

# SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

## LEGAL PROFESSION CONDUCT COMMISSIONER v THOMAS

[2017] SASCF 159

### Judgment of The Full Court

(The Honourable Chief Justice Kourakis, The Honourable Justice Blue and The Honourable Justice Stanley)

5 December 2017

**PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT,  
UNFITNESS AND DISCIPLINE - DISCIPLINARY ORDERS - STRIKING  
OFF AND ANCILLARY ORDERS**

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND  
DISCIPLINE - PROFESSIONAL MISCONDUCT AND  
UNSATISFACTORY PROFESSIONAL CONDUCT - FALSIFICATION OF  
DOCUMENTS AND TRANSACTIONS**

Application by consent that the practitioner's name is struck from the Roll of Legal Practitioners.

The practitioner was appointed the attorney for, and the executor of the estate, of Ms H, who was a fellow parishioner. Shortly before and just after Ms H's death, the practitioner engaged in fraudulent misappropriation of assets to a net total of \$176,729.66. The practitioner also swore an Affidavit of Assets and Liabilities exhibiting a Statement of Assets and Liabilities which he falsified for the purpose of hiding his actions. The practitioner has pleaded guilty to 25 counts of aggravated theft and one count of perjury arising out of his conduct.

Held per Curiam:

1. The practitioner's name is struck off the Roll of Legal Practitioners.

*Legal Practitioners Act 1981 (SA) s 77J, s 89, referred to.*

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**Applicant: LEGAL PROFESSION CONDUCT COMMISSIONER      Solicitor: LEGAL PROFESSION  
CONDUCT COMMISSIONER**

**Respondent: STEVEN JOHN GARETH THOMAS      Solicitor: ILES SELLEY**

**Hearing Date/s:**

**File No/s: SCCIV-17-772**

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**LEGAL PROFESSION CONDUCT COMMISSIONER v THOMAS  
[2017] SASFC 159**

**Full Court: Kourakis CJ, Blue and Stanley JJ**

1 **THE COURT:** This is an application by the Legal Profession Conduct  
Commissioner (the Commissioner) that the name Steven John Gareth Thomas  
(the practitioner) be struck off the Roll of Legal Practitioners. The application is  
made with the practitioner's consent pursuant to ss 89(1) and 89(1b) of the *Legal  
Practitioners Act 1981* (SA) (the LPA) and rules 366 and 398 of the *Supreme  
Court Civil Rules 2006* (SA).

2 On 2 June 2017, the Commissioner determined that there was evidence that  
the practitioner had engaged in professional misconduct which could not be  
adequately dealt with by the Commissioner pursuant to s 77J of the LPA.

3 On 7 June 2017, the Commissioner wrote to the solicitors for the  
practitioner advising that disciplinary proceedings would be instituted and asking  
for the practitioner's consent to his name being struck off the Roll. The  
practitioner indicated that he would consent.

4 The application proceeds on the basis of the following facts.

**Background facts**

5 The practitioner was admitted to practice on 16 December 1991. At the time  
of the misconduct he was a member of the independent bar practising out of  
chambers in Adelaide. As a member of the independent bar the practitioner did  
not operate a trust account.

6 The practitioner surrendered his practicing certificate to the Law Society  
which was cancelled, pursuant to s 20AK of the LPA, with effect from  
6 April 2017.

**The professional misconduct**

7 In around 2006 the practitioner met Ms H through his Church. In 2013, the  
practitioner agreed to be appointed Ms H's attorney and executor. Ms H granted  
the practitioner an enduring power of attorney on 22 May 2013. Ms H's Will  
appointing the practitioner as executor was executed on 6 June 2013.

8 Around 13 January 2016, the practitioner gained online access to the bank  
accounts held by Ms H with the Commonwealth Bank of Australia (CBA) as  
Ms H's attorney.

9 Ms H died on 23 February 2016.

10 The practitioner instructed another legal practitioner, Miles Harper, to act for him in the administration of Ms H's estate. Mr Harper was responsible for preparing Ms H's Will and the enduring power of attorney granted to the practitioner. A grant of probate was made appointing the practitioner as executor of Ms H's estate.

11 On 29 March 2017, Mr Harper issued a summons in this Court seeking directions in relation to the administration of Ms H's estate (the application for directions). Mr Harper made the application in his capacity as trustee of estate monies held in his firm's trust account on behalf of the practitioner as executor of the estate of Ms H.

