

Law Society of Singapore v Lim Stephen
[2006] SGHC 5

Case Number : OS 1311/2005, NM 86/2005
Decision Date : 17 January 2006
Tribunal/Court : High Court
Coram : Chao Hick Tin JA; Choo Han Teck J; Yong Pung How CJ
Counsel Name(s) : Zaheer Merchant (Madhavan Partnership) for the applicant; The respondent absent
Parties : Law Society of Singapore — Lim Stephen

Legal Profession – Professional conduct – Show cause action – Whether circumstances warranting an order for striking off existing – Whether mitigating factors existing – Section 83 and 94A(1) Legal Profession Act (Cap 161, 2001 Rev Ed)

17 January 2006

Choo Han Teck J (delivering the judgment of the court):

1 The respondent was admitted to the Bar as an advocate and solicitor in 1992 and was at all material times practising as the sole proprietor of the firm Stephen & Co (“the firm”). The firm was previously known as Lim & Partners. In 2005 the respondent was charged with 24 charges under s 409 of the Penal Code (Cap 224, 1985 Rev Ed) in relation to the criminal breach of trust of his clients’ money. On 14 July 2005, the Prosecution proceeded with six of those charges.

2 The facts and circumstances concerning the six charges may be summarised as follows. The respondent acted as solicitor for Oki Motor Workshop (“Oki”) and was instructed by Oki to claim damages on behalf of Oki’s customers whose vehicles were damaged by other vehicles. The respondent would, if necessary, and did from time to time, negotiate a global sum in settlement of the claims made. There was an agreement between Oki and the respondent which permitted the respondent to collect payments made, and from the funds received he would deduct his legal fees before paying the balance over to Oki. However, the respondent withheld all moneys paid to his firm in respect of the six charges, and, in breach of his agreement, the respondent did not make any payment whatsoever to Oki, and, instead, used the money for his firm’s expenses. A total of \$118,063.69 was thus misappropriated in respect of the six charges.

3 The respondent admitted the statement of facts relating to the six charges and pleaded guilty to all six charges. The remaining 18 charges were taken into consideration for purposes of sentencing. He was sentenced to a total of three years and six months’ imprisonment in respect of the six charges. The terms of imprisonment were ordered to take effect from 6 May 2005.

4 The Law Society of Singapore applied for an order that the respondent show cause why he should not be dealt with under ss 83 and 94A(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed). The application was granted by the High Court on 29 September 2005. The Law Society of Singapore appeared through its counsel, Mr Zaheer Merchant, before us at the show cause proceedings but the respondent was absent and not represented.

5 From a perusal of the record we are satisfied that the circumstances indicated that the respondent acted with a degree of dishonesty that warrants an order striking him off the roll of advocates and solicitors and disbarring him from practice henceforth. It is evident that the

respondent knew that it was wrong for him to use the money due to Oki to pay his firm's expenses. He negotiated the terms of the brief with his client (Oki), including the collection of compensation from third parties and the deduction of his fees from them. The respondent advanced in mitigation (in the criminal proceedings) the fact that the sum of money involved was not large, which is, to some extent, a subjective matter depending on the facts, and that he had rendered all co-operation to the police in their investigation of his conduct. In this case, there was nothing substantially in his favour by way of mitigation that merited a departure from the standard disciplinary action that this court has consistently upheld. The mitigating factors that might have been taken into account in the criminal proceedings in such cases can also be considered in the show cause proceedings, but at this stage, it must not be forgotten that the crucial issue is the commission of an act or several acts of dishonesty in which the solicitor's client's trust had been breached. At this point, we have to consider whether the mitigating factors sufficiently ameliorated the conduct such that a less severe form of disciplinary measure than striking him off the roll would be adequate. We are of the view that the amount was not only large but it was also misappropriated in a systematic fashion, which is to say, that it was not a one-off incident. Even one-off incidents might be equally serious, depending on the circumstances, but this was not a relevant issue in this case. The evidence appeared to be straightforward and overwhelming. Hence, we are of the view that his co-operation with the police was not a sufficient factor to weigh in his favour. As there were no other mitigating factors to be considered since the respondent did not appear, we were of the view that he should be struck off the roll of advocates and solicitors and did so accordingly.

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