

In the Matter of Leslie Gordon Victor Priddle

Case No: SCT/54
Date of Hearing: 30 October 2001
Appearing Before: Mr P Cooper (Chair)
Mr P J Mullins
Ms I Vallin-Thorpe (Lay Member)
Penalty: Suspended from practice until 30
June 2002.

Charges

1. The practitioner, being the trustee of the B Trust (the Trust) has failed to keep or cause to be kept accounting and other records of all trust moneys and of any disbursement or disposal thereof or dealing therewith as would sufficiently explain the transactions and true position in regard thereto and enable true and fair accounts to be prepared from time to time as required by s.6(1) of the *Trust Accounts Act 1973*.
2. The practitioner has failed to provide to:
 - (i) LWO'B; or
 - (ii) the Queensland Law Society Incorporated ("the Society")accounts of the application of the assets of the Trust.

Particulars

- (a) By deed of trust dated 1 January 1979, the practitioner was appointed trustee of the trust which was created for the benefit of the family of O'B;
- (b) Under cover of letter dated 4 May 1995, the practitioner provided Mr and Mrs O'B with accounts for the trust for the years ended 30 June 1992, 1993 and 1994, which accounts set out by way of statement of trust assets various amounts held in the form of:
 - Unsecured Loans
 - T Partnership
 - Interest in Common Investments,but which did not otherwise provide any information as to the nature of those "Unsecured Loans" or "Common Investments"
- (c) By letter to the practitioner dated 12 August 1998, O'B by his solicitors PR & Associates requested:
 - (i) particulars of the practitioner's investment of Trust moneys; and
 - (ii) accounts for the Trust in a form capable of being audited;
- (d) By letter dated 14 August 1998, the practitioner advised PR & Associates that "work to bring the trust's reporting up to date is well advanced and I

expect to be able to have JF (one of the proposed new trustees of the trust) examine the reporting and help me perform next week";

- (e) By undated letter sent on or about 24 August 1998, the practitioner advised PR & Associates that:
 - (i) "the investments of the B Trust were part of a combined investments portfolio with the estate of HHM. The M estate is currently the subject of a Supreme Court action in which I am represented by ME ... I have sought advice and believe it is currently impossible to complete trust accounts because of the "unknowns" involved from the M litigation";
 - (ii) he proposed to attend at the offices of PR & Associates during the week commencing 7 September 1998 "with all files and explain the position to you".
- (f) By letter to the practitioner dated 7 September 1998, PR & Associates sought details of the Supreme Court action in which the trust assets were involved;
- (g) The practitioner failed to respond to the letter from PR & Associates dated 7 September 1998 and failed to attend at the offices of PR & Associates during the week commencing 11 September 1998 or at all;
- (h) By letter dated 23 July 1998, the Society forwarded to the practitioner a letter of complaint from PR & Associates dated 8 July 1999 together with enclosures and sought from the practitioner an explanation in relation to the matters raised by PR & Associates and in particular, information as to the disposition of the trust assets.
- (i) By letter to the Society dated 17 July 2000, the practitioner:
 - (i) confirmed "that the moneys invested on behalf of the B Trust were invested in a series of investments in which my personal moneys and the moneys of the Estate of the late HHM were invested";
 - (ii) advised that "The moneys were invested in the companies after I sought advice and with a view to making the funds of both the B Trust, the M Estate and my family money which consisted to a large extent of superannuation money from the University of Queensland grow beyond the then rate of inflation";

