

Law Society of Singapore v Vardan Vasantha Lakshmi
[2006] SGHC 185

Case Number : OS 660/2006, SUM 2323/2006
Decision Date : 08 November 2006
Tribunal/Court : High Court
Coram : Andrew Ang J; Chan Sek Keong CJ; Andrew Phang Boon Leong JA
Counsel Name(s) : Tan Tee Jim SC and Jiang Ke Yue (Lee & Lee) for the applicant; C R Rajah SC (Tan Rajah & Cheah), Thangavelu (Rajah Velu & Co) and David Nayar (David Nayar and Vardan) for the respondent
Parties : Law Society of Singapore — Vardan Vasantha Lakshmi

Legal Profession – Professional conduct – Breach – Advocate and solicitor acting for homeowners and housing agent in transaction for sale of flat – Whether advocate and solicitor breaching Legal Profession (Professional Conduct) Rules by placing herself in position of conflict of interest and failing to adequately explain to homeowners significance of documents signed – Appropriate sentence for such misconduct where no evidence of dishonesty existing but absence of diligence and significant indifference to homeowners' interests displayed – Rule 25(b) Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)

8 November 2006

Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 The respondent, Vasantha Lakshmi Vardan, is an advocate and solicitor of some 12 years' standing, having been called to the Singapore Bar in 1994. At all material times, she was a partner in a law firm.

2 The respondent was introduced to Shaik Raheem s/o Abdul Shaik Shaikh Dawood ("Shaik") by the respondent's father in 1998. They had a regular working relationship in the sense that Shaik often recommended the respondent's legal services to his clients. It was through such an arrangement that Ibrahim bin Hassan ("Ibrahim") and Zaharah binte Ibrahim ("Zaharah"), a married couple (collectively, "the complainants"), came to know about the respondent.

3 Some time in June 1999, the complainants were looking to sell the flat they were residing in and purchase another one. Ibrahim was a little cash-strapped then as he needed money for the down payment for the purchase of a new flat. Abu Baker ("AB") was Zaharah's brother-in-law. AB was working in a realty firm and it was he who introduced Shaik to the complainants. AB told the complainants that they could obtain an interest-free "friendly" loan from Shaik in return for appointing Shaik as their exclusive housing agent in the sale of the flat. The complainants obtained an initial loan of \$5,000 and agreed to the appointment.

4 AB then told the complainants that they could obtain additional interest-free loans from Shaik. At AB's behest, Ibrahim approached Shaik for an additional loan of up to a total of \$50,000. Shaik agreed to provide the loans but requested that the complainants sign a statutory declaration in relation to the loans ("the Statutory Declaration"). He also recommended the respondent's services as a lawyer to Ibrahim to complete the conveyancing and loan transactions.

5 The complainants went to the respondent's office on 21 June 1999 to sign documents relating to the purchase and sale of the flat and regarding the loan with Shaik. The pertinent documents were as follows:

- (a) a warrant to act in the sale of the flat;
- (b) a letter authorising the respondent to copy to Shaik all correspondence in relation to the sale of the flat;
- (c) a warrant to act in relation to the Statutory Declaration;
- (d) a deed of agreement indicating that \$50,000 would be advanced from Shaik to the complainants ("the Deed of Agreement").
- (e) a letter authorising the Housing and Development Board ("HDB") to pay the balance of the sale proceeds (after deducting moneys due to the HDB and refunding the appropriate moneys to the Central Provident Fund Board ("CPF Board")) to the respondent's firm;
- (f) a letter irrevocably authorising the respondent to pay to Shaik (from the proceeds of sale of the flat) \$50,000 in addition to 2% commission of the sale price of the flat, as well as to pay such further sums to Shaik which the complainants should confirm orally or in writing before or after completion of the sale of the flat; and
- (g) a letter requesting the respondent's firm to give an undertaking to Shaik for payment of the loan and commission from the proceeds of the sale of the flat ("the Request to Provide an Undertaking").

6 That *very same day*, immediately after the documents had been signed, the respondent's secretary, Jenny Lee ("Jenny"), brought the complainants to the office of a Commissioner for Oaths. There, they signed the Statutory Declaration before the said Commissioner, confirming that the loan of \$50,000 had indeed been disbursed.

