Law Society of Singapore v Low Yong Sen
[2008] SGHC 170

Case Number : OS 352/2008, SUM 1565/2008

Decision Date : 08 October 2008

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Tan Jee Ming (Tan Jee Ming & Partners) and Srinivasan V N (Heng, Leong & Srinivasan) for the applicant; Respondent in person

Parties : Law Society of Singapore — Low Yong Sen

Legal Profession – Show cause action – Whether respondent was guilty of gross overcharging – Whether respondent was guilty of failure to disclose interest – Rules 26(a) and 38 Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) – Whether overcharging amounted to grossly improper conduct – Appropriate sanction for gross overcharging – Relevant circumstances to be taken into consideration

Words and Phrases – "An interest in any matter" – Rule 26(a) Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)

8 October 2008

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 The respondent, Low Yong Sen, is a lawyer of 15 years' standing, having been admitted to the Singapore Bar on 20 March 1993. A complaint was made against him by one Dr Rayman Gao Zhiqiang ("Dr Gao"), who alleged that the respondent had overcharged him in a conveyancing transaction. After the inquiry committee appointed by the Law Society of Singapore ("the Law Society") had issued its report, the Council of the Law Society referred the complaint for formal investigation by a disciplinary committee ("the DC"). The Law Society preferred four charges against the respondent before the DC, and the DC found the respondent guilty of two – the first and the fourth charges (see *The Law Society of Singapore v Low Yong Sen* [2008] SGDC 3 ("the DC's decision")). The Law Society then applied for an order for the respondent to show cause as to why he should not be dealt with pursuant to s 83 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") in respect of the two charges he was found guilty of by the DC. We heard the application on 30 July and 4 August 2008 and held that the respondent was only guilty of the first charge for which we imposed a punishment of six months' suspension from practice. We ruled that he was not guilty of the fourth charge. We now give our reasons.

Facts

2 The respondent was the sole proprietor of M/s Y S Low & Partners since 16 March 1995, focusing mainly on family law and corporate secretarial work. He was assisted in his practice by his brother, Mr Michael Low Pong Seng ("Mr Michael Low"), who was also his secretary. According to Mr Michael Low, he was formerly an accounts assistant. On 9 March 1995, he started a business called "High Business Services" ("HBS"), which rendered services relating to the incorporation of companies and accounting. He was the sole proprietor of HBS until 8 May 1998 when he apparently transferred the ownership of the business to two of his relatives, Low Ban Lai and Ho Nyuk Lan,

although he continued to run the business as its manager. The DC found that the purported change in ownership was merely cosmetic and that, in fact, Mr Michael Low continued to be the beneficial owner of HBS (see the DC's decision at [3]).

3 The respondent's firm was located at 101 Upper Cross Street #04-40 People's Park Centre, Singapore 058357. This was also the business address of HBS as registered with the Accounting and Corporate Regulatory Authority ("ACRA"), although Mr Michael Low claimed that this address was just the "registered" or mailing address of HBS and that he operated the business of HBS mainly from home (see the DC's decision at [4]).

4 In late 2005, Dr Gao and his wife, Mdm Li Pin ("Mdm Li"), engaged the respondent to act for them in relation to the purchase of a terrace house at 45 Verde Grove, Singapore 688577. The terrace house was purchased for $723,000, to be paid partly in cash and partly from funds in the Central Provident Fund ("CPF") accounts of Dr Gao and Mdm Li. By the respondent's own admission, this was the first private property transaction he had undertaken since 1997. It was also the respondent's evidence that he engaged a freelance conveyancing secretary called Mr Alan Tan Cheng Tee ("Mr Alan Tan") to assist him in his litigation work and to undertake title searches and legal requisitions in relation to conveyancing matters. There was also an arrangement between Mr Michael Low and Mr Alan Tan for the latter to use HBS as a vehicle to bill for his services.

