

Law Society of Singapore v Lim Yee Kai
[2001] SGHC 4

Case Number : OS 1114/2000

Decision Date : 04 January 2001

Tribunal/Court : High Court

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

Counsel Name(s) : M Sivakumar and Prakash P Mulani (Azman Soh Murugaiyan) for the applicant;
Respondent absent

Parties : Law Society of Singapore — Lim Yee Kai

Legal Profession – Show cause action – Grossly improper conduct in discharge of professional duties – Failure to maintain proper clients' accounts – Whether Legal Profession (Solicitors' Account) Rules contravened – Whether misappropriation of clients' moneys, amount to grossly improper conduct in discharge of professional duty – Appropriate sanction – s 83(2)(b) Legal Profession Act (Cap 161, 1997 Ed)

(delivering the grounds of decision of the court): In these proceedings before us, the abovenamed, Lim Yee Kai, (‘the respondent’), an advocate and solicitor of the Supreme Court, was ordered, upon application by the Law Society of Singapore (‘the Law Society’) under s 98 of the Legal Profession Act (Cap 161, 1997 Ed) (‘the Act’), to show cause why he should not be dealt with under the provisions of s 83 of the Act. No cause was shown, and at the conclusion of the hearing, we made an order that the respondent be struck off the roll of advocates and solicitors of the Supreme Court. We now give our reasons.

Background

The respondent was admitted to the roll of advocates and solicitors on 11 April 1990. At all material times, he was practising under the name and style of YK Lim and Company (‘the firm’) at 1557 Keppel Road, Block B, [num]02-24, Cantonment Central, Singapore 089066.

One Mr Thomas Loh Chong Yong (‘Mr Loh’) joined the firm with effect from 17 September 1996. The arrangement between the two of them was that Mr Loh would not be a partner of the firm, although he was designated as a ‘partner’, and that Mr Loh was to pay the respondent 15% of the income that he (Mr Loh) would bring to the firm through his own efforts. Under the arrangement, Mr Loh was not responsible for any of the firm’s accounts, although as a matter of convenience, he was a signatory for the purpose of operating both the office and client’s accounts.

In November 1997, Mr Loh discovered that the client’s account of the firm was overdrawn to the sum of \$155,731.79. In fact, there should have been a credit of \$261,242.33, being the total amount of stakeholder funds placed with the firm. The total sum that was missing from the client’s account was \$416,974.12. Mr Loh confronted the respondent, who admitted that he took the moneys from the client’s account for various purposes of his own.

Subsequently, on 19 November 1997, Mr Loh made a report to the Commercial Affairs Department (‘CAD’) about a possible breach of trust on the respondent’s part. He also informed the Law Society of the same matter by way of a letter dated 20 November 1997.

The Law Society’s investigations

Arising from the letter from Mr Loh, the Council of the Law Society (‘the Council’) on the same day resolved to intervene in the firm’s practice pursuant to s 74 of the Act and paras 1(1)(a) and 6 of the First Schedule thereto, on the ground that the Council had reason to suspect dishonesty on the part of the respondent in connection with his practice. On 21 November 1997, the Law Society served on the respondent and Mr Loh notices respectively to the effect that the Council had resolved to intervene in their partnership and their client’s accounts. The notices also contained a request to them to deliver up all the firm’s books of accounts, details of the bank accounts and a list of persons who were beneficially entitled to the moneys in the client’s account. The respondent then delivered some documents relating to the firm’s accounts pursuant to this request. From these documents and an investigation carried out, the Council found that for the year 1997, the accounting records and books required under paras (1)-(4) of r 11 of the Legal Profession (Solicitors’ Accounts) Rules, namely:

- (a) Cash books, receipt cash book and payment cash book;
- (b) General ledger;
- (c) Clients’ ledger;
- (d) Journals;
- (e) Reconciliation Statements;
- (f) Record of all dealings with clients’ money; and
- (g) Bank statement,

were not kept and maintained by the respondent. The respondent therefore had failed to comply with these Rules.

Subsequently, on 6 December 1997, the Law Society applied by way of OS 1358/97 for an order under s 27B(1)(a) and (b) of the Act. On 15 January 1998, the court ordered that the practising certificate of the respondent be suspended and that the Law Society refer the respondent’s conduct to a Disciplinary Committee for investigation pursuant to s 85(3)(b) of the Act.

