

IN THE LEGAL PRACTITIONERS  
DISCIPLINARY TRIBUNAL

ACTION NOS. 9 of 2013 & 22 of 2013

IN THE MATTER OF:

THE LEGAL PRACTITIONERS ACT 1981

- and -

IN THE MATTER OF:

PATRIC GRAHAM ALDERMAN

REPORT OF THE DISCIPLINARY APPEALS TRIBUNAL

**Background**

1. Each proceeding is the subject of a charge of unprofessional conduct against Patric Graham Alderman ('the practitioner') pursuant to s82(2) of the *Legal Practitioners Act 1981* ('the Act'). Both charges were filed with the Tribunal on 10 October 2013.
2. Proceeding **no 9 of 2013** alleges that between 1 July 2008 to 31 January 2013 the practitioner in respect of four matters practised the profession of law whilst not being a holder of a practising certificate thereby breaching s21(1)(a) of the Act.
3. It is also alleged in this proceeding that the practitioner recklessly or carelessly mislead the Board when he advised the Board in 2009 that he had retired from legal practice and that he did not have the carriage of any further files, which statement was false.
4. Proceeding **no 22 of 2013** alleges (counts 1 and 2) against the practitioner that between November of 2009 and October of 2013 the practitioner failed without

reasonable excuse, to pay counsel fees due to two counsel, Mr James Telfer and Ms Elizabeth Mansfield.

5. It is alleged in count 3 that the practitioner failed to respond to a notice dated 24 June 2013 issued by the *Legal Practitioners Conduct Board* ('Conduct Board') pursuant to s76(4a) of the Act, which notice required him to provide to the Board a detailed report by 5.00 pm on 28 June 2013 regarding the complaint by Ms Mansfield about the non payment of her fees.
6. It is also alleged in count 4 that the practitioner knowingly, recklessly or carelessly mislead the Board in a letter dated 4 March 2013 in which he wrote that he had not acted for anyone in a professional capacity as a solicitor since retiring from the profession.

#### **Proceedings before the Tribunal**

7. The Conduct Board was represented by Mr K Tredrea of counsel. The practitioner was represented by Ms Frances Nelson QC of counsel.
8. The practitioner admitted in his Reply<sup>1</sup> filed on 20 July 2014 that the conduct alleged in proceeding No 9 of 2013 constituted unprofessional conduct when considered separately.
9. The practitioner admitted in respect of proceeding No 22 of 2013 in his Reply also filed on 30 July 2014 that the conduct alleged in the charge constituted unprofessional conduct considered separately and/or together.<sup>2</sup>
10. The parties tendered by agreement the Agreed Book of Documents which contained a Statement of Agreed Facts in respect of each charge.<sup>3</sup>
11. The parties by agreement clarified the following three matters relating to the two charges and the Replies in the two proceedings.

---

<sup>1</sup> Reply at [21]

<sup>2</sup> Reply at [15]

<sup>3</sup> Statement of Agreed Facts for proceeding No 9 of 2013 is at page 17 of the Agreed Book of Documents. The Statement of Agreed Facts for proceeding No 22 of 2013 is at page 34 of the Agreed Book of Documents.

- 11.1 First, in proceeding No 9 of 2013, senior counsel for the practitioner rectified the omission in the Reply regarding paragraph 3 of the charge by stating that paragraph 3 was now admitted by the practitioner.
- 11.2 Second, in proceeding No 22 of 2013 count 4 on page 26 of the Agreed Book of Documents had not been admitted in the Reply. That count was now admitted and is the subject of agreed fact in the Second Statement of Agreed Facts at page 37 paragraph 29.
- 11.3 Third, in proceeding No 9 of 2013, the practitioner had not admitted in his Reply paragraph 1.17 of the charge dealing with the *Triad Transport Pty Ltd v GN Freeman & BJ Freeman* matter. The practitioner in his Reply at paragraph 8 stated that he did not admit amongst other paragraphs the contents of paragraph 1.17 as he had no recollection of being involved in the *Triad Transport* matter and had no recollection of knowing the Freemans. The Conduct Board, however, submitted that based on the court record in evidence noting the practitioner's presence in court as acting for the relevant party at page 100 of the Agreed Book of Documents, the Tribunal should find the particulars noted in paragraph 1.17 of the charge made out. The Tribunal so finds.
12. Mr Tredrea on behalf of the Conduct Board emphasised in respect of the four matters involving the practitioner in practising the profession of law whilst not holding a practising certificate, the subject of the charge in proceeding no 9 of 2013 the following matters as reflective of the seriousness of the conduct in question: the duration, nature, and the number and nature of the breaches.<sup>4</sup> It was also rightly emphasised by the Board that an important consequence of acting without a practicing certificate is the lack of professional indemnity insurance which can have serious consequences for clients.
13. The Conduct Board also emphasised that the false statement of the practitioner to the Board that he had retired from legal practice, the subject of count 3 in proceeding no 9 of 2013 was of some significance to the deliberations of the board when it reprimanded the practitioner in July of 2009, as noted in paragraph 3.4.<sup>5</sup>