5 For acting in this conveyance, the respondent rendered a bill dated 6 February 2006 to both Dr Gao and Mdm Li for a total sum of $27,990, made up of the following:

(a)Professional fees

(b)Disbursements

(i) Valuation report

(ii) Title, cause book, bankruptcy and writ of seizure and sale searches

(iii) Legal requisitions to eight government departments

(iv) Road/drainage interpretation plans

(v) Stamp fees

(vi) Lodgment fees

(vii) Transport, fax, telephone, photocopy charges and other incidentals

(c)Less: Payment to account

6 There was no dispute that there had been a miscalculation in the amount of stamp fees as stated on the bill. The correct formula for calculating the stamp fees payable was 3% of the sale price less $5,400. What occurred was that the respondent failed to deduct the $5,400. Upon this error being pointed out by the lawyers for the CPF Board, a sum of $5,321.70 ($5,400 less $78.30) was soon refunded by the respondent to Dr Gao and Mdm Li. Excluding the stamp fees payable on the purchase, the total sum of the other disbursements charged added up to $4,300.

7 Dr Gao was unhappy with the fees and disbursements charged by the respondent, as well as the $78.30 that had been deducted from the stamp fees refund. Being unable to resolve the issue with the respondent, he lodged a complaint with the Law Society on 27 February 2006, alleging that the respondent had agreed to charge a net fee of $2,000 for the conveyance (*ie*, inclusive of both professional fees and disbursements). Instead, the respondent had billed Dr Gao and Mdm Li $3,000 for professional fees and $4,300 for disbursements. They also said that, according to their own investigations, the respondent had overcharged them for the disbursements. Finally, Dr Gao expressed unhappiness at the fact that $78.30 had been deducted from the stamp fees refund as "handling fees".

8 The complaint was referred by the Law Society to an inquiry committee, in the course of which the respondent agreed to and did make a refund of $2,526.13 to Dr Gao and Mdm Li for disbursements that had been overcharged, although it was not clear how this sum was derived (see the DC's decision at [12]).

The four charges

9 Before the DC, the respondent faced the following four charges relating to:

(a) overcharging in relation to both the professional fees of $3,000 and the disbursements of $4,300;

(b) accepting instructions in a field of practice in which the respondent possessed insufficient knowledge, skill or experience to competently represent Dr Gao and Mdm Li in the transaction;

(c) delegating and relying on the opinion of an unauthorised person to advise the respondent on title, legal requisitions and other necessary searches; and

(d) acting in conflict of interest or, alternatively, failing to disclose to the clients that HBS was owned or operated by persons related to the respondent.

The respondent denied all the charges.

10 After considering the evidence and the arguments, the DC concluded that only the first and the fourth charges had been made out. It further determined that cause of sufficient gravity existed for disciplinary action to be taken against the respondent pursuant to s 83 of the LPA.

The first charge

11 The first charge read as follows:

You, Low Yong Sen of M/s Y S Low & Partners are charged that on or about 6 February 2006, at 101 Upper Cross Street #04-40 People's Park Centre, Singapore 058357, you did charge Mr Rayman Gao Zhiqiang and Madam Li Pin in acting for them in respect of the purchase and CPF application relating to a property situate at 45 Verde Grove, Singapore, for work done by you as [their] solicitor for a professional fee of S$3,000.00 and disbursements of S$4,300.00 as evidenced by your Bill No. YSL 2408/06, which fee and disbursements were far in excess of and disproportionate to what you were entitled to charge for the services you rendered and such overcharging by you amounts to grossly improper conduct in the discharge of your professional duty within the meaning of S83(2)(b) of the Legal Profession Act (Cap 161).

12 Although the Law Society did not articulate the charge as such, it was plain that it was proceeding under r 38 of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("PCR"), which reads:

Gross overcharging

38. An advocate and solicitor shall not render a bill (whether the bill is subject to taxation or otherwise) which amounts to such gross overcharging that will affect the integrity of the profession.

