

LEGAL PRACTICE TRIBUNAL

CITATION: *Legal Services Commissioner v Sorban* [2009] LPT 5

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
SORBAN
(respondent)

FILE NO: BS10757 of 2008

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline application

DELIVERED ON: 19 February 2009

DELIVERED AT: Brisbane

HEARING DATE: 19 February 2009

JUDGE: Mullins J
Mr K Horsley and Ms K Keating, assisting

ORDER: **1. The respondent is publicly reprimanded.**
2. The respondent must pay the applicant's costs of the application fixed in the amount of \$1,500.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – where the respondent solicitor created and disseminated a false email with the intention of deceiving his clients and others about the date when the email was originally sent – where the respondent did not receive any direct pecuniary gain from his conduct – where the respondent's conduct amounted to professional misconduct because it involved dishonesty – where the respondent was publicly reprimanded – whether an order imposing a penalty or conditions on the respondent's right to practise was also required

Legal Services Commissioner v Ramsden [2006] LPT 10, distinguished

COUNSEL: B I McMillan for the applicant
J C Bell QC for the respondent

SOLICITORS: Legal Services Commission for the applicant
Hopgood Ganim Lawyers for the respondent

LEGAL PRACTICE TRIBUNAL

MULLINS J

MR K HORSLEY
MS K KEATING

No 10757 of 2008

LEGAL SERVICES COMMISSIONER

Applicant

and

DAVID STEVEN SORBAN

Respondent

BRISBANE

..DATE 19/02/2009

ORDER

HER HONOUR: The discipline application concerns one charge of creation and dissemination of a false document. The application was filed on 24 October 2008. By the respondent's statement in response to the discipline application, which was filed on 14 November 2008, the respondent admitted the charge and the particulars. This application has proceeded to an early hearing.

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The respondent, who was 30 years old, was admitted as a solicitor in late 2004. He has been employed by a firm of solicitors for over seven years, first as a paralegal and then subsequently as a solicitor. He remains employed by that firm.

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The respondent was acting on behalf of clients in relation to the registration of a multiunit development and the subsequent sales of the units. The clients' financier was represented by another firm of solicitors. The financier had to release its mortgage as the clients settled each of the sales of the units. The respondent was supervising a paralegal. The paralegal had responsibility in liaising with the various solicitors for the purchasers of the units and the financier's solicitor with respect to obtaining all documents necessary to effect settlements of the sales of the units. This included providing whatever documents were necessary to satisfy the financier's requirements for the purpose of obtaining the release of the mortgage registered over the units.

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One of the financier's requirements was for the clients to

forward to the financier's solicitors registration
confirmation statements. After checking with the paralegal
that certain registration confirmation statements had been
forwarded to the financier's solicitors for settlements to
proceed, which the paralegal mistakenly confirmed was done,
the respondent acted on that advice of the paralegal without
actively checking the file for the registration confirmation
statements himself, and informed the clients on
7 November 2007 that the relevant registration confirmation
Statements had been forwarded to the financier's solicitors.
That information was passed on by the clients to the finance
broker who in turn conveyed that information to the paralegal
at the financier's solicitor.

The relevant registration confirmation statements did not
issue from the Titles Office until 9 November 2007. The
respondent was then informed by his clients that the
financier's solicitor was asserting that the registration
confirmation statements had not been received. The respondent
informed his clients that the financier's solicitor was in
error and that they had been sent. The clients asked the
respondent to send the registration confirmation statements
again to the financier's solicitor. When asked to do so, the
respondent then personally checked the file and ascertained
that the registration confirmation statements, although
registered, had not previously been forwarded to the
financier's solicitor as he had understood to be the case from
the paralegal.

The respondent created a false e-mail by backdating the date on the e-mail, attaching the registration confirmation statements, and forwarding it to the financier's solicitors on 16 November 2007 to give the impression that the e-mail had been forwarded on 7 November 2007 when, in fact, it had not been sent on that date.

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The respondent had not thought about the implications for the financier's solicitor and the fact that his false e-mail brought the financier's solicitor's integrity into question.

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The financier's solicitor complained about the respondent's conduct to the applicant on 14 December 2007.