---

<sup>4</sup>Transcript of proceedings at page 8.

<sup>5</sup> Agreed Book of Documents at pages 105 and 106.

14. Senior counsel for the practitioner put the following facts in relation to the practitioner's personal circumstances. The practitioner will turn 77 in November of 2014. He was admitted to practice in 1962. He retired effectively from legal practice in 2008. He practised blamelessly throughout the whole period of his practice. He has served the legal community and the community generally in various capacities including on various Law Society bodies in order to assist the profession generally. Ms Nelson QC submitted that it was a "*tragedy that in the twilight of ... his practising years .... he should be faced with this situation*".<sup>6</sup>
15. She further submitted that no allegation had been made that the practitioner had raised any of the invoices for the work he had done which were the subject of charges or that he had profited from this work. She submitted that the only invoice that was raised was for reimbursement of photocopying costs in the Symons matter.<sup>7</sup>
16. In relation to the Symons matter, Ms Nelson QC submitted that the practitioner erroneously believed that he was helping a friend in a rather acrimonious and unpleasant case. In this case the practitioner assisted the court and the client in question who was unable to engage an alternative solicitor and legal aid was out of question. The practitioner was overwhelmed by sympathy for Symons and also believed that by assisting her he was also assisting the court.<sup>8</sup>
17. It was also submitted on behalf of the practitioner that there was no suggestion that the relevant legal work he performed was in any way incompetent or that the persons he assisted were in any way disadvantaged by reason of his assistance.<sup>9</sup> She accepted, however, that practising without a practising certificate meant that the clients did not have the protection of indemnity insurance.
18. It was submitted on behalf of the practitioner that his wife had died some years ago and that the only current source of income is an old age pension. He has no assets, and he lives in rental accommodation which someone who knows him is providing him with at a rental rate he can afford.<sup>10</sup>

---

<sup>6</sup> Transcript of proceedings page 14.

<sup>7</sup> Transcript of proceedings page 15.

<sup>8</sup> Transcript of proceedings page 15.

<sup>9</sup> Transcript of proceedings page 19.

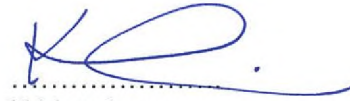
<sup>10</sup> Transcript of proceedings page 16.

19. The Conduct Board submitted that the Tribunal recommend pursuant to s82(6)(a)(v) of the Act that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court.

## Orders

20. This is an extremely sad case involving a senior practitioner with a largely unblemished record (with an exception of an instance referred to by the Conduct Board) who has served the legal community over a long period of time. Whilst no evidence was tendered at the hearing and the Tribunal was not asked to make any findings on the issue of whether the practitioner suffered from any mental issues related to his advancing age at the time of the alleged charges the Tribunal assumes on the basis of the limited observations of the practitioner during proceedings and the limited evidence before it that this is an issue on which evidence may be tendered in proceedings before the Supreme Court in order to assist the Court in its deliberations. This Tribunal has little choice but to make the findings/orders noted below given the seriousness of the conduct alleged, admissions made and the facts as found by the Tribunal.
21. The Tribunal makes the following findings and orders:
- 21.1 the two charges alleging unprofessional conduct in proceeding nos 9 and 22 of 2013 against the practitioner are made out;
- 21.2 the Tribunal recommends pursuant to s82(6)(a)(v) of the Act that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court; and
- 21.3 costs follow the event.

  
S J Maharaj QC  
Chairperson

  
K Lincoln

  
R Kennett

16  
..... September 2014