

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 002/2010**

**BETWEEN: CHIEF REGISTRAR**

**Applicant**

**AND: VIPUL MISHRA  
MEHBOOB RAZA  
MUHAMMAD SHAMSUD-DEAN SAHU KHAN  
SAHU KHAN & SAHU KHAN**

**1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent  
3<sup>rd</sup> Respondent  
4<sup>th</sup> Respondent**

**Applicant : Ms V. Lidise & Mr A. Chand  
1<sup>st</sup> Respondent : Mr S K Ram  
2<sup>nd</sup> Respondent : Ms N Khan  
3<sup>rd</sup> Respondent : Mr G P Lala**

**Date of Hearing : 28<sup>th</sup> April 2011  
Date of Judgment : 4<sup>th</sup> May 2011**

**JUDGMENT ON SENTENCE – 2<sup>nd</sup> RESPONDENT**

The 2<sup>nd</sup> Respondent has been found guilty of one count of unprofessional conduct which is particularized as follows:-

**MEHBOOB RAZA** a legal practitioner, between the period from about the 25<sup>th</sup> of March 2006 and the 30<sup>th</sup> day of July 2007, being instructed by one Sashi Kiran Pratap, failed to protect the said Sashi Kiran Pratap's interest in the Crown land situated at Nukudrala, Ba, registered under Crown Lease No. 16375, being Lots 10 and 13 on BA2298 and BA2301, wherein a duly executed transfer to the said Sashi Kiran Pratap had been lodged with the Registrar of Titles on the 25<sup>th</sup> of October 2006 and was awaiting registration, which conduct fell short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.

The 2<sup>nd</sup> Respondent failed to protect the interest of the purchaser following settlement of her purchase of Crown Lease 16375. The consequences of the conduct of the 2<sup>nd</sup> Respondent were that the judgment against the vendor was able to be registered on the title as the transfer had not been registered and was ultimately uplifted.

3. Section 121 of the Legal Practitioners Decree sets forth the powers of the Commission upon a finding of professional misconduct or unsatisfactory professional conduct. The ultimate sanction is that the legal practitioner's name be struck from the roll and the most lenient penalty is a reprimand.
4. When considering the appropriate penalty it is necessary to consider not only the nature of the misconduct but also those of the following issues as are relevant:-
  - (i) The frequency of the misconduct and prior finding of misconduct;
  - (ii) The lawyers age and professional experience;
  - (iii) The lawyers attitude;
  - (iv) The lawyers (lack of) appreciation of wrong doing;
  - (v) Testimonials and opinions by third parties;
  - (vi) Illness and stressors suffered by the lawyer;
  - (vii) The loss suffered by third parties as a result of the lawyers misconduct;
  - (viii) The loss already suffered by the lawyer personally as the result of the misconduct.
5. If satisfied that the conduct is an isolated blight on an untarnished professional career then a less severe penalty may be appropriate – Legal Practitioners Conduct Board v Nicholson (2006) 243 LSJS 293.
6. The level of experience may be relevant and it may, if the misconduct is a one-off in and otherwise unblemished lengthy professional career, support the conclusion that it was entirely out of character and does not warrant a severe disciplinary sanction, dependant of course on the seriousness of the misconduct - Chamberlain v Australian Capital Territory Law Society (1993) 118 ALR 54.
7. It was said in New South Wales Bar Association v Evatt (1968) 117 CLR 177 at 184

*"The Respondent's failure to understand the error of his ways of itself demonstrates his unfitness to belong to a profession where, in practice, the client must depend on the standards as well as the skill of his professional adviser."*
8. The main purpose served by disciplinary proceedings is to protect members of the public from misconduct by lawyers – Southern Law Society v Westbrook (1910) 10 CLR 609 at 622. This recognizes the public interest in the integrity of the members of the profession, so central to public confidence in the legal system. In New South Wales an appellate judge branded the protective function as a " *recognition of the social value in the availability of the services provided to the public, combined with an understanding of the vulnerability of many who require such services*" – New South Wales Bar Association v Meakes [2006] NSWCA 340.

