

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003 (WA)
LEGAL PRACTITIONERS ACT 1893 (WA)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and DE PARDO [2007] WASAT 211

MEMBER : JUSTICE M L BARKER (PRESIDENT)
MR D R PARRY (SENIOR MEMBER)
MS D DEAN (MEMBER)

DELIVERED : 24 AUGUST 2007

FILE NO/S : VR 55 of 2007
VR 56 of 2007

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

NINO ANTHONY DE PARDO
Respondent

Catchwords:

Professions - Legal practice - Illegal conduct - Unsatisfactory conduct - Dishonesty - Fraudulent conduct - Reference to Supreme Court (full bench) - Recommendation practitioner's name be struck off the Roll of Practitioners

Legislation:

Legal Practice Act 2003 (WA), s 185(1), s 185(2), s 185(3)
Legal Practitioners Act 1993 (WA), s 29A(2)

State Administrative Tribunal 2004 (WA), s 87(2)

Result:

Findings of illegal and unsatisfactory conduct.

Reference to Supreme Court (full bench) with recommendation that the practitioners name is struck off the Roll of Practitioners.

Suspension of practitioners right to practice pending resolution of proceedings in Supreme Court (full bench).

Practitioner ordered to pay Committee's costs of proceedings in Tribunal.

Category: B

Representation:

Counsel:

Applicant : Ms G Roberts
Respondent : J A Bougher

Solicitors:

Applicant : Legal Practitioners Complaints Committee
Respondent : J A Bougher

Case(s) referred to in decision(s):

Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119
Medical Board of Western Australia and Roberman [2005] WASAT 81(S)
Paridis v Settlement Agents Supervisory Board [2007] WASCA 97

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The parties, in particular the practitioner, consented to the Tribunal making findings that the practitioner was guilty of illegal conduct and unsatisfactory conduct and that the Tribunal should refer these findings to the Supreme Court (full bench) so that the Court could consider the recommendation of the Tribunal that the practitioner's name be struck off the Roll of Practitioners.

2 The Tribunal made consequential orders that the practitioner be suspended from practice pending the determination of the Supreme Court (full bench) and that the practitioner pay the costs of the Legal Practitioners Complaints Committee in the proceedings in the Tribunal fixed in the sum of \$2,600 within 30 days.

Issue

3 The principal issue in each proceeding, VR 55 of 2007 and VR 56 of 2007, is whether the Tribunal should make an order that a report be transmitted to the Supreme Court (full bench) with a recommendation that the practitioner be struck off the Roll of Practitioners.

4 A further issue is whether pending the determination of the Supreme Court (full bench), in the event that the Tribunal orders the report be transmitted, there should be an order immediately suspending the practitioner from practice.

5 The final issue is whether an order for costs should be made in these proceedings against the practitioner.

Tribunal's findings on conduct and penalty

6 In VR 55 of 2007, the Committee alleges that the practitioner was guilty of illegal conduct in that on 28 October 2003 at Perth he directed an officer of the Commonwealth Services Delivery Agency (Centrelink) that aged pension payments payable for the sole benefit of Renato De Pardo, his father, were to be paid into a bank account operated by El Nino Developments Pty Ltd, with the intention of dishonestly causing a loss to a Commonwealth entity, namely, the amount of \$17,328.09 from Centrelink.

7 In VR 56 of 2007 the Committee alleges that the practitioner was guilty of unsatisfactory conduct by illegal conduct in that between

30 March 2005 and 3 August 2005 at Perth he, by a deception, namely by completing and signing a Sale of Property Questionnaire form using his late father's forged handwriting and signature and lodging that form with Centrelink, dishonestly obtained property belonging to Centrelink, namely money transfers in the amount of \$4,857.82, for El Nino Developments Pty Ltd with the intention of depriving Centrelink of the said property.

8 In these proceedings, the parties, in particular the practitioner, acknowledging these allegations, consent to the Tribunal making the following order:

The Tribunal finds the practitioner guilty:

- (1) In VR 55 of 2007 of one count of illegal conduct pursuant to s 29A of the *Legal Practitioners Act 1893* (WA).
- (2) In VR 56 of 2007 of one count of unsatisfactory conduct by illegal conduct pursuant to s 185(1) of the *Legal Practice Act 2003* (WA).

9 The Tribunal finds that such an order should be made.

The question of penalty

10 As the Committee in written submissions on penalty and costs submits, the practitioner's conduct was of the most serious nature:

- the practitioner knowingly received \$22,000 of public money which he knew he was not entitled to;
- the practitioner re-directed the periodic payments by Centrelink to his own company's bank account;
- the practitioner forged his father's handwriting and signature to secure ongoing payments of public monies he knew he was not entitled to receive;
- the conduct (hence the dishonesty) continued for nearly two years;
- during that period the practitioner received the periodic payments of the pension. The offending may be characterised as a continuing series of acts of dishonesty; and

- the fraudulent conduct only ceased when Centrelink discovered the fraud.

11 The Committee submits that, having regard to the findings of the Tribunal, made by consent, and the facts relating to the conduct of the practitioner, there is no alternative but that the Tribunal transmit a report to the Supreme Court (full bench) so that the court can consider removing the practitioner's name from the Roll of Practitioners.