7 The flat was sold for \$404,000. This meant that Shaik was entitled to \$8,080 in commission. After the completion of the sale of the flat, the complainants were invited to the respondent's office on 22 October 1999 to close the completion account. The account showed a deduction of \$55,330 in payment to Shaik (and a further deduction of \$2,209.43 in respect of the respondent's bills of costs). The complainants signed the account, and authorised payment to Shaik.

8 The following year, in mid-2000, Ibrahim made a police report that Shaik had swindled him of money. In particular, in his police report, Ibrahim complained that Shaik had only lent him \$25,000 but had, instead, deducted \$55,330 from the sales proceeds of the flat. Shaik was subsequently charged and convicted on 25 April 2006 on four charges of cheating under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) in relation to various loans, including that which was extended to the complainants (see *PP v Shaik Raheem s/o Abdul Shaik Shaikh Dawood* [2006] SGDC 86, where, it should be noted, the complainants did also appear to have acknowledged (at [26]) that, in addition to the \$25,000 disbursed to them by Shaik by way of loan, Shaik was also entitled to a total of \$10,130 by way of commissions). On 8 May 2001, the complainants lodged a complaint against the respondent to the Law Society – culminating in the present proceedings before this court.

The Disciplinary Committee proceedings

The charges

9 The first charge preferred against the respondent reads as follows:

That you, Vasantha Lakshmi Vardan, are charged that during the course of your retainer during or about the period between June 1999 and October 1999 as the solicitor for Mr. Ibrahim Bin Hassan and Mdm Zaharah Binte Ibrahim, you failed to advance the said client's interests unaffected by any interest of any other person, by acting in the interest of Shaik Raheem and/or his firm, in contravention of Rule 25(b) of the Legal Profession (Professional Conduct) Rules, such breach amounting to improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2001).

Rule 25(b) of the Legal Professional (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) reads as follows:

During the course of a retainer, an advocate and solicitor shall advance the client's interest unaffected by —

...

(b) any interest of any other person; ...

10 The alternative charge preferred against the respondent reads as follows:

That you, Vasantha Lakshmi Vardan, are guilty of misconduct unbecoming an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Cap. 161, Rev Ed 2001) by failing to advance the interests of your clients Mr. Ibrahim Bin Hassan and Mdm Zaharah Binte Ibrahim unaffected by any interest of any other person, by acting in the interest of Shaik Raheem and/or his firm.

11 Section 83 of the Legal Profession Act (Cap 161, 2001 Rev Ed) itself reads as follows:

(1) All advocates and solicitors shall be subject to the control of the Supreme Court and *shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.*

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

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;

(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) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in section 124 (5) (a), (b), (c), (d), (e), (f), (h), (i), (k), (l) or (m) of the Bankruptcy Act (Cap. 20);

(d) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor;

(e) has, directly or indirectly, procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

(f) has accepted employment in any legal business through a person who has been proclaimed a tout under any written law relating thereto;

(g) allows any clerk or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision;

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

(i) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling;

(j) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; or

(k) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country.

(3) Pupils shall, with the necessary modifications, be subject to the same jurisdiction as can be exercised over advocates and solicitors under this Part; but in lieu of an order striking him off the roll or suspending him, an order may be made prohibiting the pupil from petitioning the court for admission until after a date specified in the order.

(4) The jurisdiction given by subsection (3) shall be exercised by a single Judge.

(5) *In any proceedings under this Part, the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.*

(6) In any proceedings instituted under this Part against an advocate and solicitor consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Committee and a court of 3 Judges of the Supreme Court referred to in section 98 shall accept his conviction as final and conclusive.

[emphasis added]

The arguments of both parties

12 Before the Disciplinary Committee ("DC"), the Law Society made the following arguments:

(a) The documents the complainants were made to sign contained terms which were not in their interest but which were in the interest of Shaik instead.

(b) The respondent did not attend the meeting on 21 June 1999 and therefore could not have explained the contents of the documents to the complainants.