- (iii) advised that "the moneys were invested as I explained in an earlier letter in a series of companies all of which failed. The accounts being prepared by D Forensic Accounting Section will be ready within three weeks. The accounts will hopefully, if I can provide sufficient record and historical data, show exactly what transpired as a result of my investments. I shall have the reconstructed records, reconstructed to the best of our ability, available on or before Monday, 14 August 2000";
- (i) By letter to the practitioner dated 20 October 2000, the Society sought a copy of the accounts prepared by D or alternatively advice from D as to the current state of preparation of the accounts;
- (k) By letter to the practitioner dated 15 November 2000, the Society enquired whether any funds belonging to the trust were invested in TU Trust or OC;
- (l) By letter to the Society dated 27 February 2001, HCB (on behalf of the practitioner) advised that:
- (i) from the practitioner's recollection no funds of the B Trust were invested in TU or OC;
 - (ii) difficulties were being experienced in obtaining records required to enable further information to be provided;
- (m) By letter to the Society dated 4 April 2001, HCB advised that "The companies in which the practitioner invested the B money have all been removed from the Register....";
- (n) By letter to HCB dated 24 April 2001, the Society noted that no records of the trust were likely to be found and asked the practitioner to provide the best information available to him as to:
- (i) the entities in which the trust funds were invested;
 - (ii) the amounts or approximate amounts of such investments;
 - (iii) the nature of the businesses carried on by those entities in which the funds were invested;
 - (iv) whether those entities had failed and, if so, when.
- (o) By letter to the Society dated 25 May 2001, HCB advised that:
- (i) "our client instructs that any assets that were available in the trust were already distributed to the beneficiaries and there was nothing left to distribute. Our client also instructs that a part of the trust moneys were lent with the consent of the parties to the daughter, L, for the purchase of a house property about ten years ago. He does not specifically recall the amount involved";
 - (ii) due to unavailability of records "our client is unable to provide any further information which may

be of assistance to you";

The practitioner has not otherwise provided further information as to the investment of the assets of the trust.

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr B Bartley, solicitor of Brian Bartley & Associates, solicitors.
- (b) For the practitioner:
Mr L D Bowden of counsel instructed by Hawthorn Cuppage & Badgery, solicitors.

Findings and Orders

The tribunal grants leave to amend the Notice of Charge dated 22 August 2001 in sub-paragraph (h) of the particulars by deleting "23 July 1998" and inserting "23 July 1999".

The tribunal finds both charges set forth in the Notice of Charge dated 22 August 2001 proved.

The tribunal finds that those matters set out in the Notice of Charge amount to unprofessional conduct.

The tribunal finds the practitioner guilty of unprofessional conduct on both charges.

Upon the undertaking of the practitioner not to practice on his own account on an indefinite basis, the tribunal orders that the practitioner be suspended from practice until 30 June 2002.

The tribunal further orders that the practitioner pay the costs of the Queensland Law Society Incorporated of the application, including the costs of the Clerk of the tribunal and the Recorder, such costs to be agreed upon and failing agreement, as assessed by Monsour Legal Costs Pty Ltd.

The tribunal allows the practitioner time to pay the costs until 30 June 2002.

Reasons

Charge No. 1

The Parties' Submissions

Mr Bowden of counsel who appeared for the practitioner submitted that in respect of the first charge the *Trust Accounts Act 1973* had no application because the practitioner's role as Trustee of the B Trust was a family matter (handled for his uncle Mr O'B) rather than one related to his practice as a solicitor. No other ground of defence was raised to this charge.

Mr Bartley, solicitor on behalf of the Queensland Law Society Incorporated (the Society) submitted that although various investments of the trust monies occurred from 1988/1989 the relevant period commences from about 1990. Mr Bartley submitted that in respect of his

work related to the B Trust after 1 November 1991 the practitioner held himself out as a solicitor.

The Practitioner's Practice as Solicitor

Exhibit 2 lists the various Practising Certificates held by the practitioner from 1975.

That shows from 1 November 1991 until 30 June 1999 the practitioner held an unrestricted practising certificate and the evidence is that he practised as a sole practitioner for most, if not all, of that period.

The Evidence of the Practitioner

The affidavit of the practitioner filed 25 October 2001 at paragraph 18 refers to the making of investments on behalf of the trust by purchase of shares in four companies. Paragraph 19 of the affidavit confirms that the trust also included an interest in a primary production partnership, the TW Partnership.

At paragraph 21 the practitioner deposes to the fact that the TW Partnership was dissolved in 1993 and that monies were distributed according to the wishes of Mr O'B. This was at a time after the practitioner commenced practice as a solicitor on his own account.

At paragraph 25 the practitioner also deposes to the fact that "about \$20,000.00 was received and this was reflected in the accounts and disbursed to the beneficiaries". The practitioner also deposed in his affidavit to the fact that he acted as trustee of the estate of HHM deceased and he gave oral evidence about being involved in litigation concerning that estate and he gave evidence that he bought shares for the B Trust and for the M Estate Trust, as well as putting some of his own monies into shares in four public companies. His oral evidence was that these shares were referred to in accounts prepared for the trust for 1992, 1993 and 1994 as "Interest in Common Investments".

