

LEGAL PRACTICE COMMITTEE OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 007/06

Applicant: LEGAL SERVICES COMMISSIONER

AND

Respondent: KEITH DOUGLAS SCOTT

DISCIPLINE APPLICATION

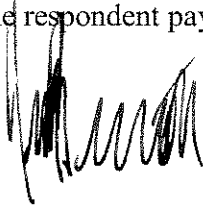
A. DETAILS OF APPLICATION

This application is made under section 276 of the *Legal Profession Act 2004* ("Act").

On the facts stated in the particulars of charge set out below, the applicant seeks the following orders:

1. Pursuant to section 282 of the Act that the respondent is guilty of unsatisfactory professional conduct.
2. Such further or other orders or directions as may be just.
3. The respondent pay the applicant's costs of the application.

Signed:



Description: Legal Services Commissioner

Dated:

30 Jan '06

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by *L Hedman*
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DISCIPLINE APPLICATION
Filed on behalf of the Applicant
Rule 4(1) Legal Profession (Tribunal and Committee) Rule 2004
Form LPT1, Version 1

Legal Services Commission
Level 25, 307 Queen Street
Brisbane Qld 4000
Telephone: (07) 3406 7737
Facsimile: (07) 3406 7749

B. PARTICULARS OF CHARGE

The Commissioner alleges that the following charges constitute unsatisfactory professional conduct:

Charge No 1

1. Between February 2002 and April 2002, the respondent failed to supervise the conduct of two conveyancing matters undertaken on behalf of Christopher Anderson and Stephen Folkes ("*vendors*").

Particulars

- 1.1 At all material times the respondent:
 - (a) Was a legal practitioner;
 - (b) Carried on practice under the firm names Goodfellow & Scott Solicitors and subsequently as Keith Scott & Associates;
 - (c) Acted on behalf of the vendors in respect of the sale of Units 40 and 42 at 31 Defiance Road, Woodridge ("*properties*");
 - (d) Caused or permitted the conduct of these two conveyancing matters ("*conveyancing matters*") to be delegated to his conveyancing clerks Karen Pratt and/or Jane Deede.
- 1.2 The agent for the sale of the properties was Network Real Estate Pty Ltd ("*Network*") trading as Stockdale & Leggo Real Estate of 260 Kingston Road, Slacks Creek.
- 1.3 The total deposit payable in respect of each sale contract was \$1,700.00.
- 1.4 Network held a deposit of \$95.00 in respect of each sale contract prior to settlement.
- 1.5 Settlement of the conveyancing matters was effected on 27 March 2002.

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- 1.6 At the time of settlement, as a result of an error by one of the conveyancing clerks in calculating the amount of deposit to be received upon settlement of the conveyancing matters, the purchaser did not pay to the vendors the sum of \$1,605.00 at the settlement of each matter. The true position at settlement was that the further sum of \$3,210.00 was payable by the purchaser for the properties.
- 1.7 By letter dated 2 April 2002, Network advised Goodfellow and Scott that:
- (a) they held a deposit of \$95.00 in respect of each unit in their trust account;
 - (b) an amount of \$1341.88 commission remained owing to Network in respect of each unit ("*commission*").
- 1.8 At no time did the respondent or his conveyancing clerks inform the vendors that:
- (a) an error had occurred in the settlement figures;
 - (b) the incorrect amount had been received from the purchasers upon settlement;
 - (c) Network's commission remained outstanding in the amount of \$1,341.88 in respect of each unit.
- 1.9 The respondent during the conduct of the conveyancing matters:
- (a) failed to exercise any or any satisfactory supervision of Ms Pratt's or Ms Deede's dealings with the vendors;
 - (b) failed to take any or any appropriate steps to ensure that the correct amount of the deposit moneys had been paid to Network upon the settlement of each matter;

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Charge No 2

2. Between April 2002 and April 2003, the respondent in breach of his duties as a solicitor:
- (a) failed to treat the vendors fairly; and
 - (b) recklessly commenced the Magistrates Court proceedings *Network Real Estate Pty Ltd v. Christopher Anderson & Stephen Folkes*.

Particulars

- 2.1 The applicant repeats and relies on the particulars referred to in charge 1 above.
- 2.2 By letter dated 16 April 2002, the respondent advised Network *inter alia*:

"As you would be aware, we inadvertently failed to retain your commission at settlement. We have on even date, made demand on the vendor for the amount of the same and if they pay it will be forwarded to you. However, to date they have indicated they do not intend to pay, in which case the following will occur:

- (i) We will pay you out of our funds;*
- (ii) We will sue the vendor for the amount of same.*

The action will have to be in your name, which we assume will not be a problem since it will be for your benefit and we will be paying for it."

- 2.3 On 18 April 2002 Goodfellow & Scott paid Network the sum of \$2,683.76 on account of the commission owing.
- 2.4 At no time between April 2002 and December 2002 did the respondent advise the vendors that he had paid the commission to Network.
- 2.5 On 4 December 2002, without prior demand, the respondent filed Claim No M3663/02 and Statement of Claim on behalf of Network as plaintiff in the Beenleigh Magistrates Court for the recovery of the commission in the sum of \$3,210.00 alleged to be owing by the vendors.

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- 2.6 At the time of commencing the proceedings the respondent did not read fully the client file relating to the conveyancing matters.
- 2.7 On or about 14 February 2003, Folkes forwarded to the respondent a cheque payable to Network in the amount of \$3,210.00 despite requests that the respondent provide particulars in support of the claim.
- 2.8 On or about 18 March 2003, Folkes lodged a complaint with the Queensland Law Society in respect of the respondent.
- 2.9 By letter dated 30 April 2003, the respondent advised the Queensland Law Society that on reading the complaint he had that day refunded the money paid by Folkes and had apologized.

C. TO THE RESPONDENT(S)

Mr Keith Scott
Of 80 Wembley Road
Logan Central in the State of Queensland

This application will be heard by the Committee at a time and date to be fixed.

Filed with the Committee on 30 / 1 / 2006

Secretariat: *T. Neidman*

If you wish to contest this application, or to make submissions on penalty, you must lodge a Notice of Address for service with the Secretariat within fourteen [14] days of service of this application on you. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. If you fail to file a Notice of Address for service with the Secretary within fourteen [14] days of service of this application on you, the matter will be heard in default of your appearance, on a date to be fixed being not less than twenty one [21] days after service of this application on you.

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D. SERVICE

APPLICANT'S ADDRESS FOR SERVICE:

Name:	Legal Services Commission
Applicant's business address:	Level 25, 307 Queen Street. Brisbane Qld 4000
Address for service:	As Above
DX:	DX 40118 Brisbane Uptown
Telephone:	(07) 3406 7737
Fax:	(07) 34067749
E-mail address:	www.lsc@lsc.qld.gov.au

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