Law Society of Singapore v Ng Chee Sing
[2000] SGHC 35

Case Number : OS 1778/1999

Decision Date : 13 March 2000

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Mohan R Pillay and Emiley Yeow (Wong Partnership) for the applicants; Respondent absent

Parties : Law Society of Singapore — Ng Chee Sing

Legal Profession – Professional conduct – Grossly improper conduct – Whether respondent guilty of such conduct in discharging his professional duty – s 83(2)(b)Legal Profession Act (Cap 161, 1997 Ed)

Legal Profession – Conduct unbefitting an advocate and solicitor – Whether respondent guilty of such conduct in discharging his professional duty – s 83(2)(h) Legal Profession Act (Cap 161, 1997 Ed)

Legal Profession – Principles of disciplinary sentencing – s 83 Legal Profession Act (Cap 161, 1997 Ed)

Words and Phrases – "Conduct unbefitting an advocate and solicitor" – Legal Profession Act

Words and Phrases – "Grossly improper conduct" – s 83(2)(h) Legal Profession Act (Cap 161, 1997 Ed)

(delivering the grounds of judgment of the court): ***Introduction***

This was an application under s 98 of the Legal Profession Act (Cap 161) by the Law Society of Singapore to make absolute an order to show cause made against the respondent, Billy Ng Chee Sing, on 29 November 1999 by Kan Ting Chiu J. Following three unsuccessful attempts to serve the relevant documents personally on the respondent, the Law Society eventually obtained an order for substituted service on 1 February 2000, by way of posting at the respondent`s last known address. The respondent was not present in court on the day this application was heard.

The facts

The respondent, formerly a Police Force Scholar, was admitted as an advocate and solicitor of the Supreme Court of Singapore in 1995. He was made a partner in the firm of Billy Ng Chua & Partners (`BNCP`) in 1996, the year in which the events leading to these proceedings took place.

The respondent acted for both the purchasers/mortgagors and mortgagees in the grant of two mortgage loans. He was assisted by his legal assistant, Ms Chan Lai Fong. The loans related to the purported purchase of two residential units by one Foo Beng Wai and one Chan Kok Fai (`the first mortgagor` and `the second mortgagor` respectively). These two residential units were located at the development known as Trevose Park at Trevose Crescent.

The two residential units were [num]03-02 Trevose Park, Block 66 (`the first mortgaged property`) and [num]02-08 Trevose Park, Block 70 (`the second mortgaged property`) (collectively `the two mortgaged properties`). Prior to the purported purchase transactions, the two mortgaged properties were owned by the vendors, Tej Paul Jain and Rakesh Jain respectively (collectively known as `the

vendors`).

One Tarun Jain acted, at all material times, for the vendors under a power of attorney executed in his favour. The mortgagee in the purported purchase of the two mortgaged properties was Public Finance Co Ltd (`Public Finance`).

The purchase of Nos 66 and 70 Trevose Crescent

In or about January 1996, Tarun Jain sought the respondent`s advice on how to raise funds for his business activities. At about the same time, Tarun Jain and the respondent agreed :

(a) to use the two mortgaged properties to raise funds for Tarun Jain`s business activities by procuring buyers for the two mortgaged properties;

(b) to use the sale proceeds for investment purposes so as to generate profits that would be shared equally between them; and

(c) that these buyers would later re-sell the two properties to Tarun Jain at the same price.

In or around February 1996, the respondent approached the first mortgagor and the second mortgagor and asked them to purchase the first mortgaged property and the second mortgaged property respectively from Tarun Jain. The two mortgagors were actually nominees for the respondent. The respondent then approached Public Finance to finance the two purchases on behalf of the two mortgagors.

