

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Sullivan* [2018] QCAT
423

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
KEITH NICHOLAS LINEDALE SULLIVAN
(respondent)

APPLICATION NO/S:

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 29 November 2018

HEARING DATE: 29 November 2018

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Dr Margaret Steinberg

Mr Scott Anderson

ORDERS:

- 1. It is recommended that the Respondent's name be removed from the roll of practitioners.**
- 2. The Respondent shall pay the Applicant's costs of and incidental to this proceeding, such costs to be assessed as if the matter were a proceeding in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where the Respondent arranged for forged invoices to be paid to his wife's bank account – where the Respondent permitted clients files to be charged by a business belonging to his wife for work which was not done – where the Respondent caused payments to be made to his wife without disclosing he was using his wife's services – where the evidence was unchallenged – where there was no appearance by the Respondent – where it was submitted the conduct amounted to professional misconduct – whether the solicitor should be removed from the roll of practitioners

Legal Profession Act 2007, s 452

Attorney-General v Bax [1999] 2 Qd R 9APPEARANCES &
REPRESENTATION:

Applicant: B J Power instructed by the Legal Services Commission
Respondent: No appearance

REASONS FOR DECISION

- [1] This is a discipline application brought by the Applicant, the Legal Services Commissioner, against Keith Nicholas Linedale Sullivan pursuant to s 452 of the *Legal Profession Act 2007* (“the Act”). The Applicant contends that the Respondent is guilty of professional misconduct.
- [2] I will shortly outline the relevant facts giving rise to the three charges preferred by the Applicant against the Respondent. I note expressly that, in setting out the background to this matter and the factual context of the Respondent’s offending, I have had regard to, and rely on, the unchallenged evidence which has been put before the Tribunal. That evidence, including an independent investigation of financial matters, is evidence which properly forms the basis for the findings of fact which I am about to recount. It is, as I have already noted, unchallenged evidence.
- [3] The onus rests on the Commissioner to prove the charges against the Respondent even in the Respondent’s absence. I find that the evidence which has been placed before the Tribunal constitutes ample proof of the matters relied on by the Commissioner and of the facts which I shall recount in some detail shortly.
- [4] I also note that there has been no appearance today by the Respondent. He was informed of today’s hearing. He, apparently, has chosen not to appear. There is no surprise in that. He has not at any time, or in any way, contested the charges preferred in the discipline application. Nor has he challenged in any way the facts which are made out in the evidence adduced by the Legal Services Commissioner. In a letter from his former solicitors dated 4 May 2018 to the Applicant, the Respondent, through his solicitors advised:
- Mr Sullivan has instructed us to advise the Tribunal that he does not wish to take part in these proceedings or to be heard in respect of them. He does not propose to appear or have us appear on his behalf. He does not wish to be served with any material.
- [5] So it is consistent with that early expression that there has been no appearance today by the Respondent. Notwithstanding that, the Tribunal will proceed on the basis of the evidence which has been put before it by the Applicant.
- [6] The relevant conduct occurred between 2011 and 2014. During that period the Respondent was employed as a solicitor with McInnes Wilson. He practised in the field of medical negligence litigation. In the course of that employment it was appropriate for him to engage medico-legal experts and to engage outside

organisations to prepare summaries of clients' medical records for the purposes of litigation.

- [7] Between 12 April 2011 and 29 January 2014 the Respondent made, or caused to be made, payments to his wife without disclosing that he was using his wife's services and purporting that those payments were proper payments for work done on files. Investigations revealed that in many cases the payments were not proper payments for work done on the files.
- [8] The payments which were made to the Respondent's wife fell into two categories. First, there were payments to the Respondent's wife's account based on invoicing rendered by a person called 'Kaye Moreton' who falsely purported to be a speech pathologist at the Westmead Private Hospital and had used a fake ABN or the ABN of another business. Secondly, there were payments of invoices from a business called Medical Chronology, that being a business which belonged to the Respondent's wife and which purported to provide summaries of clients' medical records.
- [9] In some instances the work was done appropriately. In other instances, the work was not done at all, duplicate copies of summaries were paid for, or the work was done at a non-commercial rate. As I have already noted, the details of that conduct are set out in the evidence contained in the affidavit material including the investigation reports which have been adduced in evidence in this proceeding by the Applicant.
- [10] The first charge against the Respondent, in summary, is that he acted dishonestly by arranging for forged invoices to be paid to his wife's bank account. In summary, the conduct relied on in support of that charge is that over a 12 month period he dishonestly arranged for invoices, purporting to be from a speech pathologist, Kaye Moreton, to be paid by his firm knowing that the invoices were false. The payments were made into a bank account held by the Respondent's wife. Full details of that conduct are set out in both the investigation report and the independent financial report prepared by Mr Franklin. The invoices that were paid by the Respondent, or caused to be paid by the Respondent, were rendered in the name of Kaye Moreton who falsely purported to be a speech pathologist at the Westmead Private Hospital in New South Wales. Payments by the law firm to the Respondent's wife's account, based on these fraudulent invoices, totalled \$62,766, with that amount paid by the law firm to the Respondent's wife's account. And at a later time some \$8,635 of that amount was recovered from clients.
- [11] It was clear that this conduct was fundamentally dishonest and there can be no question that it constituted professional misconduct. It involved a substantial and consistent failure to maintain a reasonable standard of competence and diligence. It was not a single mistaken occurrence. On the contrary, it was a protracted period involving numerous transactions over an extended period of time. The conduct did not cease until it was detected. It involved many separate occasions of dishonesty and it was tantamount to the perpetration of an extended fraud on the Respondent's employer firm and on the clients of that firm. It is quite clear that charge 1 has been made out to the necessary standard and that the Respondent is guilty of professional misconduct as a consequence.
- [12] The second charge is that the Respondent acted dishonestly in permitting client files to be charged by a business belonging to the Respondent's wife for work which was

