

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Hartvigsen* [2021] QCAT 319

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

ALISON MARGARET HARTVIGSEN
(respondent)

APPLICATION NO/S: OCR043-21

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 31 August 2021 (*ex tempore*)

HEARING DATE: 31 August 2021

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President
Assisted by:
Mr Michael Heiner
Ms Patrice McKay

ORDERS:

- 1. In respect of each of Charges 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, there is a finding that the Respondent engaged in professional misconduct.**
- 2. The Tribunal recommends that the name of the Respondent, Alison Margaret Hartvigsen, be removed from the Roll of Legal Practitioners in Queensland.**
- 3. The Respondent shall pay the Applicant's standard costs of and incidental to the discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where respondent a sole practitioner – where applicant filed discipline application in the Tribunal against respondent – where discipline application contained ten charges – where respondent does not admit allegations contained in charges – where respondent has otherwise filed no material in response – whether the respondent's conduct ought be

characterised as unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where respondent dishonestly disbursed money from firm’s trust account to general account – where respondent dishonestly applied money to own use – where respondent prepared false trust account ledgers – where applicant filed discipline application in the Tribunal – whether the respondent engaged in unsatisfactory professional conduct or professional misconduct – whether name of the respondent should be removed from the Roll

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLIGENCE AND DELAY – where respondent acted for client in deceased estate – where respondent delayed taking necessary steps to obtain grant of probate – where respondent acted for clients in property matter transaction – where respondent failed to deliver necessary body corporate forms to clients – where respondent failed to provide necessary cheques – where respondent demonstrated a lack of communication – where respondent failed to respond to section 444(3) *Legal Profession Act* notices – whether the respondent engaged in unsatisfactory professional conduct or professional misconduct – whether name of the respondent should be removed from the Roll

Legal Profession Act 2007 (Qld), s 443

**APPEARANCES &
REPRESENTATION:**

Applicant: D Holliday QC, instructed by Legal Services Commissioner
Respondent: B Cohen (solicitor), instructed by Bartley Cohen

REASONS FOR DECISION

- [1] By this discipline application brought under the *Legal Profession Act 2007 (Qld)* (“LPA”), the Applicant, the Legal Services Commissioner, has brought a total of ten charges against the Respondent, Alison Margaret Hartvigsen. In summary, those charges are:
- (a) Three charges of the Respondent dishonestly dispersing a total of \$119,632.44 from the trust account of her firm to its general account – Charges 1, 2 and 4.

- (b) One charge of dishonestly applying money in the sum of \$8,995 to her own use – Charge 7.
 - (c) One charge of engaging in conduct amounting to unsatisfactory professional conduct or professional misconduct by her dishonest or reckless conduct relating to the retainer of Ms Hoolahan – Charge 5.
 - (d) Five charges of breaching s 443(3) of the LPA – Charges 3, 6, 8, 9 and 10.
- [2] The Respondent has not put on any material in opposition to the charges. The Respondent's only material was filing a formal response in which she did not admit the allegations made in the discipline application, and further claimed privilege against self-incrimination.
- [3] The Applicant has filed a series of affidavits by the Applicant's investigators, by Queensland Law Society ("QLS") officers, and also by the clients directly affected by the Respondent's conduct. The Tribunal has reviewed those affidavits and is satisfied to the requisite standard that each and every one of the allegations made in the discipline application has been proven to the requisite standard.

The charges

- [4] The Respondent was admitted to practice in Queensland on 29 January 2008. During the time the subject of the charges, the Respondent was a sole practitioner practising under the name "AMH Lawyers".
- [5] On 29 November 2018, the QLS appointed officers as supervisors of the trust account of AMH Lawyers. On 22 February 2019, the Respondent's practising certificate was cancelled. On 26 February 2019, the QLS appointed a receiver of the regulated property of AMH Lawyers.
- [6] In terms of the conduct which is the subject of the charges, and given the way in which the matter has proceeded, the factual circumstances can be dealt with briefly.
- [7] Charge 1 is a charge of dishonest transfer of moneys from a trust account. In April 2018, a Ms Sharpe engaged the Respondent to act on her behalf in the purchase of a particular property at Surfers Paradise. In the course of acting for Ms Sharpe, the Respondent's firm asked for Ms Sharpe to pay a sum of money into the firm's trust account to be disbursed for, amongst other things, stamp duty and registration fees.
- [8] The sum of money was paid into the trust account. The purchase of the property was settled on 28 May 2018. The money that was supposed to be applied to stamp duty and registration fees was not, however, used for that purpose. Rather, an entry was made in the trust account ledger which falsely recorded that some \$2,525 was paid to the Office of State Revenue ("OSR") on 11 May 2018, and around \$724 was paid to the Department of Natural Resources and Mines on 19 May 2018.
- [9] In fact, both of those sums were paid to the Respondent's general account. Subsequent investigations revealed that the property had not been transferred to Ms Sharpe after settlement. Ms Sharpe consequently made a successful claim against the fidelity fund in the sum of \$3,244, as well as a sum to compensate for other disbursements.
- [10] It is quite clear on the uncontested material that the Respondent dishonestly disbursed moneys from the trust account to the general account. Charge 1 is made out.