(c) In the alternative, on the assumption that the respondent attended the meeting:

(i) she did not inform the complainants that she had worked out the provisions of the documents with Shaik in advance and that such provisions had been based on his needs and requirements;

(ii) she did not explain the terms of the documents to the complainants;

(iii) she did not take prior instructions from the complainants concerning the drafting of the documents, but had prepared the documents in advance instead;

(iv) she did not ascertain what the precise facts were in relation to the loan from Shaik to the complainants;

(v) she did not advise the complainants of the consequences of signing the said documents;

(vi) she did not advise the complainants not to agree to the terms in the documents;
and

(vii) she had failed and/or neglected to ascertain whether the complainants borrowed \$50,000 before asking them to sign the documents.

(d) On 22 October 1999, when the complainants made their objections to the completion account known to Jenny, the respondent did not pay any attention to the objection and proceeded to remit the money to Shaik.

13 On the other hand, the respondent's case before the DC was as follows:

(a) She had dealt on several occasions with Shaik and knew what he required in relation to the loan agreement.

(b) Jenny had confirmed with the complainants the particulars of the conveyance and loan prior to the first meeting on 21 June 1999, which particulars were incorporated in draft form pending the complainants' further confirmation at the meeting itself.

(c) In preparing the draft documents in the light of the lender's (Shaik's) requirements, she had acted much as a solicitor acting jointly for banks and the CPF Board would act.

(d) She attended the meeting on 21 June 1999, such attendance being confirmed not only by her own evidence and that of Jenny but also by her attendance note of that meeting.

(e) The complainants' evidence that they had not seen the respondent prior to the commencement of the hearing and that they did not even know that she was female ought to be rejected in the light of, *inter alia*, the correspondence that had passed between them.

(f) She had in fact explained the documents concerned to the complainants in English and they (the complainants) were able to understand English.

(g) The fact that the documents concerned contained provisions which were in the interests of Shaik should not lead to the conclusion that the respondent had not protected the interests of the complainants.

(h) She had ascertained what the contents and nature of the loan were. The documents drafted merely gave effect to the intentions of both the complainants and Shaik in so far as this loan transaction was concerned and that, accordingly, the terms of the documents signed were not adverse to the complainants' interests.

(i) She discharged her duty by confirming the complainants' instructions and explaining all the terms of the documents to them.

(j) The complainants did not object to the completion account. The first time she heard of the objection was when they complained to the Law Society.

(k) The fact that the complainants were referred by Shaik to her did not affect the performance by the respondent of her duties.

The respondent's presence at the 21 June 1999 meeting

14 The DC evaluated the testimony of the various witnesses and found the complainants to be simple, unsophisticated folk and quite unlikely to lie about the respondent's presence. Though the complainants were adamant about the respondent's absence during the 21 June 1999 meeting, their own testimony was fraught with confusion and inconsistency.

15 The respondent's secretary, Jenny, had difficulty recalling the events of 21 June 1999 or 22 October 1999. She explained the practice and procedure she normally adopted when meeting clients but simply could not recall whether she did any of these at those particular dates. Her testimony, the DC found, was thus of little value.

16 The DC also evaluated the attendance note. It noted some oddities in the attendance note making it unlikely to have been contemporaneous, but was generally unwilling to conclude that the note was fabricated.

17 From its evaluation of the evidence, the DC concluded that it was not proved beyond reasonable doubt that the respondent was absent from the 21 June 1999 meeting.

The respondent's duties to the complainants

18 However, the DC found that the terms of the documents were drafted to protect Shaik's interests. In that sense, the respondent was acting in Shaik's interests. Some of those terms were not in the complainants' interests. They included the lodging of a caveat over the flat in respect of the loan; the letter of authorisation irrevocably authorising the respondent to pay Shaik the loan amount and the commission; the additional solicitor's undertaking to pay from the proceeds of sale; and the Statutory Declaration indicating the complainants' indebtedness to Shaik for the sum of \$50,000.