The first mortgage loan (being a loan of $1,300,00) that was extended to the first mortgagor was meant to be secured by a first legal mortgage registered against the first mortgaged property, which the first mortgagor was purportedly buying. The second mortgage loan (being a loan of $1,250,000) which was disbursed to the second mortgagor was, in turn, meant to be secured by a first legal mortgage registered against the second mortgaged property which the second mortgagor was purportedly buying. At that time, United Overseas Bank (`UOB`) was the existing mortgagee of both properties.

The mortgage transactions

On 15 March 1996, Public Finance issued letters of offer for the mortgage loans to the two mortgagors. The mortgage documents were signed by Public Finance and the first mortgagor and the second mortgagor respectively. The mortgage documents were forwarded to BNCP on the same day.

BNCP also advised Public Finance to release the first mortgage loan in the form of a cashier`s order for $889,674.73 in favour of UOB for the account of Tej Paul Jain, and a cash cheque for $410,325.27. Further, caveats were lodged by BNCP against the first and second mortgaged properties on 15 March 1996 itself. On 16 March 1996, Public Finance disbursed the first mortgage loan in the manner prescribed by BNCP.

On 25 March 1996, BNCP advised Public Finance to release the second mortgage loan in the form of a cashier`s order for $565,387.76 in favour of UOB for the account of Rakesh Jain, and a cashier`s order for $684,612.24 in favour of BNCP. This was done by Public Finance on 26 March 1996.

All the three cashier`s orders and the single cash cheque were presented for payment and duly honoured.

On 27 March 1996, the respondent used a total sum of S$1,088,687.51 (being the balance of the first and second mortgage loans) as agreed with Tarun Jain by extending loans to other persons at a commission of about 3% to 5%. Firstly, the balance of the second mortgage loan disbursed to BNCP, being a sum of S$678,362.24, was extended to one Tay Ho Han in two cheques drawn on BNCP`s account for the sums of S$300,000 and S$378,362.24 respectively. Secondly, cash amounting to S$410,325.57 was extended to one Mark Tan. The balance of the first mortgage loan of $410,325.27 disbursed to BNCP was included in this loan to Mark Tan. The commission earned from the disbursement of these two loans was to be shared between Tarun Jain and the respondent.

The respondent did not tell Public Finance that the first and second mortgagors were his nominees, nor did the respondent inform Public Finance that part of the mortgage loans were to be used by him and Tarun Jain for the purposes of their personal investments. Thus, Public Finance was at all material times under the impression that the first and second mortgage loans were straightforward mortgage transactions.

Failure to register mortgages

The first legal mortgages on the first and second mortgaged properties were not registered in the Land Titles Registry. When Public Finance inquired of the respondent on the status of the mortgages on 8 April 1996, the respondent told them that registration was still pending and that, in any case, both mortgagors wanted to redeem the loans. On 3 May 1996, BNCP gave notices of redemption for the first and second mortgaged properties. However, the two mortgage loans were not redeemed.

On 2 July 1996, Public Finance received a letter from PK Wong & Advani, a firm of solicitors, stating that they acted for the vendors. They stated that Public Finance should remove their caveats over the two mortgaged properties as there was no relationship between the vendors, their clients, and Public Finance. On 5 July 1996, BNCP replied to PK Wong & Advani on behalf of Public Finance stating that the mortgaged properties had been refinanced through Public Finance and that the transactions were pending registration.

Public Finance wrote to the respondent and his assistant on 13 August 1996 inquiring on the status of the registration and asking that the matter be urgently resolved by 16 August 1996. They received no reply from the respondent.

On 18 September 1996, Public Finance instructed Piah Tan & Partners (`PTP`) to obtain the relevant documents for registration from BCNP. The next day, PTP asked BNCP to forward the relevant documents to them for the registration of the mortgages, including the following :

(A) duplicate subsidiary strata Certificate of Title;

(B) mortgage in Public Finance`s favour;

(C) total discharge of mortgage;

(D) transfer in favour of the second mortgagor;

(E) copy of option to purchase/agreement;

(F) BNCP`s cheque for $44,110 in favour of the Commissioner of Stamps being the stamp fee on the transfer and total discharge of mortgage; and

(G) BNCP`s cheque for $120 in PTP`s favour being the lodgment fee on the transfer and total discharge of mortgage.

