

Law Society of Singapore v Tay Soo Wan
[2005] SGHC 7

Case Number : OS 987/2004

Decision Date : 07 January 2005

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Tay Yong Kwang J; Yong Pung How CJ

Counsel Name(s) : Zaheer K Merchant (Madhavan Partnership) for applicant; Respondent absent

Parties : Law Society of Singapore — Tay Soo Wan

Legal Profession – Show cause action – Advocate and solicitor convicted of criminal breach of trust – Appropriate order to be made – Section 83 Legal Profession Act (Cap 161, 2001 Rev Ed)

7 January 2005

Yong Pung How CJ (delivering the judgment of the court):

1 This was an application by the Law Society of Singapore (“the Law Society”) under s 98(5) of the Legal Profession Act (Cap 161, 2001 Rev Ed) (“the LPA”) to make absolute an order to show cause. We granted the application and ordered the respondent, Tay Soo Wan, to be struck off the roll of advocates and solicitors. We now give our reasons.

The facts

2 The respondent was called to the Bar in 1978 as an advocate and solicitor of the Supreme Court of Singapore. At all material times, he was the sole proprietor of the firm M/s S W Tay and Co.

3 For the purposes of this judgment, we do not deem it necessary to go into the details of the respondent’s misconduct, except to state briefly that between December 2000 and June 2002, the respondent dishonestly misappropriated a total of \$118,434.75 from moneys entrusted to him by various clients, and converted those moneys to his own use. The law eventually caught up with him, and three charges of criminal breach of trust, punishable under s 409 of the Penal Code (Cap 224, 1985 Rev Ed), were preferred against him. He pleaded guilty to one charge, whilst the other two charges were taken into consideration for purposes of sentencing.

4 The district judge sentenced the respondent to a term of 21 months’ imprisonment on 28 January 2004. The respondent did not appeal. At the time of the proceedings before us, he was serving his sentence and chose not to appear before this court.

The show cause proceedings

5 Where an advocate and solicitor has been convicted of an offence involving fraud or dishonesty, s 94A of the LPA directs the Law Society to proceed with an application for the respondent to show cause as to why he should not be dealt with under s 83(1) of the LPA. Section 83(1) of the LPA provides that an errant solicitor may be struck off the roll, suspended from practice or censured if the court is satisfied that due cause has been shown.

6 In turn, s 83(2)(a) of the LPA states that due cause may be shown by proof that an advocate and solicitor “has been convicted of a criminal offence, implying a defect of character which

makes him unfit for his profession". As it is not open to either the respondent or the court to go behind the respondent's conviction by virtue of s 83(6) of the LPA, the respondent's failure to tender any submissions before us was immaterial.

7 We were satisfied that due cause had been shown. The respondent was convicted of a criminal offence involving fraud and dishonesty, committed in the course of his professional duties as an advocate and solicitor. Our justice system had expressed its disapprobation of his conduct by sentencing him to 21 months in jail. In sum, the respondent's dishonest conduct and subsequent conviction fell squarely within the ambit of s 83(2)(a) of the LPA, implying a defect of character which made him unfit for his profession: *Law Society of Singapore v Loh Wai Mun Daniel* [2004] 2 SLR 261, *Law Society of Singapore v Caines Colin* [2004] SGHC 250, and most recently, *Law Society of Singapore v Yap Shao Sin Philip* [2004] SGHC 252.

8 Ergo, the only issue remaining before us was that of the appropriate order to be made under s 83(1) of the LPA.

The appropriate order to be made

9 As the respondent failed to appear before us, we were not apprised of any factors that might have mitigated his conduct in misappropriating the moneys. In any case, it is well established that where the advocate and solicitor has been convicted of dishonest conduct, the weight to be attached to a plea in mitigation is virtually negligible. Striking off will be the consequence as a matter of course: *Bolton v Law Society* [1994] 1 WLR 512, approved in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696 and *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168.

10 The paramount considerations before any court in deciding on the appropriate order to be made in such a case are the protection of the public and the preservation of the good name of the legal profession: *Re Knight Glenn Jeyasingam* [1994] 3 SLR 531. In this regard, we also considered that the respondent's dishonest acts were committed in his capacity as an advocate and solicitor, which must have further undermined the trust of the public in the legal profession.

11 On the facts before us, there was no question that the twin objectives enunciated in *Re Knight Glenn Jeyasingam* were best served by striking the respondent off the roll of advocates and solicitors. We further ordered that the respondent should bear the cost of these proceedings.

Order accordingly.

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