19 The DC noted that whilst the terms may have been designed to protect Shaik, that alone did

not mean that the respondent could not discharge her duty towards the complainants. She had, though, a more onerous task; as it noted in the report of the Disciplinary Committee ("the Report") at para 19:

In order to act fairly and adequately on behalf of the Complainants in the circumstances, it was necessary for the Respondent to explain to the Complainants that she had worked out the provisions in the light of Shaik's needs and requirements and to confirm that they nevertheless wished her to act for them, to explain the documents to them and highlight to them the features of the transaction which had been designed to protect Shaik, to confirm that the Complainants had agreed to borrow the sum of \$50,000.00 as provided in the Deed of Agreement from Shaik, and, before procuring the execution of the Statutory Declaration, to confirm that they had already received the sum of \$50,000.00 mentioned therein. In carrying out the above steps, the Respondent would have to take into account the Complainants' level of education and standard of English.

20 The DC concluded that the respondent had not discharged her duty towards the complainants. In the circumstances, the DC held that the charge and the alternative charge had been made out.

21 As for the other issues, the DC decided that there was nothing wrong with preparing documents and taking instructions subsequent to that; it also decided that the respondent did not have a duty to advise the complainants against adopting the terms of the agreements. In so far as this last-mentioned finding is concerned, we wish to put on record that it goes too far inasmuch as it absolves an advocate and solicitor from his or her duty to protect his or her client's interest. The advocate and solicitor concerned may have no duty to advise his or her clients to accept the terms of the agreement in question, but he or she nevertheless has a duty to explain fully to the client the disadvantages stemming from any or all of the terms.

Issues before the court

22 The issues before this court were as follows:

(a) Were the charges against the respondent made out inasmuch as she had placed herself in a situation of conflict of interests and had not taken the appropriate steps to extricate herself from such a situation?

(b) If the answer to (a) above is in the affirmative, what is the appropriate sanction to be imposed on the respondent?

The decision of the court

23 We consider, first, whether the respondent had placed herself in a situation of conflict of interests and, if so, whether she had taken the appropriate steps to extricate herself from such a situation.

24 Counsel for the Law Society, Mr Tan Tee Jim SC, argued that the terms and conditions of the relevant documents prepared by the respondent and which were signed by the complainants were clearly designed to protect Shaik's interests over those of the complainants'. They included terms and conditions in the Deed of Agreement, the Statutory Declaration and the Request to Provide an Undertaking.

25 The Deed of Agreement recorded the agreement between Shaik and the complainants, under which the former agreed to lend \$50,000 to the latter at the latter's request. This was recorded as a friendly loan, free of interest, and payable on demand or upon the sale of the complainants' flat – whichever was earlier. We note, however, that this document, whilst signed by the borrowers (the complainants), was not in fact signed by the lender (Shaik).

26 The material portion of the Statutory Declaration, signed by the complainants, read as follows:

That we have taken a friendly loan, free of interest, in the sum of S\$50,000.00 from Mr. Shaik Raheem s/o Abdul Shaik Shaikh Dawood ... and confirm that we are accordingly indebted to the said Mr. Shaik Raheem s/o Abdul Shaik Shaikh Dawood ... for the sum above stated.

27 The Request to Provide an Undertaking incorporated a request, by the complainants, to the respondent's firm to provide an undertaking that the said firm would pay, upon the receipt of the sale proceeds, the sum borrowed by the complainants from Shaik to Shaik himself.

28 Mr Tan referred, in particular, to a term in the Deed of Agreement allowing Shaik to lodge a caveat over the property in spite of the fact that he had neither a legal nor equitable interest in the flat as he had not lent any money at the time. In his view, this was a significant term which was clearly designed to favour Shaik.

29 In our view, however, the more important issue concerns the *knowledge of the respondent herself*. In other words, had she merely been acting on her clients' (here, the complainants') instructions? If she had, had she *adequately* explained the contents of the various documents to the complainants before they signed them? If these questions are answered in the affirmative, then it would appear that the respondent had fulfilled her professional duties.