BNCP only forwarded the duplicate Subsidiary Strata Certificates of Title relating to the two mortgaged properties without any cover letter to PTP. PTP replied on the same day reminding BNCP that they still had not explained why the mortgages had not been registered.

On 23 September 1996, BNCP wrote to PTP stating that they were `in the process of getting all the documents` requested, and that they would be responding `as soon as possible`. When BNCP did not respond by 3 October 1996, PTP wrote to BNCP reminding them to forward the documents and furnish an explanation for the non-registration of the mortgages. PTP repeated these requests on 14 October 1996, 16 October 1996 and 18 October 1996. However, BNCP still did not respond.

BNCP finally responded to PTP on 21 October 1996 apologising for the delay and stating that they were still trying to obtain their clients` instructions. On that same day, BNCP wrote to Public Finance and asked for Public Finance`s redemption statement in exchange for certificates of title. On 23 October 1996, BNCP received a letter from PTP stating that PTP were already in possession of the certificates of title. PTP also sought an explanation from BNCP as to why BNCP required Public Finance`s redemption statement and, at the same time, reminded BNCP not to communicate directly with their clients, Public Finance. Once again, BNCP did not reply to PTP.

On 20 November 1998, BNCP wrote directly to Public Finance again asking for the redemption statement. PTP wrote to BNCP the next day giving them a final reminder to hand over all the requested documents by 30 November 1998 and to provide an explanation as to why the mortgages had not been registered. BNCP replied on that day asking PTP to hold matters in abeyance as their clients intended to redeem the mortgages by 30 December 1996.

On 28 November 1996, PTP wrote to BNCP stating that their clients were agreeable to the proposed redemption date of 30 December 1996. PTP also stated that BNCP could hold on to the documents in the meantime in order to arrange for re-financing for their clients on the condition that their clients made monthly repayments to Public Finance. However, BNCP`s clients did not make the monthly repayments. Consequently, PTP wrote to BNCP on 18 January 1997 demanding the return of all the documents.

On 12 March 1997, PTP learnt from the vendors` solicitors, PK Wong & Advani, that the sale of the properties had allegedly not been completed. PK Wong & Advani accordingly requested that the caveats against the first and second mortgaged properties be withdrawn. PTP then wrote to BNCP on 14 March 1997 asking that they account for the loan sums disbursed by Public Finance to BNCP in respect of both properties. BNCP did not reply. Therefore, on 17 March 1997, PTP wrote to BNCP demanding the return of the loan sums that had been released to them.

On 18 March 1997, BNCP wrote to PTP stating that their clients would be redeeming the loans by the first week of April 1997 and requested that matters be held in abeyance in the meantime. On 27 March 1997, PTP replied to BNCP stating that the demand was directed at BNCP as opposed to BNCP`s clients as it related to the loan sums of $1,088,687.51 which had been forwarded to BNCP as solicitors.

On 29 March 1997, BNCP informed the Law Society that the respondent had left the firm on 27 March

1997. Public Finance then commenced Suit Nos 1068/97 and 1069/97 against the respondent and Tarun Jain to recover the losses incurred as a result of the above events. The respondent was made a bankrupt in April 1998. Consequently, Public Finance proceeded with their claim against Tarun Jain. Judgment was eventually given against Tarun Jain in Public Finance`s favour.