The respondent cooperated fully with the investigation that then followed. The respondent sent a letter of apology to the financier's solicitor on 25 March 2008. The financier's solicitor has filed an affidavit for the purpose of this application, recognising the contrition of the respondent and acknowledging that apart from the incident, which is the subject of this application, the financier's solicitor's dealings with the respondent, both before and after the incident, have given him no concern about the respondent's integrity, professionalism or ability. There were no consequences for the financier as a result of the incident.

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The respondent accepts that there was no excuse for fabricating the e-mail. In summary, the respondent created a false document and sent it with the intention of deceiving his

clients and the financier's solicitor about the date when the e-mail had been originally sent.

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This creation and sending of the false e-mail was not done for direct pecuniary gain. What the respondent does say in his affidavit about his conduct was that he did it on the spur of the moment and that it was as a result of pride and embarrassment and concern not to convey the wrong impression to his clients. He also noted that at the time he had an exceptionally large workload.

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A principal of the respondent's employer has noted that the respondent was under an extremely heavy workload at the time of the incident that was exacerbated by the fact that he took over files from a practitioner who had left the firm.

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One of the clients has filed an affidavit in support of the respondent and has continued to engage him as a solicitor, despite the incident, as she trusts his professionalism, honesty and integrity absolutely.

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Because of the dishonesty involved in the conduct, it amounts to professional misconduct and I so find.

There has been no other complaint about the respondent made either prior to or subsequent to this incident. The manner in which the respondent has dealt with the complaint against him and this application is to his credit. The inference can be drawn from the respondent's post-incident conduct and the

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respondent's affidavit and other affidavits filed in support of him on this application that he has learnt from what is accurately described as a temporary lapse of judgment and will remain acutely aware of the responsibility of being absolutely honest in all his dealings with clients and other practitioners.

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It has been 15 months since the incident and it is not irrelevant that the respondent has endured the stress associated with the uncertainty of his future as a solicitor at this early stage of his career.

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Because of the importance of general and personal deterrence, the respondent must be publicly reprimanded for his professional misconduct. That will be a matter of public record for the remainder of his legal career.

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The question that arose during submissions was whether an additional order should be made imposing a penalty. The applicant seeks an order that the respondent pay a penalty in the amount of \$5,000. The applicant relies on a number of decisions of the Tribunal, but particularly Legal Services Commissioner v. Ramsden [2006] LPT 10.

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That matter concerned a 29 year old solicitor who postdated a mortgage in order to avoid stamp duty penalties of \$44.85, and then misled the Office of State Revenue by lodging the incorrectly verified document. That involved two charges that were found to be professional misconduct and a third charge

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arising out of the delay in the lodgment of the mortgage that was found to be unsatisfactory professional conduct. The solicitor in that matter also promptly and fully acknowledged his error and expressed contrition and remorse for his conduct. He also implemented office systems to ensure no future recurrence in relation to delays in lodgement of a mortgage. He was publicly reprimanded and fined \$5,000.

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That decision is a more serious example of professional misconduct than that of the respondent.

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I consider that, ordinarily, professional misconduct involving dishonesty would not only attract a public reprimand, but also the imposition of a pecuniary penalty. Each matter before the Tribunal has to be decided on all the material that is before the Tribunal. Having regard to the personal circumstances of the respondent and the confidence that the Tribunal has gained from considering the material put before the Tribunal in support of the respondent, I have decided that deterrence, both general and personal, and the protection of the public, will be met in this case by the imposition of a public reprimand without the additional order imposing a pecuniary penalty.

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The applicant also submitted that the Tribunal could consider imposing conditions on the respondent's practice, such as that he be under the supervision of a practitioner for a period of 12 months, and conditions affecting the timing of any application by the respondent for a principal level practising

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certificate.

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In view of the matters that are favourable to the applicant and the time that has transpired since the incident, I have concluded that it is unnecessary to impose any additional conditions such as those suggested by the applicant.

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The orders that the Tribunal makes are: one, the respondent is publicly reprimanded; two, the respondent must pay the applicant's costs of the application fixed in the amount of \$1,500.

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