3 0 *However*, Mr Tan argued that the respondent had preferred Shaik's interests over the complainants' and that the respondent ought, *inter alia*, to have checked whether the complainants had in fact received the \$50,000 from Shaik. Mr Tan also submitted that, owing to the lack of sophistication and poor understanding of their legal rights, that the complainants had not lodged a complaint until they saw the completion account for the property. In the circumstances, he argued that the respondent ought to have gone *further* and *disclosed her past relationship with Shaik to the complainants*. In this regard, we note that the respondent's past relationship with Shaik was relevant and, indeed, highly significant to her relationship with the complainants. The following undisputed facts in the Report are telling (see paras 7 and 8):

7. The Respondent had known Shaik since 1998, having been introduced to him by her father. Shaik had since 1998 recommended several persons who required the services of a solicitor to her firm. The Respondent admits that she had "worked out" with Shaik a set of documents to be used in connection with loans to be made by him to customers of his housing agency.

8. On 21 June 1999, the Complainants attended at the Respondent's office for the first time. *At this point of time, the Respondent had acted in 27 matters previously in which Shaik had made loans to persons for whom he was acting as housing agent in the sale of HDB flats.*

[emphasis added]

In a similar vein, the following undisputed finding in the Report ought also to be noted (see the Report

at para 16):

The Respondent *admits* that she "*worked out*" the terms of the documents with Shaik and had handled 27 cases of this nature involving a borrower/seller and Shaik prior to the Complainants' transaction. In working out the terms of the documents, the Respondent was acting in Shaik's interests. *From the evidence, it is clear that the Respondent had prepared a set of documents that would protect Shaik and meet his requirements.* [emphasis added]

Again, in para 53 of the Report, it is observed as follows:

Unfortunately, the Respondent's duties in the present case were more onerous than that outlined by her, in view of her relationship with Shaik. *She had an on-going relationship with Shaik pursuant to which he regularly recommended clients to her. She had worked out the provisions of documents which would suit Shaik's requirements and protect his interests and set up a system whereby Shaik's clients would be asked to swear Statutory Declarations, which was also in his interest.* [emphasis added]

31 In our view, the situation in the present proceedings was an unusual one. The respondent obviously had a standing arrangement with Shaik which, on one view at least, might even be construed as an informal retainer. It was clear, in any event, that, under this standing arrangement, the respondent's role was clearly to ensure that Shaik's interests were protected. This included the preparation (in advance) of documents that were clearly designed to advance Shaik's interests. In the circumstances, therefore, the respondent clearly put herself in a position of a conflict of interests between Shaik and the complainants. We are also of the view that the standing arrangement the respondent had with Shaik simultaneously furthered *her own interests* inasmuch as she received legal work from him from time to time. It was therefore incumbent on the respondent not only to disclose to the complainants her relationship with Shaik but also to *adequately* explain the contents of the various documents to the complainants in the light of her relationship with Shaik. On the evidence, she had done neither and had therefore breached her duty to the complainants to protect their interests *vis-à-vis* the transaction concerned. Let us elaborate.

32 It is clear that the complainants had not instructed that the relevant documents be prepared. Indeed, the *respondent admitted* that she had prepared these documents in advance (and see para 7 of the Report, quoted at [30] above). More importantly, these documents were prepared, as we have noted, in order to protect and advance Shaik's interests, whilst simultaneously advancing her own interests as well (as pointed out in the preceding paragraph).

33 As importantly, we agree with Mr Tan that the complainants were not only legally unsophisticated but were also not entirely conversant in the English language (see generally the Report at paras 19, 44, 49 and 57, where both these points are canvassed). In the circumstances, therefore, the respondent ought, having regard to both these facts as well as the fact that she was the one who had prepared the documents concerned in advance which were designed to promote Shaik's interests, to have gone further and disclosed her past relationship with Shaik to the complainants. In this particular regard, this court has observed in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [68], as follows:

[W]e do note that the beneficiaries were generally unschooled in the law and therefore relied upon the respondent for legal advice. More than that, it is clear to us that they trusted the respondent. A more general – and extremely significant – point arises from this. *It is that the public rely upon lawyers for wise and effective counsel. This is especially the case when clients are particularly vulnerable. This could be due to a number or variety of reasons – or, indeed, a*