The charges

Pursuant to a complaint by Public Finance (`the complainants`) to the Law Society, the respondent became the focus of disciplinary proceedings. At the hearing before the Disciplinary Committee on 11 August 1999, the Law Society proceeded on four amended charges, as follows:

> *First charge*
>
> *That Ng Chee Sing is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161) and/or of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap 161) by failing to disclose to his client, Public Finance Co Ltd, the true nature of the transaction ie that the first and second mortgagors were at all times acting as nominees for him; and that part of the mortgage loans were to be used by him and Tarun Jain for investment purposes and for personal profit.*
>
> *Second charge*
>
> *That Ng Chee Sing is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161) and/or of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap 161) in that he consistently failed to safeguard the interest of his client, Public Finance Co Ltd, by failing to register the mortgages created in their favour within a good and reasonable time, or at all.*
>
> *Third charge*
>
> *That Ng Chee Sing is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161) and/or of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap 161) in that he failed to safeguard, account for and ensure the proper disbursement of the mortgage loans disbursed to him by his client Public Finance for the specific purposes they were intended for, and return on demand the same if they have not been utilised.*
>
> *Fourth charge*
>
> *That Ng Chee Sing is guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act (Cap 161) and/or of misconduct unbefitting an advocate and solicitor as an*

officer of the Supreme Court or as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act (Cap 161) in that he failed to respond promptly or appropriately to queries from his client, Public Finance Co Ltd, on the progress of their matter and failed to give any explanation to them as to the status of the matter despite requests from them on numerous occasions to do so.

The respondent`s submissions

With the permission of the Disciplinary Committee, the respondent put forward written submissions on 26 August 1999. The most material points raised by the respondent were as follows:

(i) that at the material time, he was a `fresh lawyer without experience`;

(ii) that he understood that `the prosecution had made out the charges` against him;

(iii) that he had gone to great lengths to protect other parties involved in the transactions, whom he regarded as innocent, in particular Ms Chan Lai Fong, his assistant at BNCP, who was involved in the conduct of the transactions until June 1996;

(iv) that he had lost his money, his friends and his reputation;

(v) that despite exhaustive investigations into the transactions, the Commercial Affairs Department had not launched any prosecution;

(vi) that he was neither `short of integrity`, nor a `fraud or trickster` but rather an `inexperienced and over-enthusiastic` lawyer;

(vii) that he did not know he was doing anything illegal when he asked his friends `to buy the properties from Tarun Jain` even though they were doing it for him. He claimed that he would have purchased them himself had he possessed the resources;

(viii) that he was let down by Tarun Jain, who had been totally dishonest in his dealings with the respondent;

(viv) that he was not aware that he was obliged to inform the complainants as to the purpose of the loans or what Tarun Jain intended to do with the funds after loans were disbursed;

(x) that he sincerely believed that Tarun Jain had the authority to deal with the two properties;

(xi) that he had sought to repay the complainants, having partially reimbursed them before he became bankrupt;

(xii) that he was truly apologetic and regretful `for taking up the Law Society`s time and for having let down the profession with my complacency and carelessness`.

The findings of the Disciplinary Committee

The Disciplinary Committee found that all four charges had been made out. With respect to the first

charge, the Disciplinary Committee did not accept that the respondent`s acts were those of an `inexperienced and over-enthusiastic lawyer`. As the respondent was an active speculator in the property market, the Committee concluded that he had deliberately concealed from the complainants the true nature of the transactions in reckless disregard of their interests. This amounted to grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act.

The Disciplinary Committee also found that the second charge had been made out. Although the complainants were given some measure of security by virtue of the lodging of caveats, the respondent`s failure to register, or cause mortgages to be registered, against the two properties, either timeously or at all, was in flagrant breach of the specific instructions of his clients, the complainants. This amounted to conduct unbefitting an advocate and solicitor as an officer of the Supreme Court and as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act.

The third charge was amply supported by the facts of this case. The respondent conducted himself in total disregard of the complainants` interests. The respondent`s assertions that the chain of events that developed was the result of his having been `let down` by Tarun Jain did not mitigate his blameworthy conduct. Accordingly, the Disciplinary Committee found the respondent guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the Legal Profession Act.