13 It was the Law Society's case initially that *both* the professional fees and the disbursements charged were excessive. However, the DC took the view that the Law Society had abandoned this ground in its closing submission, and, in any event, that the $3,000 charged by the respondent for professional fees did not constitute overcharging (see the DC's decision at [24]–[27]). Nonetheless, the Law Society maintained that the sum of $4,300 charged by the respondent for disbursements was far in excess and disproportionate to what the respondent was entitled to charge. According to the Law Society's expert witness, Mr Ernest Yogarajah Balasubramaniam ("Mr Balasubramaniam"), the fair amount chargeable by the respondent for the disbursements should have been around $1,385.62. The amounts charged and the fair amounts chargeable are summarised in the following table:

No	Item	Amount charged ($)	Fair amount ($)	Percentage overcharged
1	Valuation report	550.00	550.00	0%
2	Title, cause book, bankruptcy and writ of seizure and sale searches	850.00	471.50	80.28%
3	Legal requisitions	1,850.00	193.62	855.48%
4	Road interpretation plans	250.00	56.05	346.03%
5	Lodgment fees	450.00	64.45	598.21%

6	Transport, fax, telephone, photocopy charges and other incidentals	350.00	50.00	600%
Total disbursements		4,300.00	1,385.62	210.33%

14 The respondent did not dispute Mr Balasubramaniam's testimony and, on the face of the evidence, it was patently clear that the disbursements charged by the respondent were far in excess and disproportionate to what he was entitled to charge (see the DC's decision at [39]–[41]). However, the respondent claimed the disbursements charged were merely passed on from the bills that Mr Alan Tan had rendered to his firm, which were ostensibly for searches and requisitions and for submitting the application of Dr Gao and Mdm Li to the CPF online. This contention raised the following issue: Can a solicitor who did not benefit from the overcharging of disbursements, as the full sum was in fact and in good faith paid over to a third party, be nevertheless guilty of overcharging?

15 The DC appeared to take the view that a solicitor who did not so personally benefit from the overcharging could still be guilty of overcharging. In this regard, the DC's analysis (at [60] and [61]) bears closer examination:

> We propose to begin at the beginning, which is with the principle that a solicitor is to "charge fairly for work done". The ethical principle that underpins this norm of practice is that a solicitor should act honestly in the discharge of his retainer. This principle, like all other ethical principles or norms of practice, is meant to both protect the public and safeguard the integrity and repute of the legal profession.
>
> The principle ***can*** encompass a third party's disbursements that are charged by the solicitor to the client. *Clearly, the mere fact that the solicitor is passing on the third party's charges to the client does not mean that his conduct falls outside the ambit of his duty to act honestly in the discharge of his retainer. Even if he does not stand to directly benefit from the third party's charges he* ***may*** *be answerable for them.* It all depends on the circumstances.
>
> [emphasis added, emphasis in original in bold italics]

16 In our opinion, the above statement of the DC does not adequately distinguish between wrongful conduct and overcharging. While overcharging by a solicitor must necessarily constitute wrongful conduct, a solicitor's wrongful conduct need not entail overcharging. According to the DC, a solicitor has a duty to act honestly in the discharge of his retainer, and even where he does not stand to directly benefit from a third party's charges, he can be answerable for them. This proposition is in itself irrefutable, but the DC did not explain why the respondent's conduct should be characterised as overcharging. The incertitude of the DC's reasoning was further illustrated at [64]:

> *It follows therefore that the fact that the Respondent did not personally derive or expect to derive a benefit from the disbursements overcharged* – at least in so far as Items 2 to 5 are concerned – *does not necessarily mean that he cannot be guilty of grossly improper conduct.* [emphasis added]

17 In our opinion, the fact that the respondent was guilty of some improper conduct in this case did not mean that overcharging was necessarily an appropriate charge. Indeed, we leaned toward the view that for a solicitor to be guilty of overcharging, he had to derive some personal benefit of sorts from the inflated charges. However, we would refrain from positing a conclusive opinion on this issue

because, in any event, we found that the respondent had benefited personally from the excessive disbursements charged.