12 On 30 March 2017, this Court made orders restraining the practitioner from disposing of or dealing with any assets of Ms H's estate as well as restraining him from taking any step or exercising any further power as executor in relation to the estate until further order. The Court made further orders on 11 April 2017 including an order revoking the grant of probate issued to the practitioner in relation to Ms H's estate. On 1 May 2017 the Court made orders which enabled the administration of Ms H's estate to proceed with another beneficiary as administrator. On the same day, the practitioner agreed to indemnify Ms H's estate in relation to costs. Mr Harper's application for directions is still before this Court.

### **Fraudulent misappropriation**

13 At all material times, the practitioner had an everyday bank account with the CBA; a credit card account with American Express Australia; and a number of bank accounts with ANZ Bank.

14 At the time of her death, Ms H held the following bank accounts with the CBA:

<b>Description</b>	<b>Abbreviation</b>
Joint account with Mr H	Joint account
Cash investment account	CIA 1
Cash investment account	CIA 2
Complete access account	Access account
Mastercard Account	Mastercard account
Term Deposit	TD 1
Term Deposit	TD 2
Term Deposit	TD 3
Term Deposit	TD 4
Goalsaver account	Goalsaver account

15 The practitioner engaged in fraudulent misappropriation both in his capacity as attorney for Ms H and as her executor by making a number of unauthorised payments, transfers or withdrawals from her CBA accounts.

- 16 The practitioner paid the following amounts to his American Express account from Ms H's various CBA accounts.

<b>Date</b>	<b>Amount</b>	<b>CBA Source</b>	<b>Admitted by the practitioner</b>
28 Jan 2016	\$8,349.20	CIA 2	Yes
16 Feb 2016	\$7,700.00	CIA 2	Yes
23 Feb 2016	\$7,600.00	CIA 2	Yes
3 Apr 2016 (credited on 4 Apr 2016)	\$20,000.00	Goalsaver account	Yes
4 Jun 2016	\$8,772.46	Goalsaver account	Yes
3 Jun 2016	\$13,000.00	Access account	Yes
16 Jun 2016	\$2,000.00	CIA 2	Yes
11 Jul 2016	\$4,000.00	CIA 2	Yes
20 Jul 2016	\$5,806.00	CIA 2	Yes
<b>Total</b>	<b>\$77,277.66</b>		

- 17 The practitioner paid the following amounts to his own CBA account.

<b>Date</b>	<b>Amount</b>	<b>CBA Source</b>	<b>Admitted by the practitioner</b>
9 Feb 2016	\$1,020.00	CIA 2	Yes
16 Feb 2016	\$500.00	CIA 1	Yes
11 Mar 2016	\$4,200.00	CIA 2	Yes
7 Apr 2016	\$40,000.00	Goalsaver account	Yes
25 Apr 2016	\$7,700.00	CIA 1	Yes
<b>Total</b>	<b>\$53,420.00</b>		

- 18 On 8 July 2016 the practitioner also made a payment of \$882.00 from Ms H's CIA 2 account to his children's school to pay for school fees. That payment has been admitted by the practitioner.

- 19 On 11 April 2016, the practitioner withdrew \$300.00 cash from Ms H's CIA 1 account. How that money was used is not known, but the withdrawal was admitted by the practitioner.

- 20 The practitioner also made a number of improper payments directed to unknown recipients. Those payments were as follows:

<b>Date</b>	<b>Amount</b>	<b>CBA Source</b>	<b>Admitted by the practitioner</b>
12 Jul 2016	\$2,200.00	CIA 1	Yes
28 Jun 2016	\$200.00	Access Account	Yes
8 Jul 2016	\$2,000.00	CIA 2	Yes
30 Aug 2016	\$3,300.00	CIA 2	Yes

1 Sep 2016	\$2,200.00	CIA 2	Yes
<b>Total</b>	<b>\$9,900.00</b>		

21 On 8 and 9 September 2016 the practitioner advanced cash in the total sum of \$5,343.42 (inclusive of fees) from Ms H's Mastercard account. However, the practitioner repaid this amount from his own CBA Account on 16 November 2016.

22 The practitioner made payments to the Australian Taxation Office (the ATO) from Ms H's CIA 2 Account in part satisfaction of his own liabilities. The practitioner transferred to the ATO \$29,000.00 on 25 May 2016 and \$5,000.00 on 30 June 2016.

23 The practitioner also purportedly purchased a Toyota Camry from the estate for an agreed value of \$1,000.

24 The net total of the fraudulent or unauthorised transfers and withdrawals by the practitioner from Ms H's accounts is \$176,729.66. The practitioner repaid this amount to the estate of Ms H on 8 September 2017 after this action had been instituted by the Commissioner.

