

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Rimmer* [2019] QCAT 44

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
MARGARET FAITH RIMMER
(respondent)

APPLICATION NO/S: OCR185-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 11 March 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Hon Peter Lyons QC, Judicial Member

Assisted by:

Dr John de Groot

Mr Keith Revell

ORDERS:

- 1. It is recommended that the name of the respondent be removed from the local Roll;**
- 2. The respondent is to pay the applicant's costs of and incidental to the application to be assessed on the standard basis.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent dishonestly applied trust funds – where respondent provided a false document to conceal the dishonest application of the funds - where respondent dishonestly applied funds in her capacity as enduring power of attorney for personal and financial matters – where respondent provided to client and police false explanation and documentation for the sums which had been misapplied – where respondent was convicted on pleas of guilty of two counts of dishonestly applying trust property and two counts of dishonestly applying property subject to a direction or a condition – where respondent pleaded guilty to professional misconduct – whether to recommend

that the name of the respondent be removed from the Roll of practitioners

Legal Profession Act 2007 (Qld), s 9, s 419

Allinson v General Council of Medical Education and Registration [1894] 1 QB 750

Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66

Legal Services Commissioner v CBD [2012] QCA 69

Watts v Legal Services Commissioner [2016] QCA 224

REPRESENTATION:

Applicant: Legal Services Commission

Respondent: Self-represented

APPEARANCES:

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*.

REASONS FOR DECISION

- [1] On 6 February 2017 the respondent was convicted on her pleas of guilty of two counts of dishonestly applying trust property, and two counts of dishonestly applying property subject to a direction or condition (described, when the defendant pleaded guilty, as two counts of fraud as an agent). On the basis of those offences, the applicant has brought a discipline application against the respondent. His ultimate contention is that the conduct of the respondent should be characterised as professional misconduct; and an order should be made recommending the removal of the respondent's name from the local Roll of legal practitioners.

The material

- [2] The applicant has relied upon the Verdict and Judgment Record of the convictions, together with the agreed Schedule of Facts tendered at the sentence, the transcript of the sentencing submissions, and the transcript of the sentencing remarks of Jones DCJ. These documents were exhibited to an affidavit which was itself attached to the discipline application.
- [3] The respondent has filed a response to the discipline application. In it, she stated that she pleaded guilty to professional misconduct, and did not intend to be present at the hearing. She asked for the matter to be dealt with on the papers. She also stated that she did not wish any further distress and embarrassment to be caused to other members of her family.
- [4] The respondent has not filed any further material or submissions. Since the Tribunal is not bound by the rules of evidence (and in any event, in light of the respondent's approach to the matter) it is appropriate for the Tribunal to act on the material relied upon by the applicant, and to accept that it establishes the facts put before the sentencing court. That material forms the basis of the factual matters identified in what follows, with reference to the counts on the indictment.

The counts on the indictment

- [5] The respondent was the principal of the law firm, Maleny Law. Count 1 relates to the management of the estate of a deceased client of the practice, Ms Mary Elizabeth Smith, who died in August 2010. Moneys from the estate were placed in the practice's trust account. Of those monies, \$28,366.36 was unaccounted for. The Schedule of Facts recorded that the respondent was to be sentenced on the basis that she applied that sum to her own use, or to the use of others. The material thus establishes that the respondent dishonestly applied trust funds in that amount.
- [6] The second count relates to the administration of the estate of Blanche Isabel Nelson, who died in May 2013. Estate funds were held in the practice's trust account. A Trust Account Statement dated 30 September 2014 and found on the practice's file for the estate, recorded transactions in relation to the estate, including the payment of \$11,000 as executor's commission to I Nelson. Ms I Nelson was one of two co-executrices of the will, but no such payment was made to her. Another Trust Account Statement dated 10 November 2014 was sent to the other co-executrix. It was almost identical to the earlier statement, save that it omitted the payment of executor's commission; and it recorded a deposit (described as the "Comsec funds") in an amount \$11,000 less than the actual deposit. The sum of \$11,000 remains unaccounted for. The Schedule of Facts recorded that the respondent was to be sentenced on the basis that she applied that sum to her own use. The material thus establishes that the respondent dishonestly applied trust funds in that amount. She also provided a false document to conceal the dishonest application of the funds.
- [7] Count 3 relates to the assets of Ms Mary Elizabeth Gryspeerdt, who was aged 69 and 70 at the time of the respondent's offending. The respondent was Ms Gryspeerdt's solicitor, and in November 2013, the respondent became Ms Gryspeerdt's attorney pursuant to an enduring power of attorney for personal and financial matters. The Schedule of Facts records that the respondent subsequently withdrew various sums from Ms Gryspeerdt's bank accounts without her knowledge or authority (which should be understood as specific authority for the withdrawals), and deposited them to the account of a business with which the respondent was associated. The sums totalled \$405,000. The Schedule of Facts recorded that the respondent was to be sentenced on the basis that she applied that sum to her own use, or to the use of others. The material thus establishes that the respondent, in her capacity as an agent for Ms Gryspeerdt, dishonestly applied funds in that amount.
- [8] In fact, \$20,000 was used to return monies to the trust account of Ms Nelson. Another \$210,000 was used to return monies to the trust account for the estate of Brian Keith Durran, and in turn part of this sum was used to pay fees and costs for the practice.
- [9] Of the sum the subject of this count, the respondent has repaid \$151,239 to Ms Gryspeerdt.
- [10] In the latter part of 2014 the respondent gave to Ms Gryspeerdt, and on one occasion to the police, false explanations for the sums which had been misapplied, providing documents intended (falsely) to establish that various sums of money had been lent to other persons who remained indebted to her, and in one case that the loan was secured by a mortgage.