Respondent's personal benefit

18 Mr Michael Low and the respondent both claimed that the arrangement which the respondent made with Mr Alan Tan did not generate any extra revenue for HBS or, for that matter, the respondent. However, the DC found that Mr Michael Low *had* derived a benefit from the inflated disbursements (at [75] of the DC's decision):

> These features strongly suggest that at least Mr Michael Low expected to derive a benefit from the inflated disbursements that were billed to Dr Gao and Mdm Li. They also suggest that the bills were designed in such a manner as to give the appearance – in the event that they had to be disclosed to the clients – that the disbursements billed by the Respondent were properly supported and that they had been rendered by an entity that on the face of the bills had no connection to the Respondent.

19 The DC did not make a finding as to whether the respondent himself had benefited from the arrangement. In our view, this omission arose because of the manner in which the Law Society had presented its case to the DC and this is borne out from the following statement in the DC's decision (at [56]):

> Before we attempt to answer this question, we think it important to draw attention to the fact that it was *not* the Law Society's case that the Respondent stood to personally benefit (that is, he did not have a financial interest in Mr Alan Tan's charges) from his firm's arrangement with Mr Alan Tan. … ***[W]hile the Law Society was prepared to say that Mr Michael Low stood to benefit from the arrangement, it did not say the same of the Respondent***.
>
> [emphasis added in bold italics]

20 Nonetheless, the DC went on to emphasise (*ibid*):

> The Law Society *could* have advanced such a case [that the respondent had personally benefited] ***in view of the features of the arrangement that we will scrutinize later***.
>
> [emphasis added in bold italics]

21 It would thus, at this juncture, be apposite to quote the DC's observations on the arrangement between the respondent's firm, HBS and Mr Alan Tan (at [68]–[74]):

> 68 The first feature – and this is really by way of reiteration – is that HBS was owned and managed by a person related to the Respondent – his brother. Mr Michael Low beneficially owned and was also the person actually operating HBS. He also happened to be working for the Respondent as his secretary. Both the Respondent and Mr Michael Low gave evidence that the arrangement with Mr Alan Tan did not "generate any extra revenue for" HBS. Taken literally, this statement is false. What is meant, we think, is that it was not intended for HBS to receive the benefit of this revenue. Rather, it was intended for Mr Alan Tan – although it became clear in the course of the hearing that the Respondent has not in fact paid Mr Alan Tan.
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> 69 Second, HBS' place of business in ACRA's records was the address of the Respondent's firm and HBS was listed on a board outside the premises of the Respondent's firm among the other

companies and businesses that had their registered offices or places of business at the Respondent's office. Mr Low's evidence though was that he did not use the Respondent's office as his place of business – he said he operated from his home – but only used the Respondents' firm's address as the mailing address for HBS.

70 Third, HBS was used as the "billing vehicle" for the services ostensibly performed by Mr Alan Tan because, according to Mr Michael Low, Mr Alan Tan had no "business name". *There was no satisfactory explanation from Mr Michael Low for this arrangement given his evidence that Mr Alan Tan had told him that he had been providing his services to other law firms – and presumably therefore billing these firms in his own name.* Mr Michael Low also confirmed that he would not permit Mr Alan Tan to use HBS to bill any entity other than the Respondent's firm. In other words, it was only in billing for his services to the Respondent's firm that Mr Alan Tan used HBS.

71 Fourth, the bills rendered by HBS to the Respondent's firm all bore an address – 5001 Beach Road #03-73, Golden Mile Complex, Singapore 199588 – that was in fact the address of a karaoke pub owned by Mr Michael Low. *We could not understand Mr Low's explanation that the reason for using the karaoke pub's address as HBS' address on the bills rendered was for "segregation" of bills.*

72 Fifth, it was Mr Michael Low's evidence that the entire format of the bills from HBS was designed by Mr Alan Tan and that it was not in HBS's usual format. Further, there was in the top right-hand corner of the bills a description of the services ostensibly provided by HBS, which was as follows:

(Service Provider - Company searches & all legal searches

- Title searches & legal requisitions on property

- Lodgment of all applications to government departments (HDB, EDB, CID, CPF Board, MOM, ICA, etcs)

- Translation services

This seemed an unnecessary embellishment if the only purpose of this form was for billing the Respondent's firm.

