

DISCIPLINARY HEARING
REPORT OF PROCEEDINGS

The practitioner, Martin Lee Segler has been found guilty of three complaints referred by the Legal Practitioners Complaints Committee to the Tribunal. These complaints arose from his neglect and undue delay in handling his client's claim under the Inheritance (Family and Dependents Provision) Act 1972 (the Act) between December 1997 and December 1999. As well, his neglect and undue delay between February 1998 and October 1998 by failing to pay to the client, money held in trust for the client. Further, unprofessional conduct in causing the client to pay costs which were, in all the circumstances, grossly excessive. The practitioner was employed as in-house counsel by a firm of solicitors which received instructions in the latter part of 1997 regarding the Will of the client's late father. In the end, the principal of the firm instructed the practitioner to make a claim for the client under the Act. The claim was already out of date and the practitioner prepared a pro forma claim and caused it to be filed in the Supreme Court. It was not served, nor was it supported by any affidavit, nor was an attempt made to seek leave to extend the time to make the application.

In the middle of 1998, the practitioner drafted an affidavit to support the application for substantive relief, but made no application to extend time and no affidavit was ever executed by the client.

The client's entitlement under the terms of his late father's Will was received by the firm in February 1998 and the practitioner was asked to prepare a memo of his proposed costs and give the balance to the client. Costs were deducted and a cheque for the balance of just over \$24,000 drawn in favour of the client was on 17 July 1998 pinned on the front of the file by the practitioner with, he said, the object of handing it to the client when he called. The client did not in fact see the practitioner until 8 October 1998. He had never been told that the firm

had received some \$36,000 and that a cheque was available to him for \$24,000. The practitioner stated that he was waiting further information from his principal but he was only activated to do something in relation to his client's claim when the Case Management Registrar of the Supreme Court issued a summons calling upon the client to show cause why the original summons should not be struck out because of failure to file an affidavit of service. Further orders were made by the Registrar that unless an application was filed to extend time, the proceedings would be struck out. The practitioner lodged a new originating summons on 1 September 1998 seeking leave to apply out of time, but that summons was never served, and in the meantime, the executors of the estate had advised early in 1998 that they were in the process of distributing the estate. Eventually, on further prompting from the Court, the practitioner indicated that the originating summons seeking an extension of time would be heard ex-parte. We have never discovered why the practitioner considered that he could obtain a hearing on an ex-parte basis notwithstanding that the time limited for taking under the Act was already 18 months out of time and distribution of the estate had probably already been effected. Eventually, in January 1999, the originating summons was struck out by the Case Management Registrar because it had expired without being served within 12 months of it being filed.

The practitioner sent to the client accounts for the work he claimed to have undertaken including the various matters on which he was obliged to attend before the Case Management Registrar, all of which were necessitated by his failures to take relevant action, and in the end, on 8 November 1999, the long suffering client terminated the firm's retainer and sought advice from other solicitors.

The Tribunal has also found that the costs rendered by the practitioner were, in all of the circumstances, grossly excessive.

The practitioner defended these proceedings it seemed to the Tribunal, solely on the basis that he was in dispute with the principal of his firm.

He claimed that he had many personal problems at the time which related to his then failing health and the effect of inappropriate drugs to overcome the disease from which he was suffering, as well as the death of his mother and the break up of his marriage.

In December 2001, the practitioner had pleaded guilty to an allegation of neglect and undue delay in relation to another claim under the Act which delay and neglect occurred during the same period as this. In that case, the Tribunal fined the practitioner \$1,250.

The practitioner has for some time been employed by another responsible solicitor who has at all times and will continue to supervise his work. The lay client has suffered loss both financially and in other ways, but in all the circumstances, it seems likely that the practitioner's conduct during the period in question is most unlikely to re-occur. Medical evidence indicated that new drugs taken to overcome his illness no longer have adverse side effects.

For these present breaches, the Tribunal directed that the practitioner can only practise as an employed solicitor for the next two years and it directed that the practitioner pay fines totalling \$7,500 and ordered he pay the costs of the Law Complaints Officer fixed at \$15,000 and that there be publication of this Order pursuant to Section 31C(5) Legal Practitioners Act 1893.

Mary-Anne Paton (Ms)
Registrar
Legal Practitioners Disciplinary Tribunal
March 2003