

DISCIPLINARY HEARING

REPORT OF PROCEEDINGS

The practitioner, Mr Robert James Lashansky, faced seven References instituted by the Legal Practitioners Complaints Committee in that alleging:

1. He was guilty of unprofessional conduct in that he knowingly and improperly permitted his client T to lend him some \$85,553.00 without complying with the requirements of Rule 8.1 of the Professional Conduct Rules of the Law Society which require written acknowledgments from the client that she had been advised that it was desirable to obtain independent legal advice, that the loan was a personal loan without security, that she might not have recourse against the Solicitor's Guarantee Fund and that the practitioner might benefit financially from the loan.
2. That he was guilty of unprofessional conduct in that he received trust monies from his client A which he failed to put into his trust account, but paid same to his own general practice account.
3. That he was guilty of unprofessional conduct in that he failed to give the Complaints Committee within the time limited, or any reasonable time, a full and frank response to enquiries made with respect to whether there was illegal or unprofessional conduct in connection with a shopping centre dispute he was conducting on behalf of several clients.
4. That he was guilty of unprofessional conduct in that he failed to give the Complaints Committee a full and frank answer to enquiries in relation to a complaint lodged by the practitioner against another.
5. That he was guilty of unprofessional conduct in failing to pay into his trust account monies received from a client which represented wholly future costs and disbursements or partly future costs and disbursements and partly costs and disbursements already accrued but in respect of which no bill of costs had been raised.

6&7. That he failed to comply with Orders made by the Tribunal to file answers to References 1 and 2 above.

In fact, the practitioner failed to provide an answer to any of the References prior to the hearing. At the commencement of the hearing, the practitioner who represented himself, agreed to answer certain questions which were put to him by counsel for the Complaints Committee which could be taken as answers to the References. Very few of the answers given were particularly helpful or relevant and included some scandalous remarks aimed at officers of the Complaints Committee.

At the commencement of the third hearing day, the practitioner filed what he described as a reply which again did not really deal with the allegations. At the commencement of the fourth day, the practitioner conceded most of the facts that went to make up the complaints.

The facts conceded and those found by the Tribunal were in relation to the above References as follows:

1. the practitioner admitted that he did not comply with Rule 8.1 of the Professional Conduct Rules. However his client was most supportive of the practitioner and told the Tribunal that she did not wish the prosecution to go ahead, and that she had at all times been prepared to give the money to the practitioner. She subsequently signed letters prepared by the practitioner after the investigating accountant had drawn the practitioner's attention to the relevant Rule. She said that she wanted to help him in a litigation he was running for some shop owners who had a claim for misleading conduct against the shopping centre landlord. The practitioner agreed that he had not provided any of the requirements of Rule 8.1 in writing, but he had warned the client that if he went down, that would be the end of her money.
2. the practitioner admitted that he received \$6,000 from his client A being estimated fees which would become due to experts for reports they were to prepare totalling approximately \$5,000, together with \$1,000 on account of his costs. He paid this to his general practice account. He told us from the Bar table and in the answer he gave at the commencement of the hearing, that he had instructions from the experts and client A to pay this to his general practice account. A witness called by the practitioner who was one of the experts concerned, did not support this statement, but rather stated simply that the two experts were not prepared to produce reports until money had been paid to the practitioner for this purpose. There was no suggestion that it had been agreed that money be paid to his general practice account.

The practitioner subsequently sought and obtained a further \$8,000 from his client A to meet further expert fees and costs which he also paid to his general account. He told the Tribunal from the Bar table that he had incurred costs of well over \$8,000 and had sent an account for this, but he did not produce such an account.

- 3-5 A supervising accountant employed by the Legal Practice Board was instructed by the Complaints Committee to investigate the practitioner's accounts relating to monies paid from time to time by clients who had retained him to sue the shopping centre landlord for damages. The accountant could not find accounts, although it was apparent monies had been received from time to time by the practitioner and paid to his general account. These monies apparently included expert accounting fees and other disbursements including various cheques totalling some \$23,000 from one of the clients for which no proper accounts had been sent, but were paid from time to time pursuant to oral requests made to that client and others. That client also had deducted some \$35,000 from her settlement entitlement for what was said to be an interim account. So far, that client has paid to the practitioner on account of costs and disbursements, some \$66,000 and has still not received a proper accounting of how that money has been expended.