73 Sixth, *certain information that should have [been] there in the searches and requisitions provided by Mr Alan Tan through HBS was not there. It did not contain the reference or identity of the person or entity that had done the searches and requisitions and information about the costs incurred. This information was deliberately omitted or blanked out.* This was established through the evidence of Mr Balasubramaniam.

74 Seventh, the Respondent refunded $2,526.13 to Dr Gao in the course of the proceedings before the Inquiry Committee apparently without any reference to Mr Alan Tan and, by his own admission, he has not paid the remainder of the disbursements to Mr Alan Tan. His explanation for this was that he was awaiting the outcome of these proceedings before reaching a settlement with Mr Alan Tan. It appeared to us that it was the Respondent who had the right of disposal or allocation over the disbursements paid by his clients. If the arrangement between his firm and

Mr Alan Tan was genuine, his firm's liability to pay Mr Alan Tan the agreed rates could not depend on these proceedings. From a contractual standpoint, the Respondent cannot purport to deduct what he has refunded to Dr [Gao] from what he had agreed to pay Mr Alan Tan.

[emphasis added]

22 These findings gave us the same "sense of grave disquiet" as they had the DC (see [67] of the DC's decision). In addition, we did not fail to notice that the one person who could have confirmed the respondent's version of events, Mr Alan Tan, was not called as a witness. Apart from the evidence of the respondent and his brother, there was nothing to corroborate their story regarding the arrangement with Mr Alan Tan on litigation matters and title searches and legal requisitions, and for the latter to use HBS to bill for the services. We were aware that Mr Alan Tan had filed a statutory declaration, but the DC correctly ruled that it was inadmissible because Mr Alan Tan had not been called to testify before the DC. In this regard, we would like to highlight the DC's remarks (at [45]):

There was in fact nothing to show that Mr Alan Tan had ever been involved in the matter but for the evidence of the Respondent and Mr Michael Low and the Statutory Declaration from Mr Alan Tan, which was inadmissible. Mr Michael Low said that the five bills from HBS to the Respondent's firm for the searches and requisitions were all signed by Mr Alan Tan with his permission – *although the signatures as they appear on these bills and Mr Alan Tan's Statutory Declaration are completely different*. [emphasis added]

23 Given the findings stated above, we were prepared to go further than the DC and conclude that the respondent had clearly benefited personally from the overcharging of disbursements attributed to Mr Alan Tan (relating to title searches, legal requisitions, road interpretation plans and lodgment fees: see Items 2 to 5 of the table at [13] above). It was plain to us that the so-called arrangement between the respondent, HBS and Mr Alan Tan was no more than a fig leaf meant to camouflage the fact that the respondent was benefiting from the inflated charges.

2 4 In any event, the respondent had evidently derived benefit from overcharging on the disbursements for transport, fax, telephone, photocopy charges and other incidentals (see Item 6 of the table at [13] above). According to the bill he rendered to Dr Gao and Mdm Li, these disbursements added up to $350. However, the only records that the respondent produced were several documents which he alleged related to transport charges paid to a certain "Wong Wong Choy", but there was no explanation as to who this person was. Moreover, those transport claims only added up to $180, leaving the other $170 charged by the respondent unaccounted for. The Conveyancing Practice Committee of the Law Society recommends a fee of $50 for such disbursements, and as the DC noted quite correctly (at [40]), the respondent provided no evidence to suggest that he had incurred any disbursements that would have entitled him to charge more than $50. In the circumstances, we could only conclude that the respondent had blatantly overcharged Dr Gao and Mdm Li for these miscellaneous disbursements, and had personally benefited from the excessive charges.