The CAD’s investigations

In the meantime, the CAD had commenced investigations on the complaint made by Mr Loh. The results of the investigations showed that the respondent had committed several acts of misappropriation of funds from the client’s account of the firm, the details of which were as follows:

- (a) Four cheques drawn for the total amount of \$235,300 were deposited into the respondent’s personal bank account, for the purpose of clearing cheques which he had drawn from this personal account in favour of one William Thia. The respondent was supposed to represent Mr Thia in a bankruptcy petition but was negligent and Mr Thia was consequently adjudged a bankrupt. The cheques issued from the respondent’s personal account were for the purpose of discharging the bankruptcy order against Mr Thia. The balance of the moneys was used to pay the respondent’s credit card bills.
- (b) Two cheques drawn for the total amount of \$23,664.92 were issued to M/s Chan Kam Foo &

Associates, who were the opposing solicitors in a suit. Judgment was obtained against the respondent's client due to his negligence. One cheque to the amount of \$13,742.92 was used to make payment to Chan Kam Foo & Associates while another cheque to the amount of \$9,922 was used towards the satisfaction of the taxed costs and expenses under a sale and seizure in respect of the same suit.

(c) Three cheques drawn for the total amount of \$45,000 were used to make personal loans to one Mr Hung Sai Khoon.

(d) One cheque drawn for the amount of \$48,000 was deposited into the firm's US dollar client's account, for the purpose of clearing another cheque to the amount of US\$22,000 which the respondent had issued to one Mr John Tan Khee Eng as a personal loan. The balance of the moneys was again used to pay the respondent's credit card bills.

(e) One cheque drawn for the amount of \$11,164.80 was issued as payment to Colin Ng & Partners who were the opposing solicitors in another suit. Judgment was summarily obtained against the respondent's client in default of filing a defence, again due to his negligence.

(f) Two cheques drawn for the amount of \$50,000 were converted into Malaysian Ringgit and used by the respondent to cover his expenses, such as hotel bills and travelling expenses, incurred in Kuala Lumpur, where he went to meet some clients.

All in all, the respondent had misappropriated a total sum of \$413,129.72.

As a result of the investigations carried out by the CAD, the respondent was charged before the District Court on 3 April 1998 for criminal breach of trust in respect of the sum of \$413,129.72, an offence punishable under s 409 of the Penal Code (Cap 224). The matter was fixed for a pre-trial conference on various dates at the request of the respondent, so as to enable him to make restitution. However, he failed to make any restitution and the matter was fixed for hearing on 3 July 1998. The respondent did not attend the hearing; he had absconded, and a warrant for his arrest was issued.

The Disciplinary Committee's findings

On 28 January 1999, the Chief Justice pursuant to s 90 of the Act appointed a Disciplinary Committee to hear and investigate the complaint against the respondent. Before the Disciplinary Committee two charges were preferred against the respondent, namely:

First charge

That Lim Yee Kai (NRIC No 1606968/Z) 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) or is guilty of contravening or failing to comply with the Legal Profession (Solicitors' Accounts) Rules ('the Rules') within the meaning of s 83(2)(j) of the Legal Profession Act (Cap 161) in that the respondent had failed to maintain for 1997 the relevant accounting records and books required under rr 11(1), (2), (3) and (4) of the Rules.

Second charge

That Lim Yee Kai (NRIC No 1606968/Z) 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) in that he has committed the offence of criminal breach of trust in that he, at the material time practising as an Advocate and Solicitor of the Supreme Court of Singapore and a partner in the firm of M/s YK Lim & Company and in such capacity entrusted with dominion over clients funds held in the clients' account No 01-0-13366-3 maintained with Standard Chartered Bank dishonestly misappropriated a sum of S\$413,129.72 and thereby committing an offence punishable under s 409 of the Penal Code (Cap 224).

The respondent was not present at the hearing before the Disciplinary Committee as he had absconded by then. He was then represented by counsel, but his counsel had not received any instructions from him on the conduct of the proceedings.

Before the Disciplinary Committee, Mr Loh gave evidence as to how he discovered that the funds were missing from the client's account. He testified that his suspicion was aroused when he found that a cheque drawn on the client's account with Standard Chartered Bank for an amount, which the client had earlier paid into the client's account, was dishonoured. This started a train of inquiries by Mr Loh, which eventually led to the respondent's admission that he took clients' moneys for various purposes. On the basis of this admission, Mr Loh lodged a report with the CAD and informed the Law Society accordingly.