- [11] Ms Dorothy Gladys Tucker was a client of the respondent, and in 2001 had appointed the respondent (and the respondent's sister, who was Ms Tucker's daughter-in-law) as her attorney under an enduring power of attorney for personal and financial matters. Between July and October 2014 the respondent withdrew and dishonestly misapplied sums totalling \$136,560 from Ms Tucker's bank account, without her knowledge. Between August 2014 and December 2014 the respondent also withdrew from Ms Tucker's cash and shares portfolio, sums totalling \$340,950, and deposited them to the trust conducting the business with which she was associated. The Schedule of Facts recorded that the respondent was to be sentenced on the basis that she applied the sums from the bank account to her own use, or to the use of others. While the Schedule of Facts does not contain a similar statement in relation to the monies from the portfolio, the same conclusion should be reached. Thus while the monies taken from Ms Tucker did not come from a trust fund, they were taken by means of a breach of the fiduciary obligations which the respondent owed to Ms Tucker, and were dishonestly applied by her in her capacity as Ms Tucker's agent.
- [12] At various times, the respondent gave false explanations about some of the funds misappropriated from Ms Tucker.
- [13] In November and December 2014, the respondent is said in the Schedule to have restored sums totalling \$209,050 to (or to the account of) Ms Tucker. However, of this sum, \$180,000 came from the trust account of the practice, and is not treated in the Schedule as in fact affecting the amount outstanding, said to be \$377,510. There being no suggestion that this approach is incorrect, it should be accepted. It is clearly the basis on which the respondent was sentenced, at a time when she was represented by Counsel.
- [14] In summary, therefore, the respondent misappropriated a total of \$890,612.82; of which \$690,323.82 has not been repaid.

Characterisation of the respondent's conduct

- [15] The applicant contended that the respondent's conduct should be characterised as professional misconduct by reference to the definition in s 419(1)(a) of *Legal Profession Act 2007 (Qld) (LP Act)*. The real vice in the respondent's conduct was the dishonest abuse of her position as a trustee, and as an agent subject to fiduciary obligations. Her misconduct does not relate to matters of competence and diligence. This submission should not be accepted.
- [16] The applicant also contended that the respondent's conduct would justify a finding that the applicant was not a fit and proper person to engage in legal practice, and accordingly was professional misconduct as defined in s 419(1)(b) of the *Legal Profession Act 2007 (Qld) (LP Act)*. Under s 419(2), for determining whether a legal practitioner is a fit and proper person to engage in legal practice, regard may be had to the suitability matters, which are identified in s 9. The applicant contended (albeit when discussing sanctions) that the relevant matter was the convictions, relying on s 9(1)(d). It may be accepted that the conduct the subject of the convictions demonstrates that the respondent was not a fit and proper person to engage in legal practice, and accordingly that her conduct should be characterised as professional misconduct.