25 In the circumstances, we were satisfied, and agreed with the DC, that the respondent was guilty of gross overcharging. We will now explain why we, like the DC, thought that such overcharging could constitute grossly improper conduct. We recognised that not every instance of overcharging would constitute grossly improper conduct. In *Re Han Ngiap Juan* [1993] 2 SLR 81, the court of three judges constituted under the LPA stated (at 90, [34]):

Obviously not every case of overcharging will constitute grossly improper conduct. Inevitably

there will be some diversity of opinion as to what would or would not be correct in each case, and where the line ought to be drawn. The passages quoted from *Lau Liat Meng*'s case indicate clearly that the extent to which a client is overcharged is a very strong factor against an advocate and solicitor accused of overcharging amounting to grossly improper conduct under s 83(2)(b) of the [LPA], and this must be so whether or not there is any allegation of dishonesty or deceit. In our view, while this may not be a conclusive factor, it is a very material one, and the more a client is overcharged, the harder it will be for the advocate and solicitor concerned to persuade the court that the explanation he gives does justify the overcharge.

26 In *Re Lau Liat Meng* [1992] 2 SLR 203, where the solicitor charged a client a fee of $22,454.60 (reduced from $23,604.60) to obtain letters of administration in respect of assets worth $68,394, the disciplinary committee of the Law Society found that the records on the solicitor's time sheet as to some attendances had been exaggerated. The court of three judges imposed a punishment of three months' suspension for the misconduct, and stated the legal position as follows (at 208, [15]):

> As to the position in law, s 83(2)(b) of the [LPA] requires 'grossly improper conduct in the discharge of his professional duty …'. This, according to Darling J in *Re A Solicitor* [[1912] 1 KB 302], requires an act 'which could be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency'. The intention to deceive was not an essential element: *Rajasooria v Disciplinary Committee* [[1955] 1 WLR 405]. In that case, Pretheroe CJ accepted the definition of 'grossly improper conduct' as 'conduct which is dishonourable to the appellant as a man and dishonourable in his profession'.

27 In the circumstances of this case, and having particular regard to the fact that subterfuge was resorted to by the respondent to avoid questions being raised, it was our view that, although in numerical terms the amount overcharged was not very large (but high in percentage terms), the overcharging here nevertheless constituted grossly improper conduct. In this regard, the following observations of the DC (at [73]) show the extent to which the respondent would go to cover his tracks:

> Sixth, certain information that should have [been] there in the searches and requisitions provided by Mr Alan Tan through HBS was not there. It did not contain the reference or identity of the person or entity that had done the searches and requisitions and information about the costs incurred. This information was deliberately omitted or blanked out. This was established through the evidence of Mr Balasubramaniam.

The fourth charge

28 We now move on to the fourth charge that the DC had found the respondent guilty of. It read as follows:

> You, Low Yong Sen of M/s Y S Low & Partners are charged that [on] or about 6 February 2006, at 101 Upper Cross Street #04-40 People's Park Centre, Singapore 058357, in the course of acting for Mr Rayman Gao Zhiqiang and Madam Li Pin in respect of the purchase and CPF application relating to a property situate at 45 Verde Grove, Singapore, did engage on behalf of the client[s], the services of High Business Services, which was a partnership owned and/or operated by persons related to you, without disclosing the aforesaid relations and/or interest of such persons, to the clients which engagement and/or non disclosure amounts to misconduct unbefitting an advocate and solicitor [as an officer] of the Supreme Court or as a member of an honourable profession within the meaning of S83(2)(h) of the Legal Profession Act (Cap 161).

29 This charge was based on r 26(*a*) of the PCR, which states:

> **Disclosure of interest**
>
> **26.** In any case where the advocate and solicitor or any member of his family or any law corporation of which the advocate and solicitor is a director or an employee or any limited liability law partnership of which the advocate and solicitor is a partner or an employee has an interest in any matter entrusted to him by a client, the advocate and solicitor shall —
>
> (*a*) make a full and frank disclosure of such interest to the client …

30 The DC held (at [105]) that this charge was made out on the basis of its finding that Mr Michael Low had a financial interest in the fees charged by HBS. With respect, however, we were unable to agree with the way the DC read r 26(*a*) and with its conclusion that the respondent was guilty of the charge.

