

LEGAL PRACTICE COMMITTEE OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 004/10

Applicant: LEGAL SERVICES COMMISSIONER

AND

Respondent: JONATHON JAMES McCARTHY

ORDER

Before: Mr P Cooper (Chairperson), Mr M Conroy (Solicitor member), Ms P Frampton (Lay member)

Date: 8 December 2010

Basis for Judgement: Discipline Application filed on 11 November 2010

THE ORDER, FINDINGS AND REASONS OF THE COMMITTEE:

The committee gives leave to withdraw discipline application 004/09 filed by the applicant on 11 September 2009 against the respondent.

The respondent is a local practitioner within the meaning of section 6 of the *Legal Profession Act 2007*. He was admitted to practice as a solicitor of the Supreme Court of Queensland on 17 February 1976. The respondent was born on 22 February 1953 and is 57 years of age.

The Commission alleges that between 18 June and 4 August 2008, the respondent failed to reach or maintain a reasonable standard of competency and diligence in the conduct of a conveyance transaction on behalf of Steven Brewster. The respondent was acting for both Steven Brewster and Mr H. P. Downs. The respondent failed to

ORDER
Filed on behalf of the Applicant
Form 59rr661

Legal Services Commission
Level 25, 307 Queen Street
Brisbane Qld 4000
Telephone: (07) 3406 7737
Facsimile: (07) 3406 7749

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by
LEGAL PRACTICE COMMITTEE

MP

advise Mr Brewster that he was also acting for Mr Downs, and failed to get the Mr Brewster's written consent.

In the course of the conveyance, it became apparent that there was a statutory charge registered on the land for land tax. Additionally, it was established that the amount required to discharge the mortgage on the land exceeded the purchase price.

Part of the difficulty in the conveyance was the fact that the respondent was encountering difficulties with obtaining a correctly executed power of attorney from the vendor Mr Downs. This caused delays in getting details of the discharge figure required from the bank.

When the respondent became aware of the problem with the discharge of the mortgage he informed Mr Brewster that he would no longer act for him. However, the respondent elected to continue to act for the vendor Mr Downs.

It is the respondent's contention that his continuing to act for the vendor was an endeavour to ensure that the matter settled. Subsequently, the respondent ceased to act for the vendor. This action of the respondent, namely, continuing to act was done in the full knowledge that it was in breach of Rule 8 of the Legal Profession (Solicitors) rule 2007.

The committee finds that the conduct complained of amounts to unsatisfactory professional conduct and finds the respondent guilty of unsatisfactory professional conduct.

Factors taken into account with regard to penalty were:

- (a) the respondent cooperated with the Commission;
- (b) the respondent has not contested any of the material;
- (c) the respondent has not previously appeared before a disciplinary body.

Mr Brewster the purchaser has made submissions to the committee for compensation. The committee has considered those submissions.

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The committee orders:

1. The respondent pay a fine of \$1500 to the Legal Practitioners Interest on Trust Accounts Fund within seven days of today;
2. The respondent is publicly reprimanded which is hereby administered;
3. By agreement, the respondent to pay the applicant's costs fixed at \$1000.00 within seven days of today;
4. The respondent to pay to Mr Brewster the sum of \$3100 within 28days of today; and
5. This order be published on the committee's website.

P. Cooper
Chairperson

22-12-10
Date

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