[17] The applicant also contended that the respondent's conduct should be characterised as professional misconduct by reference to the *Allinson* test.¹ There can be no doubt that the respondent's conduct would reasonably be regarded as disgraceful or dishonourable by her professional colleagues of good repute and competency. It is therefore professional misconduct by reference to that test. As mentioned, the respondent accepts this characterisation of her conduct.

Orders to be made

[18] The applicant submitted that the respondent is not a fit and proper person to engage in legal practice, by reason of the conduct already described; and accordingly the Tribunal should recommend that her name be removed from the Roll of legal practitioners. He also submitted that the probability is that the respondent is permanently unfit to engage in legal practice. In support of that submission, the applicant relied upon the following:

- (a) the misconduct extended over a three-year period;
- (b) the respondent's conduct was deliberately misleading and dishonest;
- (c) the conduct involved misappropriating money from vulnerable clients or clients whose money she had control over by virtue of her role as their solicitor, abusing and taking advantage of her position of trust;
- (d) the total of the money misappropriated was over \$860,000 and of that only around \$200,000 was returned to the clients;
- (e) by the very nature of the allegations particularised in the discipline application, dishonesty is alleged. It is supported by the charge as the respondent was convicted of offences under the Criminal Code (Qld), namely four counts of fraud, where dishonesty was alleged in the particulars of the charge;
- (f) the conduct of the respondent resulted in the respondent misappropriating over \$860,000 over the charge period. From one client she misappropriated \$405,000, and sought to repay some of it (\$151,239) from the funds of another client; and
- (g) the seriousness of the respondent's conduct is reflected in the period of imprisonment imposed upon her.

[19] The Tribunal can recommend the removal of a practitioner's name from the Roll only if it is satisfied that the probability is that the practitioner is permanently unfit to engage in legal practice.² That question is to be determined at the date of the hearing of the application.³

[20] The material raises a number of matters which might be considered in the respondent's favour, when dealing with the applicant's submission. They include the respondent's previously unblemished life and professional career (extending over 40 years); her good

¹ See *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750; and the discussion in Dal Pont, *Lawyers' Professional Responsibility* (Lawbook Co, 6th ed, 2017), [23.85].

² *Watts v Legal Services Commissioner* [2016] QCA 224 at [46].

³ Compare *Legal Services Commissioner v CBD* [2012] QCA 69 at [9]; *Watts* at [38], [47]; *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66 at [20].

work in the community; her co-operation with the administration of justice from a relatively early stage.

- [21] Potentially more significant might be the respondent's mental state at the time of the misconduct, and the role played by Sifrol, a medication apparently prescribed for her in 2008.⁴ These matters are referred to in a report by a psychiatrist, Dr Schramm, tendered on the sentence, and referred to in the sentencing submissions and the Judge's sentencing remarks.
- [22] However, the respondent has not placed any reliance on any of these matters. The report of Dr Schramm has not been tendered. The applicant has not had the opportunity to cross-examine him, nor to consider whether other evidence might be called in relation to them. There is no reason to think that the respondent, in deciding what course to take in relation to the application, is suffering from any mental condition which might adversely affect her ability to make a sound judgment.⁵ In those circumstances, it is not appropriate to consider these matters when determining what order should be made. In any event, the matters other than the respondent's mental health, and possibly the effect of her medication, would be unlikely to have any real bearing on the determination of appropriate orders.
- [23] It follows that, on the basis of the respondent's conduct, and the finding that she was not a fit and proper person to engage in legal practice, and in the absence of any significant countervailing matter, the Tribunal should find that the likelihood is that she remains permanently unfit to engage in legal practice; and should recommend that her name be removed from the Roll of practitioners.
- [24] The applicant also sought his costs of the discipline application. Under s 462 of the LP Act, the Tribunal is required to make such an order unless it is satisfied that exceptional circumstances exist. None has been suggested. Accordingly the applicant should have an order in his favour for costs.

Conclusion

- [25] The following orders should be made:
- (a) The Tribunal recommends that the name of the respondent, Margaret Faith Rimmer, be removed from the local Roll of legal practitioners;
 - (b) The respondent is to pay the applicant's costs of and incidental to the discipline application, to be assessed on the standard basis.

⁴ Compare *Watts*.

⁵ If she were, it might be necessary to consider whether the Tribunal should take some action under s 28 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).