9. Related to this are the objectives of maintaining proper standards in the profession and setting an example to other lawyers – De Pardo v Legal Practitioners Complaints Committee (2000) 170 ALR 709. It cannot be denied, to this end, that a disciplinary sanction may deter other lawyers from engaging in the impugned conduct and also deter the lawyer disciplined and so indirectly protect the public against like defaults. It is said that this means that a court or tribunal, in making a disciplinary order, takes account of the message that the order conveys to other lawyers, particularly young lawyers – Re Drew (1920) 20 SR (NSW) 463 at 466.
10. The fact that professional disciplinary proceedings are directed at a chiefly protective objective does not deny that they may generate an outcome that is punitive in effect. The courts have not denied the deterrent effect of disciplinary orders, but have emphasized the link between deterrence and the central protective aim – Law Society of New South Wales v Foreman (No 2) (1994) 34 NSWLR 408 at 441. Protection of the public may thus justify a "punitive response". Such a response shows the grave view the court or tribunal takes of the misconduct; a failure to mark its censure and disapproval via a punitive response in the case of grave misconduct may be viewed by the public as almost tacit approval – Legal Practitioners Conduct Board v Boylen (2003) 229 LSJS 32. The imposition of a fine, although apparently punitive in effect, may have a protective effect in discouraging other lawyers from misconduct – Re a Medical Practitioner [1995] 2 Qd R 154, or at least a deterrent effect on the lawyer who has been fined. It may even operate, in some circumstances, to deprive the lawyer of monetary gain that was secured by the unprofessional conduct – Legal Services Commission v Mullins [2006] LPT 012.
11. The Applicant submits that the 2<sup>nd</sup> Respondent's conduct in failing to lodge a caveat to protect the interest of the purchaser was an omission of a basic but important conveyancing practice, particularly when it spans a period from 24<sup>th</sup> October 2006 until 31<sup>st</sup> July 2007.
12. The 2<sup>nd</sup> Respondent acknowledges [Submission p.6] "that the lodgment of a caveat would have, at best, given notice to the purchaser of a competing interest ....".
13. It is the giving of this notice that may have prevented the events that flowed from the registration of the judgment on the title and the order for sale of the property.
14. The 2<sup>nd</sup> Respondent was admitted in England in 1976 and has practiced in Fiji since that time. He has an exemplary record and was in 1986/ 1987 Director of Public Prosecution.
15. Since 1987 he has practiced on his own account. During his time in practice he has been an active member of the community particularly of his religious society and the Jai Narayan College (Indian College).

16. Testimonials have been produced from fellow practitioners attesting to his character and his professional conduct. He has suffered significant surgery following the complaint being filed and prior to the hearing of the matter.
17. The Applicant submits that the conduct warrants the imposition of a substantial fine and an order for further training in conveyancing practice.
18. Whilst the omission by the 2<sup>nd</sup> Respondent had significant impact on the purchaser I do not think that further training is justified.
19. The conduct is an isolated blight on an untarnished professional career and therefore a less severe penalty is appropriate.
20. The practice in Fiji of having largely unsupervised clerks carry out many aspects of legal practice is a significant contributor to the omission which has occurred on this occasion and hence the consequences that flowed from it.
21. Notwithstanding the isolated nature of the conduct of the 2<sup>nd</sup> Respondent and his antecedents the obligation on the Commission is to protect the public and to deter similar conduct from occurring in the future and I am therefore obliged to impose a monetary penalty.
22. The submissions made on behalf of the 2<sup>nd</sup> Respondent whilst acknowledging that the lodgment of a caveat would have given notice to the purchaser of a competing interest show no contrition whatsoever. This exacerbates the situation and therefore calls for a greater penalty than might otherwise have been appropriate.
23. No submissions have been made as to the impact of a monetary penalty on the 2<sup>nd</sup> Respondent and I must therefore conclude that the imposition of a modest monetary penalty would be capable of being met by him.
24. Witness expenses have been agreed in the sum of \$113.50.

## ORDERS

1. The 2<sup>nd</sup> Respondent is fined the sum of \$10,000.
2. The sum of \$600 is to be paid to the Independent Legal Services Commission for payment to the purchaser by way of refund of fees paid by her.
3. Witness expenses in the sum of \$113.50 are to be paid to the Independent Legal Services Commission.
4. Total amount of \$10,713.50 is to be paid to the Independent Legal Services Commission within 28 days failing which the 2<sup>nd</sup> Respondent's practicing certificate shall be suspended without further order.



**JOHN CONNORS  
COMMISSIONER**



**4 MAY 2011**