- [11] In respect of Charge 2, in May 2018 a Mr Coughlan engaged the Respondent on his behalf in respect of the purchase of a property at Peregrin Beach. Mr Coughlan was asked to pay moneys into the Respondent's trust account to enable settlement to proceed. On 5 June 2018, he caused a sum in excess of \$1.5 million to be paid into her trust account. That was credited in the trust account as being moneys received from the client for settlement.
- [12] On 5 June 2018, the amount of \$68,512 was disbursed from the trust account to the firm's general account. A false trust account ledger statement was prepared which purported to record that the money had been paid to the OSR in the amount of \$68,512. In similar pursuit of the dishonest application of the funds, the settlement statement which was subsequently prepared purported to record that the \$68,512 had been paid to the OSR.
- [13] Settlement of the property occurred on 29 June 2018. The client followed up enquiring about the payment of the transfer duty but was effectively passed off by the Respondent. Subsequent searches revealed that the transfer duty had not in fact been paid, and a title search of the property showed the vendor was still the registered owner.
- [14] The client purchaser then arranged for a caveat to be placed over the property. He made a claim on the Fidelity Guarantee Fund in February 2019. Even into 2019, the vendor remained the registered proprietor of the property, and continued to receive rates and utilities notices. Ultimately, in May 2019, a decision was made to reimburse Mr Coughlan for amounts of money, including the misappropriated sum of \$68,512. The transfer duty was then able to be made, and the formal requirements of transfer registration able to be effected.
- [15] It is clear on the material that Charge 2 is made out.
- [16] Charge 3 concerns a breach of s 443(3) of the LPA. In short, the Respondent was given formal notices under the LPA to respond to queries concerning her conduct in respect of Mr Coughlan's matter. The Respondent did not provide any proper response to the notices that had been given under s 443.
- [17] There is no doubt that the Respondent breached the obligation under s 443 as particularised under Charge 3.
- [18] Charge 4 is another charge of dishonest transfer of moneys from trust. That concerned the Respondent's conduct of a deceased estate. In the course of acting for the executors of the estate, the Respondent was retained to apply for probate and administer the estate of Ms Jobson. In the course of so doing, the Respondent wrote to a fund manager asking that an investment account held by the deceased with the fund be closed, and the proceeds of that account be paid to the Respondent's trust account. That account was closed on 18 April 2018, and \$47,876.44 was paid to the Respondent's trust account. The firm's trust account ledger falsely records that the sum was received into the trust account and paid to the client on 26 April 2018. In fact, the money was paid into the firm's general account and not to the clients.
- [19] The Respondent did not inform the clients that the investment account had been closed or the proceeds had been paid into her trust account. Ultimately, the clients made a successful claim on the fidelity fund and were reimbursed for the misappropriated

sum of \$47,876.44, plus interest as well as costs. It is clear on the material that Charge 4 is made out.

- [20] Charge 5 concerns the manner in which the Respondent conducted herself in handling the deceased estate. In particular, the Respondent delayed taking the necessary steps to obtain a grant of probate in respect of the deceased estate.
- [21] The evidence discloses that, from August 2018 and for a number of months, the complainant, Ms Hoolahan, made repeated and increasingly concerned enquiries with the Respondent's office as to the progress of obtaining the grant of probate. No satisfactory response was received by Ms Hoolahan in respect of the inordinate inaction by the Respondent's firm in attending to obtaining the grant of probate.
- [22] It is quite clear on the material that the Respondent simply failed to provide legal services of a standard of reasonableness which might be expected by clients in the circumstances, and this amounted to conduct which certainly fell short of the standards of competence and diligence that a member of the public should be entitled to expect.
- [23] Charge 6 is another charge of the Respondent breaching s 443(3) of the LPA. That charge arises out of the Respondent's failure to respond to a written notice issued by the Applicant for the Respondent to provide an explanation for her conduct, or lack of conduct, in respect of acting for Ms Hoolahan in the matter referred to above. The Respondent failed to respond to the notice given under s 443. Clearly, Charge 6 is made out.
- [24] Charge 7 is a charge of the Respondent dishonestly applying money to her own use.
- [25] In November 2018, a Mr Whitfield engaged the Respondent to act on his behalf in the purchase of a property at Marcoola. As is normal practice in conveyances, the Respondent asked the client to deposit moneys into the firm's account for the payment of stamp duty. The Respondent nominated a particular numbered bank account for the purposes of that payment by the client on 30 November 2018. The client paid the requested sum of \$9,005 into the nominated bank account.
- [26] However, the bank account which had been nominated by the Respondent, and into which the client unwittingly paid the money, was not the respondent's trust account but was another account which was held by the Respondent in her name trading as AMH Lawyers. Regardless of which particular account it was paid into, it is clear that it was not the Respondent's firm's trust account as it should have been. In addition to this, the Respondent did not pay stamp duty to the OSR in respect of the conveyance.
- [27] Ultimately, a decision was made by the QLS to reimburse the complainant in the sum of \$8,995 for the stamp duty that needed to be paid, plus interest. It is clear that the dishonest conduct alleged under Charge 7 has been made out.
- [28] Charge 8 is another charge of the Respondent breaching s 443(3) of the LPA. That arose out of the circumstances of the Respondent acting for a Ms Hanna and a Ms Cooling. The clients had engaged the Respondent in relation to the purchase of a property at Thornside which settled on 3 August 2018.
- [29] Ms Hanna and Ms Cooling complained to the Applicant that the Respondent had:

