

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003 (WA)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and SEGLER [2009] WASAT 91 (S)

MEMBER : JUSTICE J A CHANEY (PRESIDENT)
MR M ODES QC (SENIOR SESSIONAL MEMBER)
MS D DEAN (MEMBER)

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 11 MAY 2009

**SUPPLEMENTARY
DECISION** : 2 JULY 2009

FILE NO/S : VR 211 of 2008

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

MARTIN LEE SEGLER
Respondent

Catchwords:

Legal practitioners - Unprofessional conduct - Penalty

Legislation:

Legal Profession Act 2008 (WA), Pt 13 Div 10

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

Result:

Practitioner reprimanded, fined \$2,500 and ordered to pay costs

Category: B

Representation:

Counsel:

Applicant : Mr M Herron and Ms P Le Miere
Respondent : In Person

Solicitors:

Applicant : Law Complaints Officer
Respondent : Self-represented

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

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

1 In reasons delivered on 11 May 2009, we made a finding that Martin Lee Segler was guilty of unsatisfactory conduct by unprofessional conduct in sending a letter written on his letterhead containing threats and inappropriate and intimidating demands to an agent of a Mr Dortch who was a defendant in proceedings brought, in his personal capacity, by Mr Segler and his wife. We invited the parties to file and serve submissions on penalty following that finding.

2 The Legal Practitioners Complaints Committee submitted that the practitioner should be reprimanded and fined a sum of between \$5,000 and \$6,000, and ordered to pay costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA). It was submitted, and we accept, that the question of penalty falls to be determined under the provisions of Pt 13 Div 10 of the *Legal Profession Act 2008* (WA).

3 The Committee submits that a penalty should be imposed which indicates the seriousness with which the Tribunal views the practitioner's conduct. It submits that the practitioner has not acknowledged that his conduct was improper, and that his conduct during the hearing demonstrates a lack of understanding or acceptance as to the impropriety of his conduct. The Committee notes the Tribunal's conclusion that the threat made by the practitioner was made in order to cause distress to the practitioner's former landlord. It notes that the practitioner continually sought to justify his actions through the course of the proceedings.

4 The Committee also notes that the practitioner has been previously found guilty of unprofessional conduct on two occasions in relation to six separate matters. In 2001, the practitioner pleaded guilty to unprofessional conduct in that, in 1997, he applied trust moneys in payment of costs and disbursements and did not serve a bill of costs within 14 days of so doing. At the same time he pleaded guilty to an allegation of neglect and undue delay in relation to the same client. In 2003, Mr Segler was found guilty of three complaints in respect of another matter involving a failure to properly make a claim under the *Inheritance (Family Independants Provision) Act 1972* (WA) between 1997 and 1999.

5 In response, the practitioner submitted that he did understand and appreciate the impropriety of his conduct, and proffered an assurance to the Tribunal that he would not engage in similar conduct again. He

submits that the position is mitigated by the fact that Mr Dortch did not suffer any pecuniary loss, and that no evidence was adduced that Mr Dortch suffered any distress as a result of the threats. He also suggests that the position is mitigated by virtue of the fact that he and his wife were the aggrieved parties in relation to the dispute with Mr Dortch, that they were successful in the proceedings before the magistrate, and that the events giving rise to the proceedings before the magistrate caused inconvenience, discomfort and expense to Mr Segler and his wife.

6 The practitioner's submissions on penalty seem to us to continue the attempts made during the hearing to justify his actions. That is a matter of some concern. Whilst asserting an acceptance that his conduct was unprofessional, Mr Segler seems to suggest that because there was no evidence that his threats achieved their intended effect, and because he had been inconvenienced by his landlord, the unjustified demands and threats should not be treated as seriously as they otherwise might be. We are concerned that the practitioner continues to lack insight as to the nature of his conduct. In the circumstances, we do not accept the practitioner's submission that the appropriate penalty is a reprimand.

7 We agree with the Committee that the findings against the practitioner call for the imposition of a fine and a reprimand. In addition, the Committee seeks an order for payment of its costs fixed in the sum of \$4,500.

8 The practitioner made no submissions in relation to the claim for costs, and we accept that the practitioner should pay the Committee's costs, and that the amount claimed is reasonable.

9 Having regard to the amount of the costs payable by the practitioner, and the fact that the practitioner is to be reprimanded, we consider that the amount of the fine suggested by the Committee is more than is required to achieve the objectives of demonstrating the seriousness with which the Tribunal views the practitioner's conduct, and bringing home to him the need to avoid such conduct in the future. In our view, a fine in the sum of \$2,500 is appropriate.

10 Accordingly, the Tribunal will make the following orders:

Having regard to the Tribunal's find that, in or about the month of November 2007, the respondent was guilty of unsatisfactory conduct by unprofessional conduct in sending a letter written on his letterhead containing threats and inappropriate and

intimidating demands to one, Hayden Groves, as agent for Charles Dortch, it is ordered that:

1. The respondent be reprimanded.
2. The respondent do pay a fine to the Legal Practice Board in the sum of \$2,500 within 30 days.
3. The respondent do pay the applicant's costs of the proceedings fixed in the sum of \$4,500 within 30 days of the date of this order.

I certify that this and the preceding [10] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE J A CHANEY, PRESIDENT