With respect to the first charge against the respondent, Ms Yashodhara Dhoraisingam of the Law Society gave evidence to the effect that soon after receiving the letter from Mr Loh, the Law Society proceeded to intervene in the practice of the firm under s 74 of the Act and paras 1(1)(a) and 6 of the First Schedule thereto. In exercise of the powers under the Act, the Law Society requested from the respondent the delivery of all books of accounts of the practice of the firm, a full list of the banks at which clients' moneys were deposited, the latest balance of these accounts and a full list of persons who were beneficially entitled to the moneys in the clients' accounts. Pursuant to this request, the respondent attended at the office of the Law Society but he failed to produce, inter alia, a full list of clients beneficially entitled to the clients' moneys. Nothing was furnished by the respondent to show that in 1997 he maintained the relevant accounting records and books required under the rules, namely: cash books, receipt cash book, payment cash book, general ledger, client's ledger, journals, reconciliation statements, record of all dealings with clients' moneys and bank statements. Ms Yashodhara Dhoraisingam's evidence was corroborated by the evidence of one Mr Yeo Ek Khuan, the auditor appointed by the Law Society to carry out an investigative audit of the practice of the firm. The Disciplinary Committee was satisfied with their evidence.

With respect to the second charge, evidence was given by one Mr Richard Wong Peng Kong, who was an inspector attached to the CAD at the relevant time. He gave evidence of the CAD's investigations into the respondent's misappropriation of funds. It was his evidence that the respondent withdrew moneys from the client's account with Standard Chartered Bank and used them for a variety of purposes of his own. The Disciplinary Committee found that in his investigations the inspector had traced the flow of clients' moneys from the client's account at the Standard Chartered Bank to whatever ends the respondent had put the moneys to. In addition, the specific cheques involved and the amounts for which each cheque was drawn were also identified. The Disciplinary Committee accepted Mr Wong's evidence.

The Disciplinary Committee found that there was overwhelming evidence in support of the two charges and both the charges had been proved. Accordingly, the Disciplinary Committee determined

that there was cause of sufficient gravity in respect of both the charges for disciplinary action to be taken against the respondent under s 83 of the Act. Following this determination, the Law Society applied for an order under s 98 of the Act, and on 4 August 2000 an order was made requiring the respondent to show cause why he should not be dealt with under s 83 of the Act.

Show cause proceedings

The respondent was not present before us; nor was he represented by counsel. There were two issues before us: first, whether due cause was shown under s 83(2) of the Act, and second, if such due cause was shown, what the appropriate penalty should be under s 83(1) of the Act.

This was a straightforward case. In relation to both the charges, due cause was shown under s 83(2) of the Act. In respect of the first charge, there was clear evidence that the respondent had contravened paras (1)-(4) of r 11 of the Legal Profession (Solicitors' Accounts) Rules. These rules prescribe mandatory requirements for proper accounts to be maintained in respect of clients' moneys. The purpose of these rules is to protect the public and to instil public confidence in solicitors. Solicitors are placed in a position of trust by their clients, and they are often entrusted by their clients to hold large sums of moneys. Members of the public must have confidence in the integrity of the accounting system of solicitors and must have trust that their solicitors can properly maintain their client's accounts accurately. It is of vital importance that solicitors should be scrupulously diligent in keeping and maintaining proper accounts of such moneys. In this case, large sums of moneys had been entrusted to the respondent to hold on behalf of his clients, and he failed or neglected to keep proper accounts of such moneys. These were serious breaches of the rules. Where rules relating to accounts are breached, disciplinary action is warranted under s 72(3) or s 83(2)(j) of the Act. In our opinion, such contravention of the rules by the respondent amounted to grossly improper conduct in the discharge of his professional duty.

In relation to the second charge, the respondent's conduct was deplorable. He misappropriated large sums of money from the client's account for his own purposes, with scant regard for the interests of his clients. He made no restitution. Not only that, he had absconded. This is a clear case of fraudulent and grossly improper conduct on the part of the respondent in the discharge of his professional duty.

The appropriate penalty

We now turn to the question of penalty. Under s 83(1) of the Act, upon due cause being shown, the court may strike an advocate and solicitor off the roll, suspend the advocate and solicitor from practice for any period not exceeding five years or censure the advocate and solicitor. The principles for imposing such penalties are clear and settled and have been stated and reiterated, time and again in many recent cases: see [Law Society of Singapore v Heng Guan Hong Geoffrey \[2000\] 1 SLR 361](#), [Law Society of Singapore v Ng Chee Sing \[2000\] 2 SLR 165](#), and [Law Society of Singapore v Amdad Hussein Lawrence \[2000\] 4 SLR 88](#).

It is trite law that where a solicitor has acted dishonestly, the court will order that he be struck off the roll. In the present case, the respondent failed to discharge his professional duties with any degree of integrity and trustworthiness whatsoever. He neglected to keep proper accounts. He wilfully misappropriated his clients' moneys for his own use. His conduct was dishonest and dishonourable. In these circumstances, there was only one order we could make and did make: that was to strike the respondent off the roll of advocates and solicitors of the Supreme Court of

Singapore.

Outcome:

Order accordingly.

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