

**DISCIPLINARY HEARING**  
**REPORT OF PROCEEDINGS**

After a hearing the practitioner, Dirk Hazel Avery, was found guilty of unprofessional conduct in that he continued to act for his client in circumstances when he knew that the duty he owed to his client conflicted with his own personal interests.

The practitioner was instructed by his elderly pensioner client to advise and act in relation to the proposed sale of a house property in Melbourne which had been left to the client by her mother. There was a life tenant aged 79 years in occupation of those premises. The practitioner obtained valuations of both the unencumbered freehold and the client's interest as remainderman.

In the end, the client agreed to sell her remainder interest in the property to the practitioner for some \$50,000 net to her after payment of the practitioner's costs of winding up her mother's estate which were fixed at \$5,000.

The practitioner knew that the client did not have the means to pay for an auction which the Victorian real estate agents had advised as the best method of sale. The valuations of the unencumbered real estate were between \$130,000 to \$150,000 and the client's interest in remainder at between \$50,000 to \$100,000.

The practitioner's offer of \$50,000 net to the client was the subject to him obtaining a loan. The contract also provided that prior to entering into the contract, the client 'has been given the opportunity of seeking and obtaining independent legal advice'.

The client could not afford to get another solicitor and in the event, she spoke to the Justice of the Peace with whom she had been boarding who had introduced her to the practitioner and who prepared a document which the client signed which stated that she understood the legal consequences of what she was doing and had decided to accept the practitioner's offer. At no time did the practitioner explain to the client that his interests were in conflict with hers, nor did he insist that she obtain independent legal advice. He was aware that the client had little commercial understanding of this type of transaction. The disparity between the circumstances of the practitioner and the client were manifestly very great.

The practitioner was able to sell the freehold some three years after he purchased and after spending approximately \$20,000 on improvements. His sale price was some \$265,000.

The Tribunal found that the conflict of interest was significant and the solicitor should have ensured that his client obtained proper independent legal advice and that this a serious breach of the fiduciary duty owed by a practitioner to his client.

After the Tribunal had delivered its Reasons, the client, at the Tribunal's request, obtained independent legal advice and the practitioner and the client entered into a Deed whereby the practitioner agreed to pay to the client a further \$90,000 over and above the purchase price of \$50,000 paid to her. The Tribunal resolved to reprimand the practitioner and fine him the sum of \$5,000 which figure takes into account the restitution he has made with the client. It was ordered that the practitioner pay the Complaints Committee's costs and that the decision be published in accordance with Section 31C(5) of the *Legal Practitioners Act 1893*.

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Mary-Anne Paton (Ms)  
Registrar  
Legal Practitioners Disciplinary Tribunal  
8 October 2004