- (a) failed to forward to them the necessary body corporate change forms;
 - (b) not provided the body corporate and the Redland Shire Council with cheques which ought to have been paid to those bodies; and
 - (c) demonstrated a lack of communication.
- [30] In December 2018 and following, the Applicant communicated with the Respondent seeking formal responses to these complaints despite having received the requisite notices under s 443 of the LPA. The Respondent did not respond and clearly breached her obligations under s 443.
- [31] I note, in passing, that Ms Hanna and Ms Cooling subsequently made a claim on the fidelity fund in respect of the mishandling of cheques.
- [32] Charge 9 is another charge of the Respondent having breached s 443(3) of the LPA. In August 2019 and following, the Applicant made a number of enquiries of the Respondent for her to provide information in connection with her practice. The Respondent failed to respond and, thereby, breached s 443.
- [33] Charge 10 concerns another breach of s 443 of the LPA. The Applicant received a complaint in February 2019 from a Mr Lofkin. Arising out of that complaint, the Applicant made formal enquiries of the Respondent, with requests ultimately made formally under the LPA, for the Respondent to provide information and respond substantively to the complaints. The Respondent failed to respond to the Applicant's formal request for information, and thereby breached s 443 of the LPA.
- [34] The Tribunal finds that each of the ten charges have been established to the requisite standard. Characterisation of these charges can be dealt with briefly.
- [35] The charges which have been established concerning dishonest conduct by the Respondent, particularly in terms of the misappropriation of client money, warrant findings that the Respondent engaged in professional misconduct. There can be no argument to the contrary on such a finding.
- [36] In relation to the Respondent's failures to respond to formal requests for information, this Tribunal has repeatedly emphasised the need for practitioners to understand that it is a fundamental obligation to engage appropriately with the profession's regulators. A failure to do so is a serious matter. The other element in this case is that the Respondent's conduct was marked by repetition and persistence in failing properly to engage with the professional regulator. Accordingly, in respect of each of the charges of a failure to comply with s 443 of the LPA, there will be a finding of professional misconduct.
- [37] Therefore, in summary, the Tribunal finds on each of the ten charges brought against her, the Respondent has engaged in professional misconduct.

Sanction

- [38] In terms of sanction, there is little that needs to be said. Honesty and trustworthiness are central to the life of every legal practitioner. Those qualities are particularly relevant to the trust placed by clients in practitioners to properly deal with moneys entrusted to the care of legal practitioners.

- [39] In this case, the material demonstrates that the Respondent engaged in repeated acts of dishonesty whereby she simply misappropriated money which had been entrusted to her for use in connection with her client's transactions or, in one case, which had been received as part of a deceased estate, and applied that money to her own use.
- [40] The Respondent, as already noted, has not put on any material and has claimed privilege against self-incrimination. The Respondent is perfectly entitled to adopt that approach to dealing with the matter. One of the consequences of that, however, is that there is no material before the Tribunal to indicate any insight, remorse, or rehabilitation on the part of the Respondent.
- [41] There is, therefore, no basis for the Tribunal to think other than that this practitioner is likely to be permanently unfit for practice. In those circumstances, the Respondent should be struck off.
- [42] For the reasons set out above, the Tribunal makes the following orders:
1. In respect of each of Charges 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, there is a finding that the Respondent engaged in professional misconduct.
 2. The Tribunal recommends that the name of the Respondent, Alison Margaret Hartvigsen, be removed from the Roll of Legal Practitioners in Queensland.
 3. The Respondent shall pay the Applicant's standard costs of and incidental to the discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.