combination thereof. These include impecuniousness, a lack of schooling and/or language and (invariably, with the exception of legally-trained persons) a lack of legal knowledge. In this last-mentioned regard, it is not merely an absence of legal knowledge. To many laypersons (even highly educated ones), the law constitutes a morass of technical – even arcane – rules. Many even fear the law when the precise opposite should be the case. The law is meant to achieve justice and fairness for all. It is the objective bulwark against tyranny and oppression, anarchy and disorder. It is supposed to facilitate transactions of all kinds in a reasoned and accessible manner. Laypersons ought therefore to embrace the law, or at least not be uncomfortable with seeking legal advice or redress. Even as there have been laudatory moves in a variety of forms towards making the law more accessible to the layperson, we must guard against anything which retards or hinders this process zealously. The present proceedings illustrate all the dangers that must be assiduously avoided. Lawyers must convey what the precise legal situation is with limpid clarity, taking into consideration the fact that their clients may not always share the same language, intellectual or legal facility as them. The legitimacy of the law in general and of legal personnel in particular depends on this. Still less must laypersons be lulled into a false sense of security and/or into a situation of misinformation. Whenever in doubt, lawyers should clarify. They must begin from the assumption that laypersons are more likely to rely upon them than not – if only because they are professionals schooled in the law and whose calling is therefore to advise on the law in all its various aspects. They must, wherever applicable, advise laypersons to seek independent legal advice if they are unable to assist – for example, because of a possible conflict of interests. [emphasis added]

34 With regard to the terms of the Statutory Declaration, we are also of the view that it strains credibility, to say the least, for the respondent to assert that she had believed that the complainants had already received the \$50,000 stated therein. Yet, this is precisely what the respondent stated, time and again, in her testimony. In one instance, for example (relating to the Deed of Agreement), the following exchange took place:[\[note: 1\]](#)

Q [Mr Tan]: Nor did you subsequently ask for any documentary evidence to show that the sum of \$50,000.00 was indeed lent and disbursed to the Complainants?

A [Respondent]: That's correct.

Q: Why didn't you do any of those two things – asking for agreement, copy of the agreement to show that there was an agreement to lend, and asking for documentary evidence to show that it was indeed lent?

A : *I asked my clients. I took their instructions. They told me that it was indeed lent and I took them at their word. I wasn't going to doubt my clients.*

[emphasis added]

And, in so far as the Statutory Declaration itself was concerned, the following testimony by the respondent should also be noted in the following exchange:[\[note: 2\]](#)

Q [Mr Tan]: And this deed [of agreement], you would agree, is very clear on that, on the fact that "I, the Complainants, agree to lend---sorry, to borrow the sum of 50,000 from Shaik Raheem"?

A [Respondent]: Yes.

Q: It is *very clear*. So why do you need to ask the Complainants to sign the SD [Statutory Declaration] then which is at page 18?

A: The SD is to confirm the fact that the loan has already been given.

Q: But the SD is dated the same date as the deed of agreement – 21st of June?

A: Yes.

Q: And both documents were signed at the same time and on the same date?

A: That's right?

Q: And you could have incorporated a statement in the SD concerning have [sic] taken the loan in the deed of agreement, isn't it, the same document?

A: Looking back now, yah, I could have. Maybe I should have.

Q: I put it to you that you asked the Complainants to sign the SD for Shaik Raheem's purposes.

A: Absolutely not. Maybe I should clarify. When you say "Shaik Raheem's purposes", if you meant as one of his requirements in a situation where the loan had been taken, then, yes, but I didn't do it to protect his interests.

Q: I put it to you that you asked the Complainants to sign the SD so that Shaik Raheem would have documentary evidence showing that he did indeed lent [sic] the sum mentioned there.

A: That was the agreement between Shaik Raheem and the clients.

[emphasis added]

Finally, and in a similar vein, we note the following exchange:[\[note: 3\]](#)

Q [Mr Tan]: The fact is that as at 21st of June, the Complainants had yet to take a loan up to \$50,000. Is that correct? At that time, 21st of June, they had yet to take a loan up to \$50,000.

A [Respondent]: *That's not what they told me.*

Q : *So you're saying that they told you that they had already taken a loan of \$50,000 when they signed this document [the Statutory Declaration]?*

A: Yes.