Finally, the Disciplinary Committee also found that the fourth charge had been made out. The respondent admitted to having repeatedly failed to respond to enquiries from the complainants and their new solicitors. This constituted conduct unbefitting an advocate and solicitor as an officer of the Supreme Court and as a member of an honourable profession within the meaning of s 83(2)(h) of the Legal Profession Act.

The Disciplinary Committee therefore determined that there was cause of sufficient gravity for disciplinary action to be taken against the respondent pursuant to s 93(1)(a) of the Legal Profession Act.

The issues

The two main issues to be considered in this application were firstly, whether due cause for disciplinary action to be taken against the respondent was shown under s 83(2)(b) or s 83(2)(h) of the Legal Profession Act; and secondly, if so, the appropriate penalty to be imposed on the respondent under s 83(1) of the Legal Profession Act.

Whether due cause shown under s 83(2)(b) of the Legal Profession Act

Section 83(2)(b) of the Legal Profession Act provides as follows:

> *(2) Such due cause may be shown by proof that an advocate and solicitor -*
>
> *(a) ...*
>
> *(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct*

made by the Council under the provisions of this Act as amounts to improper conduct or practice as an advocate and solicitor;

(c) ...

In **Re Marshall David; Law Society of Singapore v Marshall David Saul** SLR 132 [1972] 2 MLJ 221 , `grossly improper conduct` was defined as `conduct which is dishonourable to [the respondent] as a man and dishonourable to his profession`. This definition was applied in **Re Han Ngiap Juan** [1993] 2 SLR 81 and more recently in **Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361 .

According to **Law Society of Singapore v Khushvinder Singh Chopra** [1998] 3 SLR 845 , there is likely to be grossly improper conduct where a solicitor puts his interests above that of his clients. For instance, in **Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361 , the respondent was found guilty of grossly improper conduct in the discharge of his professional duties as he had withdrawn caveats over certain properties without his clients` consent or authority and in a manner opposed to the clients` interests. It was found that the respondent so acted because he wanted to continue dealing dishonestly with the properties.

The Disciplinary Committee had concluded that the respondent`s concealment of the true situation from Public Finance was deliberate. He did not want the fact that he intended to use the loan sums to generate profits of a personal nature to be exposed. Such conduct was dishonest and clearly opposed to the interests of Public Finance. Accordingly, we agreed with the Disciplinary Committee`s finding that the respondent was guilty of grossly improper conduct in the discharge of his professional duties under s 83(2)(b) of the Legal Profession Act under the first charge.

The Disciplinary Committee also found that there was grossly improper conduct in relation to the respondent`s failure to ensure the proper disbursement of the sum of $1,088,687.51 which were loan disbursements forwarded to him by Public Finance. The respondent did not account for these sums nor did he even reply to PTP`s letter of demand of 14 March 1997 in relation to these loan sums. In failing to safeguard and account for the loan sums forwarded to him by Public Finance, the respondent acted irresponsibly and in callous disregard of his clients` interests. There was no doubt that the third charge had also been made out. Accordingly, we agreed with the Disciplinary Committee`s finding in this regard.

Whether due cause shown under s 83(2)(h) of the Legal Profession Act

Section 83(2)(h) of the Legal Profession Act provides as follows:

(2) Such due cause may be shown by proof that an advocate and solicitor -

(a) ...

...

(h) has been guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;

...

Section 83(2)(h) of the Legal Profession Act is a catch-all provision which can be invoked when the conduct does not fall within any of the other enumerated grounds but is nevertheless considered unacceptable. It was stated in **Law Society of Singapore v Khushvinder Singh Chopra** [1998] 3 SLR 845 that unlike `grossly improper conduct` in s 83(2)(b), `conduct unbefitting an advocate and solicitor` is not confined to misconduct in the solicitor`s professional capacity but also extends to misconduct in the solicitor`s personal capacity. It follows that the standard of unbefitting conduct is less strict and, as stated in **Re Weare** [1893] 2 QB 439, a solicitor need only be shown to have been guilty of `such conduct as would render him unfit to remain as a member of an honourable profession`.