31 It was clear to us that, on a plain reading of r 26(*a*), the provision was not intended to apply to conduct such as the present. The words "an interest in any matter" cannot possibly be taken to include an interest in the fees charged. On that interpretation, all solicitors would be required to disclose what must be evident to every client – that they have an interest in the fees to be paid by the client, and in situations where services are rendered by a third party, that the latter has an interest in the disbursements charged. The word "matter" in the rule should be construed to refer to the substantive matter which the client has entrusted the solicitor to handle. The object behind the rule is to ensure that there is no conflict between the personal interest of the solicitor (including that of his family and any company or partnership in which the solicitor has an interest) and that of the client. This rule, which requires disclosure by the solicitor to the client of any such interest of the solicitor, is to ensure that the client will have the chance to assess whether he should allow the matter to remain in the hands of that solicitor or appoint a new solicitor. Implicit in the rule is the imperative norm that a solicitor should always, in any matter entrusted to him, act in the interest of the client (see Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at para 17.007).

32 In our opinion, the respondent's decision to engage the services of HBS did not, *per se*, raise any problem of conflict. In fact, it is not uncommon for solicitors to outsource certain services, provided that the interest of the client is not compromised on account thereof. Assuming that the outsourcing arrangement between the respondent and Mr Alan Tan had been *bona fide* and aboveboard, and that there had been no overcharging by the latter, the respondent's decision to engage the services of Mr Alan Tan would have been uneventful and irreproachable. Even if the respondent had forwarded an exorbitant bill to the clients for payment (assuming still that the outsourcing arrangement was *bona fide*), what he would have been guilty of was a breach of his duty of care but not an infringement of r 26(*a*) of the PCR.

33 Given our interpretation of the phrase "an interest in any matter" and our finding that the outsourcing of certain services to third parties *per se* (even related ones) does not automatically result in a conflict of interest, it followed that the respondent had not infringed r 26(*a*) of the PCR and could not be guilty of the fourth charge.

34 In this case, because the arrangement between the respondent and Mr Alan Tan was not *bona fide*, the respondent did not query the exorbitant bill and instead forwarded it as the basis for his own claim for disbursements. What the respondent committed was really an offence of gross overcharging. Accordingly, he was found guilty of the first charge, but not the fourth charge.

Appropriate sanction

35 We now turn to the punishment we had imposed on the respondent in relation to the first charge of which he was found guilty.

36 Section 83(1) of the LPA provides that upon due cause being shown, the court has the power to strike an advocate and solicitor off the roll, suspend him from practice for a period not exceeding five years, or censure him.

37 We note from past cases that the misconduct of overcharging had attracted the sanction of either a fine or a suspension from practice. How grave an overcharging offence should be perceived must be viewed in all the circumstances of that case. For example, the greater the amount of overcharging, the more seriously the misconduct will be viewed. Another relevant circumstance is whether this is the solicitor's first brush with the rules of professional conduct, and, in particular, whether he had previously been found guilty of other professional misconduct. Here, we noted with much concern that the respondent had an antecedent of a similar nature. In *The Law Society of Singapore v Low Yong Sen Vincent* [2006] SGDSC 3, five charges of overcharging were preferred against the respondent and all were proved. The respondent was reprimanded on two of the charges and made to pay a penalty of $7,500 or such amount as the Council of the Law Society would determine under s 94(3)(*a*) of the LPA on each of the other three charges. Though the Law Society pressed the disciplinary committee in that case to determine that cause of sufficient gravity for disciplinary action existed against the respondent, the committee declined to do so, partly because it took into consideration the small amount of overcharging.