25 On or about 14 February 2017, the practitioner in his capacity as executor of Ms H's estate instructed Mr Harper to make an interim distribution to the residuary beneficiaries of the estate including a distribution of \$30,000 to Mr Bailey. The practitioner then borrowed money from Mr Bailey for his own personal use. On 17 February 2017, Mr Bailey deposited \$25,000 into one of the practitioner's ANZ Accounts. The practitioner then transferred that money to another ANZ Account and then used that money to pay \$23,746.06 to his American Express Account. On 8 September 2017 the practitioner repaid \$25,000 to Mr Bailey via Mr Harper. The practitioner and Mr Bailey dispute the circumstances surrounding Mr Bailey's loan to the practitioner. For the purpose of these proceedings, the Commissioner has not sought to resolve that dispute.

### **False affidavit**

26 On 3 May 2016 Mr Harper emailed to the practitioner a draft Statement of Assets and Liabilities of Ms H's estate. The Statement included references to the balances of Ms H's CBA accounts at the time of her death. The practitioner deliberately delayed in approving the Statement because, due to his fraudulent misappropriations, the balances as they stood would be inconsistent with the balances at the time that Ms H had died.

27 On about 12 October 2016, the practitioner altered the Statement of Assets and Liabilities that Mr Harper had previously provided to him. He did so to conceal the discrepancies between the accounts referred to above.

28 On 12 October 2016, the practitioner swore an Affidavit of Assets and Liabilities in relation to the estate of Ms H exhibiting the Statement of Assets and

Liabilities that he had amended. Mr Harper administered the oath. The Practitioner did not tell Mr Harper that he had altered the Statement and the Affidavit was filed in Court. A grant of probate was issued to the practitioner on the basis of the Affidavit on 1 November 2016.

29 On about 10 January 2017, the sum of \$654,211.47 was transferred by CBA from the accounts of Ms H to the trust account of Harper Davison Lawyers on the practitioner's instructions.

30 On 27 March 2017 the practitioner instructed Mr Harper to transfer the balance of the monies held in Harper Davison's trust account for the benefit of Ms H's estate to an account the practitioner had opened with the CBA. The practitioner gave this instruction because, by that time, he had been questioned by Mr Harper's assistant in relation to the estate's assets. The practitioner feared that his wrongdoing would be exposed. Following this instruction, Mr Harper issued the summons in the application for directions.

31 Since the practitioner's misconduct has been discovered, he has spent time as in-patient at the Royal Adelaide Hospital and at the Adelaide Clinic.

### **The criminal proceedings**

32 The practitioner engaged a solicitor in relation to this matter and to criminal charges laid against him. The practitioner's solicitor has deposed to the following further matters.

33 The practitioner, through his solicitor, contacted the Computer and Electronic Crimes Department of South Australia (SAPOL) on 14 May and 16 May 2017. At that time SAPOL had only conducted preliminary investigations. The practitioner offered to assist SAPOL and preferred to provide to them information prior to more extensive investigations in order to expedite the matter. The practitioner did so in full knowledge that it would incriminate him in the offending.

34 The practitioner and his solicitor attended SAPOL Headquarters on 8 June 2017 and made a number of disclosures to SAPOL which were recorded on video and audio. The practitioner's solicitor also provided SAPOL with copies of the correspondence he had with the Commissioner.

35 On 31 August 2017 the practitioner was charged with 25 counts of aggravated theft, one count of dishonest dealing with documents and one count of perjury.

36 The practitioner appeared on those charges in the Adelaide Magistrates Court on 27 October 2017. The practitioner pleaded guilty to 25 counts of aggravated theft and one count of perjury. He pleaded not guilty to one count of dishonest dealing with documents on the ground that it was duplicitous with the count of perjury. The guilty pleas have been formally recorded by the Court and

the practitioner has been remanded on continuing bail to appear in the Adelaide Magistrates Court for further declarations to be filed prior to the matter proceeding to sentence. The status of the charge of dishonest dealing with documents is still uncertain.

### **Conclusion**

37 The restitution made by the practitioner does not mitigate the need to protect the public. The gross breach of trust and dishonesty established by the above facts requires that an order be made striking the practitioner's name from the Roll of Legal Practitioners. The order of the Court is:

- 1 The practitioner's name is struck off the Roll of Legal Practitioners.