The practitioner did not respond to any of the accountant's requests in writing as requested, but told him that his car had been torched which contained his bank statements and cheque books, and also that files set out for the accountant's inspection had been stolen the previous weekend. There is no evidence to dispute the practitioner's assertions in this regard which were accepted by the Tribunal, but although the practitioner had apparently affected some reconciliations of his accounts, he has not produced the information sought, nor had he given the client the accounting she seeks some two years after the matter was settled. The practitioner's answer seems to be that the evidence of the accountant was illegally obtained because the information is the subject of legal professional privilege, and also the information is confidential because of the terms of a settlement. Some of his other clients in relation to that issue, seem to be of the same opinion, notwithstanding the express provisions of the Legal Practitioners Act and the safeguards provided in the Act that any information received by the Tribunal or the Complaints Committee shall not be divulged. Notwithstanding the Tribunal's rulings, the practitioner

continues to maintain all that information is confidential and privileged.

6&7 The practitioner's answer to the Reference that he failed to comply with Orders of the Tribunal in accordance with the Rules seems to be that he cannot comply.

Apart from the answers to ascertain his response to the particular References which the practitioner gave on oath at the commencement of the hearing and which did not really illuminate an answer, the practitioner did not give evidence.

The Tribunal found each allegation proved. The practitioner made oral submissions in mitigation and was given the opportunity to make written submissions. His written submissions included several affidavits from some of his shopping centre clients mostly in identical terms, which indicate that the clients were not prepared to divulge any information and regarded their matters as confidential and they were supportive of the practitioner and critical of the Complaints Committee for instituting these complaints.

Other clients gave evidence that the practitioner had given and was giving advice at fees which were much less than other solicitors. In this regard it is difficult for the Tribunal to assess this matter. The few accounts which have been produced, indicate that the practitioner charged some of his clients at an hourly rate of \$130 and charged separately for secretarial charges. The Tribunal notes that there is no complaint or evidence that any money is missing, but the practitioner still seems to maintain that the Complaints Committee is concentrating complaints against him rather than others, and shows bias towards him, and that counsel instructed by the Complaints Committee was biased towards him but he did not seem to wish to consider why the Legal Practitioners Act contains strict procedures to deal with other people's money or why apparently responsible members of the profession consider a need for strict rules regarding loans from clients nor even now two years after the relevant action was settled, why he should give at least one of his clients, an account setting out how the money she has paid him over the period has been spent, nor why he considered it necessary to pay money into his personal account to be mixed with his own instead of being paid into a trust account, when at one time, according to a statement he made, his private account was overdrawn and bank's were not meeting his cheques.

The Tribunal finds that notwithstanding the support he received from some of his clients, the practitioner's apparent lack of understanding of his obligations as a solicitor makes him unfit to practise. This lack of understanding relates to the necessity to keep proper accounts, to separate his own money from money held on trust for others, to have proper agreements for costs if he is acting on special arrangements, to give a proper accounting to his clients, and to comply generally with his obligations under the Act which gives him an entitlement to practise.

The Tribunal believes that the powers given to this Tribunal under the Act to deal with this practitioner are not adequate and in those circumstances, it made and transmitted a report on the References to the Full Court including a record of the evidence taken at the hearing and its Reasons and pending the determination of the Court, it suspended the practitioner from practice.

The Tribunal also ordered that the practitioner pay the Legal Practitioners Complaints Committee's costs to be taxed by the taxing officer of the Supreme Court according to the Supreme Court scale and that pursuant to the Act, as this was not a minor matter details be published.

Mrs AJ Thompson
Registrar
Legal Practitioners Disciplinary Tribunal
December 2000