

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Tay* [2019] QCAT 46

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
MELVIN POH ONN TAY
(respondent)

APPLICATION NO/S: OCR235-16

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 26 February 2019

HEARING DATE: 26 February 2019

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Ms Megan Mahon
Dr Margaret Steinberg AM

ORDERS:

- 1. It is recommended that the name of Melvin Poh Onn Tay be removed from the Roll of Legal Practitioners of Queensland;**
- 2. The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed as if the matter were proceeding in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where respondent disbursed trust money without authority – where the respondent was convicted of a serious offence – where respondent expressly admits the charges and facts pleaded in respect of the charges – where respondent consents to the orders proposed by applicant – whether the respondent committed unsatisfactory professional conduct or professional misconduct – whether to recommend the name of the respondent be removed from the Roll of practitioners

Legal Profession Act 2007 (Qld), s 249, s 452

APPEARANCES &
REPRESENTATION:

Applicant: M Nicolson, instructed by Legal Services Commissioner

Respondent: M J Lawrence, instructed by Irish Bentley Lawyers

REASONS FOR DECISION

- [1] By its amended application made under s 452 of the *Legal Profession Act 2007* (Qld) (“LPA”), the applicant, Legal Services Commissioner, has stated and particularised two charges against the respondent, Melvin Poh Onn Tay. Charge 1 is the count of disbursement of trust money without authority, in breach of s 249 of the LPA. The second charge is one count of the respondent having been convicted for a serious offence.
- [2] The amended application particularises seven separate occasions of misuse of trust moneys by the respondent. The conviction which is the subject of charge 2 was the respondent’s conviction on 8 March 2018 on his own plea of guilty of one count of aggravated fraud. That offence arose out of the trust account defalcations which are the subject of charge 1 now before the Tribunal.
- [3] The Tribunal can be brief in these reasons. By his counsel today, the respondent has expressly admitted the two charges and the facts pleaded and relied on in respect of each of those charges. Moreover, the respondent has now, in Exhibit 1, provided written consent to the Tribunal making the orders which are sought in this proceeding by the applicant, those orders being, in short, a recommendation that the name of the respondent be struck from the roll and that the respondent pay the applicant’s costs assessed on the Supreme Court basis.
- [4] In those circumstances, it is sufficient for the Tribunal to note briefly the circumstances which underlay this disciplinary application, being that the respondent dishonestly applied moneys which had been deposited into his trust account on seven different occasions. The total amount misapplied was some \$93,900. True it is that this money was paid back prior to his conduct being detected, but nevertheless, there is no doubt that he dishonestly availed himself of client’s money which had been deposited into his trust account.
- [5] The respondent was born in August of 1977. The respondent was admitted to practice and, at the relevant times, was practicing on his own account under an eponymous firm name. Following a trust account investigation by the Queensland Law Society, when the respondent’s fraudulent activity was discovered, his practicing certificate was cancelled on 21 January 2014. He has not held a practicing certificate since.
- [6] As I have already noted, he pleaded guilty before the District Court to one count of aggravated fraud in connection with the matters which are the subject of charge 1. The respondent has filed an affidavit in which he gives some brief personal history. He now resides in Sydney with his wife and children. He says that he opened his own law practice in 2006 and operated that practice until it was placed into receivership in 2014. In 2015, he was declared bankrupt and was discharged from bankruptcy after the three-year term.

- [7] He says that he has tried to seek employment but has been unsuccessful. He tried to obtain a Real Estate Certificate of Registration, but has discovered that it is not possible for a person convicted of financial crimes to be registered as a real estate agent. He says that he is currently facing financial hardship with little prospects of employment.
- [8] The Tribunal has also had regard to a report by Mr Stoker, a psychologist, who assessed the respondent in March of 2018, and at that time expressed the opinion that the respondent was suffering from a major depressive disorder, resulting from financial hardship over a number of years, marital conflict, loss of respect within the Chinese community in Brisbane, loss of his career as a lawyer, remorse, regret and embarrassment regarding the criminal charges, as well as chronic financial distress from 2003 until 2014.
- [9] It would appear, from the charges which have now been admitted, that the respondent's financial distress arose, in no small part, from his gambling habits. At least some of the instances of trust account defalcation arose as a consequence of the respondent having recourse to trust moneys for the purposes of funding his gambling habit. In any event, as I say, the respondent has accepted all of the facts underlying the charges and has accepted the inevitable outcome of his having committed these grave breaches of trust.
- [10] In terms of characterising the conduct, it is clear beyond doubt that the respondent has engaged in professional misconduct. This Tribunal has, on previous occasion, noted the sacrosanct quality of trust moneys. At the heart of the solicitor client relationship is the essential quality of fidelity: clients must be able to trust their solicitors unquestioningly. Without that trust and without the fidelity displayed by solicitors in respect of safeguarding property entrusted to them, the relationship is nothing more than a freewheeling commercial or mercantile relationship, and that is fundamentally contrary to the notion of professionalism.
- [11] Having found that the respondent engaged in professional misconduct, the question then goes to the appropriate sanction to be imposed.
- [12] Again, this Tribunal has repeatedly noted the seriousness of conduct such as that engaged in by this respondent, and the fact that this sort of conduct actually points to unfitness for practice. The Tribunal needs to be satisfied, when considering whether or not to recommend striking a person's name from the roll, that the circumstances are such that the respondent is probably permanently unfit to practice. That is clearly made out in the present case.
- [13] Nothing has been put before the Tribunal to persuade the Tribunal in any way that the respondent is now, or at any time in the future, will be a person who will be fit to practice law as a member of the profession. Again, that arises from the nature of the defalcations committed by the respondent and the inevitable taint on his character, which is demonstrated by his having engaged in those activities. In those circumstances, the Tribunal accedes to the submission made by the applicant, and consented to by the respondent, that there should be a recommendation that the respondent's name be removed from the roll.

[14] As already noted, the respondent has consented to the Tribunal making an appropriate costs order in the circumstances.

[15] Accordingly, the Tribunal makes the following orders:

1. it is recommended that the name of Melvin Poh Onn Tay be removed from the Roll of Legal Practitioners of Queensland;
2. the respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed as if the matter were proceeding the Supreme Court of Queensland.