not done. Again, this patently dishonest conduct occurred over an extended period of some 30 months. In essence, he arranged for invoices from a business belonging to his wife to be paid by the firm knowing that those invoices were false. Again, full particulars of those false invoices and the payment of those false invoices are set out in detail in the evidence which has been adduced by the Applicant before this Tribunal.

- [13] On a number of occasions, between 30 June 2011 and 21 January 2014, the Respondent paid, or caused to be paid, invoices from a business called Medical Chronology. That business belonged to the Respondent's wife. It purported to provide summaries of client's medical records. However in the instances which are covered by charge 2, those summaries were not in fact provided. The amount of the improper payments to Medical Chronology, for instances where no summaries were provided, has been calculated by Mr Franklin as some \$73,371. Once again, this conduct was fundamentally dishonest. It was conduct which was not limited to an isolated incident. Rather, it occurred over a protracted period of time. Again, it did not cease until the dishonest conduct was detected, and resulted in an effective fraud of the employer firm of an amount in excess of \$70,000. Once again, there can be no question that this conduct constituted professional misconduct.
- [14] The third charge is that the Respondent acted in a way that compromised his integrity and professional independence by permitting work to be done on clients' files by a business belonging to his wife when this was not declared. On the evidence before the Tribunal, the Respondent, over a 30 month period, arranged for medical records to be summarised on files by a business belonging to his wife without having declared that connection between himself and her business to either his employer firm or the clients. Again, full evidence of those interactions, and the lack and complete absence of appropriate disclosure, is set out in the evidence before the Tribunal.
- [15] It is notable that the independent investigator has reported that the total amount paid to the Respondent's wife over the impugned period, was \$396,209.70. In addition, the quantum of improper payments to her business, Medical Chronology, was calculated at \$284,942.50. It needs to be noted, however, that that amount includes both instances where no summaries were provided, that is the conduct covered by the second charge, and also instances where the same summaries were paid for twice, and also other instances where summaries were done, but were charged at a non-commercial rate.
- [16] Leaving aside the eye watering quantum of the funds effectively diverted to the Respondent's wife by reason of his dishonest conduct, it is quite clear that the Respondent's failure to declare to his employer firm, and to his relevant clients, the relationship between him and the service provider - in this case his wife or his wife's business - was a fundamental failure to observe the appropriate and necessary standards of integrity and professional independence. Indeed, one struggles to find a more stark example of what could, in shorthand, be described as a patent conflict of interest, and the need for there to be appropriate disclosure of that conflict in the context of the provision of professional services.
- [17] The Respondent's failures, in this respect, were protracted. They were deliberate and they reaped significant material benefit for his wife. The Tribunal has no hesitation

in finding that charge 3 has been made out, and that his egregious conduct in this regard constitutes professional misconduct.

- [18] In summary then, each of charges 1, 2 and 3 have been proved by the Legal Services Commissioner to the requisite standard, and the finding in respect of each charge is that the Respondent has committed professional misconduct.
- [19] Turning then to the appropriate sanction in this matter, this is one of those cases where really not much needs to be said. It has repeatedly been said in this, and other similar professional disciplinary tribunals, that honesty and integrity lie at the heart of legal practice. As McPherson JA observed in *Attorney-General v Bax*:¹

Basic honesty is not a quality that is ordinarily acquired through experience or by lengthy practice of trying one's best to be honest. One is simply honest, or one is dishonest.

- [20] In this case, the Respondent has, by protracted and egregious acts of malfeasance in professional practice, demonstrated that he acted in patently dishonest fashion, and as such is not a fit and proper person to be, or to remain, on the roll of solicitors in this State. The Tribunal has concluded, therefore, that the appropriate decision is that it be recommended that the Respondent's name be removed from the roll of legal practitioners in the State of Queensland.
- [21] There will be the following decisions:
1. It is recommended that the Respondent's name be removed from the roll of practitioners.
 2. The Respondent shall pay the Applicant's costs of and incidental to this proceeding, such costs to be assessed as if the matter were a proceeding in the Supreme Court of Queensland.

¹ [1999] 2 Qd R 9.