The Law Society relied on a case involving disciplinary action against an accountant, **Wong Kok Chin v Singapore Society of Accountants** [1989] SLR 1129 [1990] 1 MLJ 456 , where Justice Yong Pung How (as he then was) analysed what amounted to conduct `discreditable to an accountant` as opposed to misconduct `in a professional respect`:

> *It may well be that an act or default which is discreditable to an accountant need not necessarily have arisen out of his professional work as an accountant, but it should nevertheless be an act which will bring him discredit as an accountant or on the profession as a whole. A practical test could have been if reasonable people, on hearing what he had done, would have said without hesitation that as an accountant he should not have done it.*

In the course of examining what constitutes `conduct discreditable to a pharmaceutical chemist`, Pape J in **Mercer v Pharmacy Board of Victoria** [1968] VR 72 made a similar observation:

> *I do not think it is necessary that his conduct should be dishonest or fraudulent, or that it should involve any moral turpitude. It is enough if it brings discredit to him as a pharmaceutical chemist or on the profession as a whole.*

While the above tests are useful as a practical guide, it must be borne in mind that ultimately `the standard of judgment to be applied to the solicitor`s misconduct under s 83(2)(h) is a standard fixed by the court and not the standard of peer judgment`. This was stated in **Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361 and **Law Society of Singapore v Tham Yu Xian Rick** [1999] 4 SLR 168 .

The Disciplinary Committee had concluded that the respondent`s actions in relation to the second and fourth charges amounted to `conduct unbefitting an advocate and solicitor`. We agreed with the Disciplinary Committee in this regard for the reasons set out below.

The respondent`s persistent delay in not registering the mortgages under the second charge was irresponsible and no doubt amounted to conduct unbefitting an advocate and solicitor. No valid explanation for the delay in registering the mortgages was offered. He did not even reply to PTP`s constant reminders to him to register the mortgages. Such irresponsible behaviour was inexcusable especially since the requirement of registration had a potential impact on the rights of Public Finance as mortgagees.

The fourth charge concerned the respondent`s failure to respond promptly to Public Finance`s queries and his failure to update them on the progress of the matter in question. Delay in responding to clients is a common failing among solicitors given the pressures of time they face. It was stated in ***Re C, a solicitor*** (***Law Society`s Journal*** Vol 1 No 1, May 1984) that delay in an isolated ordinary case may not necessarily constitute professional misconduct and may not warrant disciplinary action. However, gross or excessive delay in both contentious and non-contentious work is serious enough to constitute conduct unbefitting an advocate and solicitor.

It took at least three reminder letters (dated 14 October 1996, 16 October 1996 and 18 October 1996) from PTP before the respondent finally replied to PTP. Even then, no satisfactory response on why the mortgages had not been registered was given nor was there compliance with PTP`s request for documents. In our opinion, the respondent was also guilty of conduct unbefitting an advocate and solicitor in relation to the fourth charge.

For the foregoing reasons, we agreed with the finding of the Disciplinary Committee that there was sufficient cause for disciplinary action to be taken against the respondent.

The appropriate penalty

According to s 83(1) of the Legal Profession Act, disciplinary action against an errant solicitor may take the form of striking off the roll of advocates and solicitors, suspension from practice for a period of up to five years or censure.