12 By letter of the solicitor and counsel for the practitioner to the Tribunal dated 17 August 2007, the Tribunal has been advised there is "no opposition to the orders being sought", save as to the amount of costs to be awarded.

13 In the Tribunal's view, there is little doubt that the Tribunal must transmit a report to the Supreme Court (full bench) so that the Court can consider whether the practitioner's name should be struck from the Roll of Practitioners.

14 The conduct of the practitioner is utterly inimical to the maintenance of professional standards in the legal profession. A lawyer who acts dishonestly and fraudulently in the manner that this practitioner has acted, cannot claim to be a fit and proper person to practise law. If practitioners who conduct themselves in this way are permitted to continue in the practice of the law, the public's confidence that lawyers they consult maintain high standards of honesty and integrity would be completely undermined.

15 The disciplinary powers of this Tribunal and the Supreme Court in relation to legal practitioners are designed to ensure that the highest professional standards are maintained. The precedent decisions of the Supreme Court and other Australian courts in this regard are consistent, as they are numerous: see, for example, the recent decision of *Legal Practitioners Complaints Committee v McKerlie* [2007] WASC 119 at [7] - [9] per Martin CJ.

16 In these circumstances, the Tribunal considers it is appropriate to make the following orders:

1. A report be transmitted to the Supreme Court (full bench) in respect of VR 55 of 2007 under s 29A(2) of the *Legal Practitioners Act 1893* (WA) and in respect of VR 56 of 2007 under s 185(2) of the *Legal Practice Act 2003* (WA), with a recommendation that the practitioner be

struck off the Roll of Practitioners. These reasons for decision will constitute that report.

2. Pending the determination of the Supreme Court (full bench), the practitioner is suspended from practice under s 29A(2)(a)(i) of the *Legal Practitioners Act 1893* and s 185(3)(a) of the *Legal Practice Act 2003*.

17 As to the question of costs, which were opposed by the practitioner, the Committee is entitled, in circumstances such as these, to have an order for costs made in its favour under s 87(2) of the *State Administrative Tribunal Act 2004* (WA). The affidavit of Gael Louise Roberts sworn 9 August 2007 outlines the legal work done, including by counsel engaged by the Committee in respect of the conduct of the proceedings in the Tribunal. The Tribunal is satisfied that the work done by the Committee's counsel, as well as a sum of \$675 costs incurred by the Committee on account of the work done by legal practitioners employed by the Committee, are reasonable. The Committee maintain proceedings such as these in the public interest and are ordinarily entitled to their reasonable costs in bringing and maintaining the proceedings in the Tribunal: see *Medical Board of Western Australia and Roberman* [2005] WASAT 81(S) at [30]; referred to in *Paridis v Settlement Agents Supervisory Board* [2007] WASCA 97 at [35].

18 The Tribunal will together with its report forward to the Supreme Court (full bench) the following documents:

1. application in VR 55 of 2007;
2. application in VR 56 of 2007;
3. affidavit of Gael Louise Roberts sworn 26 April 2007;
4. Statement of Agreed Facts filed in the Tribunal on 3 August 2007;
5. Book of Agreed Documents filed in the Tribunal on 9 August 2007;
6. Minute of Consent Orders filed in the Tribunal on 3 August 2007;
7. outline of submissions on penalty and costs on behalf of the Legal Practitioners Complaints Committee filed in the Tribunal on 9 August 2007; and

8. letter of JA Bougher on behalf of the practitioner filed in the Tribunal on 21 August 2007.

Conclusion and Order

19 For the reasons set out above, the Tribunal makes the following findings and orders:

1. In VR 55 of 2007 the practitioner is guilty of one count of illegal conduct pursuant to s 29A of the *Legal Practitioners Act 1893* (WA).
2. In VR 56 of 2007 the practitioner is guilty of one count of unsatisfactory conduct by illegal conduct pursuant to s 185(1) of the *Legal Practice Act 2003* (WA).
3. A report be transmitted to the Supreme Court (full bench) in respect of VR 55 of 2007 under s 29A(2) of the *Legal Practitioners Act 1893* and in respect of VR 56 of 2007 under s 185(2) of the *Legal Practice Act 2003*, with a recommendation that the practitioner be struck off the Roll of Practitioners. These reasons for decision constitute that report.
4. Pending the determination of the Supreme Court (full bench), the practitioner is suspended from practice under s 29A(2)(a)(i) of the *Legal Practitioners Act 1893* and s 185(3)(a) of the *Legal Practice Act 2003*.
5. The practitioner pay the costs of the Legal Practitioners Complaints Committee in these proceedings fixed in the sum of \$2,600 within 30 days.
6. This report is to be transmitted with the following documents:
 1. application in VR 55 of 2007;
 2. application in VR 56 of 2007;
 3. affidavit of Gael Louise Roberts sworn 26 April 2007;
 4. Statement of Agreed Facts filed in the Tribunal on 3 August 2007;

5. Book of Agreed Documents filed in the Tribunal on 9 August 2007;
6. Minute of Consent Orders filed in the Tribunal on 3 August 2007;
7. outline of submissions on penalty and costs on behalf of the Legal Practitioners Complaints Committee filed in the Tribunal on 9 August 2007; and
8. letter of JA Bougher on behalf of the practitioner filed in the Tribunal on 21 August 2007.

I certify that this and the preceding [19] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE M L BARKER, PRESIDENT