Q : *And you did not deem it fit to check further with them, for example, any sort of copy of a receipt, any receipt or any copy of the cheque showing the sum of \$50,000 was disbursed by Shaik Raheem to the Complainants?*

A: *No, they confirmed they had taken.*

...

Q : *I put it to you that this SD was prepared in accordance with Shaik Raheem's requirements and that you're protecting his interests rather than the Complainants' interests.*

A: *That's not true.*

...

Q: *And of course you would understand that if the statement in the SD is wrong, they [the complainants] would be doing something illegal ... ?*

A: *Yes, it was explained to them.*

Q : *And you would agree that if in fact they had not taken a loan but say that they have taken a loan, they were making a false declaration?*

A: *Yes.*

Q: *So you do not feel it your responsibility to ensure that they have not made a false declaration by asking for certain evidence to show that they had taken a loan, indeed taken a loan up to that amount?*

A : *I did feel it was my responsibility to ensure that what they were going to swear when they go to the Commissioners was correct, which they confirmed it was correct.*

Q : *So you feel that in acting in the best interests of your clients, as long as the clients tell you that, yes, they had taken a loan, you will prepare the SD accordingly and get them to swear?*

A : *They were willing to go and swear an SD which, I've told them, has criminal sanctions if they're going to lie. Why would I think that they are lying to me? They're going to swear an SD.*

[emphasis added]

In our view, the respondent's answers showed that she was merely making up evidence which no reasonable lawyer could have believed in, *ie*, that a moneylender would part with his money before the loan document had been signed. However, we do not think that the respondent would, as a professional lawyer, have been so foolish as to ask the complainants to sign the Statutory Declaration if she had known that they would not receive the full amount stated therein. That would, in fact, have been tantamount to abetting the signing of a false document under oath.

35 We also find that the steps the respondent took with regard to explaining, to the complainants, the nature of the documents concerned *in their proper context* were woefully inadequate. The DC quite correctly pointed to the respondent's own testimony at the hearing that demonstrated clearly that she had taken only cursory steps to explain the nature of the documents concerned to the complainants. The DC referred, in particular, to the following extracts from the notes of evidence that, in our view, illustrate clearly the approach adopted by the respondent towards the complainants. The first extract reads as follows: [\[note: 4\]](#)

Before I even start going through the documents, I will tell the clients that "Look, we've prepared drafts because we're familiar that these are the terms. If anything in here is not as you've agreed or is not in the terms you agreed upon, you have to tell me". These are things that I generally tell them and I would have told these clients as well. And then I take them through it. I don't ask specifically "How did you agree? Do you have a signed loan agreement?". I don't. I ask them. I confirm with them and say "If there's anything different, tell me before you sign".

36 The second extract is as follows:[\[note: 5\]](#)

I have my clients, I have the documents, I explain it to them, I ensure they understand it, I ask them if these are the terms that they've agreed on and they want to proceed on these terms, they confirm it and they sign the documents, I go on to complete the brief. That is my understanding of the duty that I have to discharge for my clients.

37 In the light of our findings above (at [34]), we find it difficult to believe that the respondent had in fact done what she did. And even if she did *literally* do what she had claimed, we agree with the DC's findings that the respondent had, at best, taken only cursory steps to explain the nature of the documents concerned to the complainants. She had merely gone through the motions of explaining the various documents (including the Statutory Declaration) in the most cursory of fashions. Indeed, whilst the respondent went through the motions of "explaining" the documents to the respondents, she conveniently omitted to apprise them of the *context* in which those documents were prepared – including, as we have just mentioned, her relationship with Shaik. This was a classic case of paying lip service to form, whilst simultaneously undermining the spirit and substance that underlay the whole point of requiring an explanation to the clients in the first instance. The entire situation was also exacerbated by the fact that the complainants were themselves unschooled in the law and were not really conversant with the English language.

38 We find, therefore, that the respondent had put herself in a situation of conflict of interests, where she had in effect preferred both her own interests (as to which see, in particular, [31] above) as well as those of Shaik over the interests of the complainants. In particular, she had furnished Shaik with a clear advantage over the complainants, without explaining to the latter that this would be the case: this she ought to have done, having regard to the entire context and circumstances before her. We find, further, that the respondent had *not* taken the appropriate steps to extricate herself from such an invidious situation by *adequately* explaining the nature and purport of the relevant documents to the complainants before they appended their respective signatures to them.