The principles on disciplinary sentencing were applied in the recent decisions of **Law Society of Singapore v Ravindra Samuel** [1999] 1 SLR 696 , **Law Society of Singapore v Tham Yu Xian Rick** [1999] 4 SLR 168 and **Law Society of Singapore v Heng Guan Hong Geoffrey** [2000] 1 SLR 361 . These principles were in part distilled from the instructive judgment of Sir Thomas Bingham MR in **Bolton v Law Society** [1994] 2 All ER 486. The principles are as follows:

> *(1) where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors;*
>
> *(2) if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.*

A further consideration to be borne in mind when deciding on the appropriate penalty is the public dimension of disciplinary sentencing. As stated by Chief Justice Yong Pung How in **Law Society of Singapore v Ravindra Samuel** [1999] 1 SLR 696 [at [para] 11]:

> *... It is not simply a question of punishing the solicitor concerned. A further consideration must be what course should the court take to protect the public and to register its disapproval of the conduct of the solicitor ... The protection of the public is not confined to the protection of the public against further default by the solicitor in question [but] extends to the protection of the public*

> *against similar defaults by other solicitors through the court publicly marking the seriousness of what the instant solicitor has done ... Thus, the orders made should not only have a punitive, but also a deterrent effect.*

In this case, the respondent must expect severe sanctions to be imposed on him as he failed to discharge his professional duties with integrity, probity and trustworthiness. He and Tarun Jain were involved in a premeditated scheme in which both parties hoped to reap personal profit. Their plan involved using loan sums for purposes not revealed to the lender, Public Finance. By doing this, the respondent abused the confidence placed in him as a solicitor by his clients, Public Finance. The deliberate concealment of the true situation from his clients was also dishonest. On several occasions, the respondent also failed to respond promptly to his clients` requests, thus prejudicing his clients` interests. His whole course of conduct in relation to the two mortgage loans clearly fell below the high standards expected of an advocate and solicitor. Applying the principles stated above, the only suitable penalty in this case was to strike him off the rolls.

Possible mitigating factors

Having decided on the appropriate penalty, it was appropriate to consider if there were any mitigating considerations in his favour.

In his submissions, the respondent claimed to be a `fresh lawyer without experience` who was simply `over-enthusiastic`. He had only practised as an advocate and solicitor for about one year. As such, the penalty of striking him off the roll of advocates and solicitors would operate harshly in his case

The respondent also appeared to be remorseful. He had made partial restitution of a sum of $144,324.07 in favour of the complainants. He claimed that he would have made further restitution if not for his bankruptcy. In his written submissions, he stated that he regretted `taking up the Law Society`s time` and `letting down the profession with his carelessness and complacency`.

The recent Court of Three Judges` decision of **Law Society of Singapore v VCS Vardan** [1999] 2 SLR 229 sheds some light on the issue of mitigation. In that case, the respondent had been convicted of criminal breach of trust under s 406 of the Penal Code. The Court of Appeal upheld the penalty of striking off despite the mitigating circumstances and observed:

> *[S]ection 12(1)(b) of the Legal Profession Act expressly provides that no qualified person is to be admitted as an advocate and solicitor unless he is of good character. A conviction under s 406 [implied] that the respondent was of dishonest character. This would have been sufficient for him not to be admitted as an advocate and solicitor. [It is in the interests of the legal profession and the public] that there should be a legal profession observing the highest possible standards of conduct. The respondent had failed to adhere to these standards and had caused harm to the profession as a whole.*

Similarly, in **Bolton v Law Society** [1994] 2 All ER 486, the penalty of striking off was maintained against a dishonest solicitor despite the mitigation advanced by him.

In our opinion, the respondent was unreliable, untrustworthy and dishonest. Although he had not been convicted of an offence, he failed to observe the highest possible standards of conduct. As he was

not of good character, the mitigating factors should not operate to lessen the penalty of striking off. In addition, he should not be allowed to rely upon his inexperience as a mitigating factor. All advocates and solicitors, regardless of the extent of their experience, must behave honourably. A brief period in practice should not be accepted by the courts as a valid reason for the non-observance of strict standards of conduct by an advocate and solicitor, whether recently admitted to practice or not.

Conclusion

In view of the foregoing reasons, we ordered the respondent to be struck off the rolls and to bear the costs of these proceedings and the proceedings before the Disciplinary Committee.

Outcome:

Order accordingly.