38 Admittedly, overcharging may seem to be a minor transgression when compared to the case of a solicitor who commits a breach of trust of a client's money (or commits other grave professional misconduct, such as misleading the court or creating a falsehood to cheat a client of his money). But the harm done by such misconduct can be far more insidious and prolonged. Whereas the dishonest lawyer who absconds with his client's money would likely be found out soon enough and be disbarred, and thus prevented from further cheating any future clients, the solicitor who systematically overcharges by small amounts and is not discovered over an extended period can potentially defraud a large number of clients. We must therefore not condone an act of overcharging merely because it involves a small sum as, ultimately, what is at stake is of far greater importance – the integrity and standing of the profession. We would hasten to add that when we talk of overcharging we are referring to proven cases of overcharging, not just a case of a client complaining that the lawyer has charged too much. It is understandable that the expectations of the client may be different from that of the solicitor. The test is an objective one as determined by his peers of integrity and reasonable competence, having regard to the nature of the work done (contentious or otherwise) and any prior agreement between the parties.

39 The range of misconduct which can constitute grossly improper conduct varies widely, and it must follow that the punishment appropriate for each grossly improper conduct will depend on all the circumstances of the case. That is why s 83(1) of the LPA sets out a range of punishment, *ie*, "struck off the roll or suspended from practice for any period not exceeding 5 years or censured", which the court may impose.

40 We have in [26] above referred to the case of *Re Lau Liat Meng*, where the disciplinary committee found that the solicitor had on several occasions grossly exaggerated the time spent on his client's matter as depicted in his time sheet and that these actions constituted grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(*b*) of the LPA. There, the court endorsed the findings of the disciplinary committee and ordered the solicitor to be

suspended from practice for three months. In *Re Abdul Rahim Rajudin* [1988] SLR 907, the solicitor was suspended for two months for demanding unconscionable commissions and rendering an excessive bill. In *Re Han Ngiap Juan* ([25] *supra*), the solicitor was suspended for three months for overcharging. Finally, the most severe sanction was meted out in *Re Lim Kiap Khee* [2001] 3 SLR 616, where the solicitor was struck off the roll by the court, partly because he had rendered bills of costs even though no services had been provided.

41 In our view, the respondent's latest misconduct, occurring just two years after his previous offence, was a significant aggravating factor. Moreover, the respondent had not simply overcharged. The evidence revealed that the respondent had devised an arrangement with his brother's firm and an alleged third party, Mr Alan Tan, to lend a veil of legitimacy to his inflated bill and hide the fact that he would personally benefit from the excessive charges. The respondent sought to paint himself as an ignorant and unconscientious lawyer, rather than a dishonest one, but we were not persuaded. Unlike the respondent, the facts did not lie. The misconduct here borders on dishonesty. The only mitigating factor we could perceive was the fact that the respondent had refunded a sum of $2,526.13 to Dr Gao and Mdm Li (see [8] above).

42 We would emphasise that the court takes a serious view of overcharging by solicitors as it undermines the very foundation of a profession premised on honour and integrity. Solicitors have a duty to protect their clients' interests at all times. They should also charge *fairly* for work done for their clients. In this case, it was quite clear that the charges were grossly excessive even though in absolute terms they were not large. For these reasons, and bearing in mind that this was the respondent's second misconduct of the same nature and he did not seem to have learnt from his previous mistake when he was let off with a mere fine, we were of the opinion that a period of suspension was called for. This will serve as a condign punishment for the respondent, and hopefully deter similar defaults by him in the future. We also hope that it will act as a general deterrent to other solicitors and thus protect public confidence in the legal profession (see *Law Society of Singapore v Subbiah Pillai* [2004] 2 SLR 447 at [23]).

Conclusion

43 Having taken all the relevant circumstances into consideration, we deemed it appropriate to order that the respondent be suspended from practice for a period of six months and that the respondent should bear the costs of these proceedings, to be taxed if not agreed, as well as the costs of the proceedings below ($10,000, inclusive of disbursements, as fixed by the DC).