39 Counsel for the respondent, Mr C R Rajah SC, argued that it must have been apparent to the complainants that Shaik knew the respondent as he had referred them to the respondent. However, given their lack of legal knowledge and facility in the English language, it is our view that the respondent had a duty to take positive steps to explain to the complainants the precise relationship she had with Shaik, given the fact (as we have found above) that a situation of conflict of interests existed. The evidence showed, instead, that the respondent was indifferent to the interests of the complainants. The respondent, by failing to explain *fully* to the complainants the contents of all the documents that they were required to sign as well as the precise relationship she had with Shaik, was in breach of her professional duties to the complainants.

The appropriate sanction

40 This brings us to the appropriate sanction that ought to be imposed on the respondent.

41 We find that while there is no evidence of dishonesty on the part of the respondent, there

has been an absence of diligence as well as a significant degree of indifference towards the interests of her clients.

42 The fact situation in the present proceedings is not unlike that in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* ([33] *supra*). We will not reiterate the analysis of the precedents in that particular case (see, generally, *id* at [93]–[96]).

43 Of the cases cited to us by Mr Tan, one, in particular, resulted in the advocate and solicitor concerned being struck off the roll. This was the decision of this court in *Law Society of Singapore v Quan Chee Seng Michael* [2003] SGHC 140. However, in that case, the court had found that *dishonesty* had been proved – which is *not* the situation in the present proceedings. The following oft-quoted words by Sir Thomas Bingham MR (as he then was) in the English decision of *Bolton v Law Society* [1994] 1 WLR 512 at 518 should, in this regard, be noted:

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him ... Lapses from the required high standard may, of course, *take different forms and be of varying degrees*. The *most serious* involves *proven dishonesty, whether or not* leading to criminal proceedings and criminal penalties. In such cases the tribunal has *almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors*. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom *serious dishonesty* had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *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, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.* [emphasis added]

Conclusion

44 Having regard to all the relevant circumstances (and bearing in mind that there are no legitimate mitigating factors), we order that the respondent be suspended from practice for two years and that she bear the costs of the proceedings.

A coda

45 Two other points of more general import arise as a result of the present proceedings.

46 First, we found the Report to be not as helpful as it could have been. The general logic and flow of the Report had a staccato-like effect to it. More importantly, we note that there were many instances where the DC did not make clear findings of fact. Whilst it is true that each DC performs its task in the spirit of public as well as professional service, it is also a task that demands a rigorous as well as analytical approach towards both the facts, the law and the ultimate decision arrived at. This is necessary as we are dealing with issues that impact on the reputation and livelihood of members of the Bar. Fortunately, the Report contains sufficient evidence and findings of fact from which we were able to extract the real nature of the complaints against the respondent.

47 Secondly, albeit not related to the first point, we observe that there appears to have been an unhealthy increase in the number of instances where lawyers have placed themselves in a situation of conflict of interests or, having found themselves in such a position, have failed to take the appropriate steps to extricate themselves from such a situation. The present proceedings are particularly startling inasmuch as the lawyer concerned had a standing arrangement with a person to whom she was beholden for legal work from time to time. We should have thought that given the nature of the business of this “benefactor”, she must have known that she would always be at risk of preferring his interests to the interests of the clients recommended by him. Indeed, even absent such a standing arrangement, lawyers have a duty *generally* (and *always*) to give their respective clients a *thorough explanation of all relevant documents set in their appropriate contexts*. This is the minimum standard of *professionalism* which we would expect. Indeed, it is fortunate for the respondent in the present proceedings that there was no dishonesty found. Otherwise, we would have had no choice but to strike her off the roll.

[\[note: 1\]](#) See notes of evidence (“NE”) at p 318.

[\[note: 2\]](#) See NE at pp 326–327.

[\[note: 3\]](#) See NE at pp 340–342.

[\[note: 4\]](#) See NE at pp 318–319, and reproduced in para 51 of the Report.

[\[note: 5\]](#) See NE at p 300, and reproduced in para 52 of the Report.

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