

**DISCIPLINARY HEARING
REPORT OF PROCEEDINGS**

The practitioner, Bruce Graeme Grubb, pleaded not guilty before the Tribunal to charges of unprofessional conduct in that he contravened Section 34 of the Legal Practitioners Act in that he failed to retain trust moneys received for the use and benefit of his client, Mr & Mrs W in a trust account until such time as he received a direction from his clients concerning the disposal of such money and further that he failed to receive the remainder of his clients portion of the proceeds of sale and retain them in trust as aforesaid.

After a hearing at which the Practitioner pleaded not guilty, the Tribunal found him guilty as alleged in the reference. The Practitioner was a sole practitioner acting for a Finance Broker. He was instructed by the broker on behalf of 3 joint mortgagees to conduct a mortgagees sale of the mortgaged property. In this regard, he wrote to at least one of the joint mortgagees Mr & Mrs W, seeking specific written instructions to act on their behalf. He received such written instructions. Eventually, with the consent of the mortgagor's liquidator, the sale was conducted and this produced sufficient monies to pay out the mortgagees in full. The practitioner arranged to attend on settlement but in order to facilitate a disputed caveat lodged by a borrower to give notice of an unsecured loan to the mortgagor, the practitioner received into his trust account all of the proceeds of sale other than the deposit and he paid out the caveator and paid the balance of proceeds to the finance broker. He did not receive instructions from Mr & Mrs W, either to pay the proceeds to the finance broker or to pay out the caveator.

At that time the finance brokers trust account was overdrawn but the practitioner claimed that he was not aware of this. The evidence

indicated that the practitioner was aware that complaints had already been made against the particular finance broker just prior to the sale as well as generally to other finance brokers. In the event, the mortgagee from whom the practitioner had received written instructions received no portion of the secured mortgaged debt.

The practitioner stated that he believed that his client was the Finance Broker and that from prior transactions he had an implied authority, if not a written authority to pay all proceeds of sale to the finance broker. It was not an issue that there was no such written direction from Mr & Mrs W in relation to this mortgage and the Tribunal found that one could not be implied.

The case before the Tribunal was not presented on the basis of fraudulent or dishonest actions by the practitioner but rather that his conduct disclosed a lack of understanding of his obligations to pay clients from whom he had obtained written instructions to Act and a lack of understanding of his obligations under the Legal Practitioners Act when dealing with trust money belonging to these clients. The Tribunal accepted that to be the case.

The Tribunal regarded the breach as showing a serious lack of understanding of the practitioners obligations and it ordered that the practitioner be fined \$5000.00 and pay the Committee's costs which were fixed at \$3575.00 including GST. The Tribunal also directed that the practitioner not practice as a sole practitioner or in partnership for a period of 2 years, and during that time he shall not practice in the area of conveyancing which means the provision of legal services in relation to the formation or implementation of transactions of any kind, whether affecting property of any kind or not.

Ms Mary-Anne Paton
Registrar
Legal Practitioners Disciplinary Tribunal
December 2001