew how much the vendor paid for the property being purchased by his client and failed to disclose that to his clients in the transactions before us. Clearly, his duty of confidentiality to his former client precluded this.

The position is that the Practitioner, having accepted a retainer, is under a duty to disclose to his clients all information that the Practitioner has which the client might think important.

If the Practitioner has information which he cannot disclose, he should not accept those instructions for the subsequent client.

In this case, the magnitude of the difference in price paid by the end purchaser and that paid by the vendor, coupled with the short time between the transactions, would be matters that the purchaser may well find of importance.

In this case, the Practitioner should not have accepted instructions from the purchasing clients.

We note that there has been no complaint made by any of the clients and no claim for compensation.

There is no evidence that the clients could or would have made use of this information for any purpose. Had the Practitioner not acted, as he should not have done, all clients would not have been in any better position to access this information.

There is no evidence before us of any collusion or improper relationship between the solicitor, any agent or the vendor.

We have been told that there is no suggestion that the matters before us are any element of a marketing scheme.

In short, there is no evidence that any clients have suffered as a result of the conduct complained of.

We note that the matters have come before this Tribunal as a result of audits conducted by the Law Society Audit Committee and not as a result of any outside complaint or information from private auditors.

The second charge relates to the lack of client agreements as required by section 48(2) of the *Queensland Law Society Act*.

In the discussions before us, comment has been made on the widespread view within the profession that the sanction for failure to comply with this provision is contained within the section itself, that is section 48(1)(c).

In short, the penalty for failure to comply is having to accept the rulings of a costs assessor and no other penalty pertains. No authority was put before us and we express no concluded view on this issue.

The third matter of the charge relates to overcharging. The Practitioner advises that his fee was based on the disparity between the amount charged to the purchaser and the amount charged to the vendor in respect of the same property on the prior transaction. He denies that the charges in themselves were excessive.

The Society chose not to lead evidence on this issue after having been invited to do so. We regard this as a proper course taken by the Society. We can otherwise make no specific finding about overcharging.

We have been referred to previous convictions by the Practitioner in 1987 and 1988. These were 15 years ago and involved matters substantially more serious.

It is fair to say that the concept of conflict between duties to a current client and the obligation of confidentiality owed to prior clients has not achieved the level of awareness which it deserves within the profession.

Neither Counsel has been able to assist us with similar cases. This may well be because previous matters of this nature have attracted a censure from the Society and have not been deemed sufficiently serious to warrant a prosecution.

The Society does not seek an order striking off the Practitioner.

The Practitioner's plea has precluded the expenditure of significant costs.

The Practitioner has pleaded guilty to the charge of professional misconduct. We find the charge proven. We find the Practitioner guilty of professional misconduct.

In the view we have taken a penalty more consistent with a charge of unprofessional conduct as warranted on the facts presented to us.