He gave oral evidence about lending some of the B Trust monies to one of Mr O'B's daughters.

His oral evidence was that he was unable to say when the first of those companies, QAI, failed.

His oral evidence concerning the second company, AVD, was to the effect that it was wound up about 1993 but there had been litigation for some years prior to that, since about 1991. The third company was PR NL and his evidence was that although he did not know for sure when it was delisted, that it may have been early to mid 1990s.

The fourth company was LD and he gave evidence that Ds were appointed liquidators in September 1991 leaving no assets for shareholders.

He gave oral evidence that accounts for the trust ("the accounts") were for the years 1992, 1993 and 1994, and were prepared in about May 1995.

It would seem that by the time of preparation of these accounts that most if not all of these companies had failed and that the shares he had purchased for the B Trust were worthless.

The Evidence of the Society

The accounts appear at pages 18 to 22 of Exhibit A of Mr Masinello's affidavit filed 24 October 2001.

It appears that the accounts were prepared in 1995 by the practitioner in his capacity as solicitor, as appears at page 18, being the front sheet to the accounts. Page 23 of that exhibit is a copy of a letter which the practitioner wrote to Mr and Mrs O'B on 4 May 1995 enclosing the accounts. That is a letter signed by the practitioner on the letterhead of his solicitor's practice to Mr and Mrs O'B.

During 1998 the practitioner corresponded with PR & Associates on behalf of Mr and Mrs O'B. That correspondence related to the B Trust and to a request by PR & Associates for accounts for the trust. The correspondence was directed to the practitioner as solicitor and the practitioner responded as solicitor using his solicitor's practice letterhead. By the time the Society became involved in correspondence with the practitioner, he was working as a consultant to another firm of solicitors.

The Trust Accounts Act 1973

The obligation on a trustee under the *Trust Accounts Act 1973* to keep accounts is contained in s6(1). Section 6(2) requires a trustee who disburses trust monies by way of investment to keep a record of those investments as if they were trust monies. In respect of investments, the trustee under the *Trust Accounts Act 1973* is required to keep records as if those investments were trust monies of the kind referred to in s6(1).

The definition of "trustee" contained in s4 of the Act is as follows:

"trustee" means any solicitor, conveyancer or public accountant engaged in the practice of his or her profession, or the carrying on of his or her business, as such either solely on his or her own account or in partnership with any other person or persons and who, or the firm of which he or she is a partner in the course of such practice or carrying on a business receives any money upon trust or terms requiring the solicitor, conveyancer or public accountant to account to any person therefore, and includes a person declared under a regulation to be a trustee.

The Reasons for Decision

The issue is whether it was in the course of the practitioner's practice as a solicitor that the trust monies or trust investments or part thereof were received by

him or were invested by him. Under s4A a reference in the Act to monies received by a trustee is deemed to include a reference to monies received in the course of or in connection with the practice.

Monies held for or on behalf of any person whether originally received for or on behalf of the person or not are included in the term "monies received for or on behalf of any person" (s4) and are included in the definition of "Trust Monies" in s4.

By the combined effect of the definition of "monies received for and on behalf of any person", "trustee" and "trust moneys" in s4, s4A and s6(2), the investments comprising the B Trust (ie the shares purchased for the trust, the amount loaned to the O'B's daughter and the monies invested in the TW Partnership) were required to be treated the same as "trust moneys" as defined in s4 for the purposes of accounting for same under s6(1). This is so notwithstanding that some of the investments were made before 1 November 1991 when the practitioner commenced to practice as a solicitor on his own account. It is so because these investments were held for and on behalf of the beneficiaries of the B Trust by the practitioner.

Because the accounts for 1992 to 1994 were prepared in or about May 1995 in the course of the practitioner's practice as a solicitor, and because he later corresponded in respect of the B Trust with the O'B's solicitors in his capacity as a practising solicitor, we find that the "trust monies" of the B Trust were "held" and so "received" by him after November 1991 in the course of his practice as a solicitor or in connection with his practice as a solicitor. We find therefore that the practitioner on and after 1 November 1991 fits the description of a trustee contained in s4 of the *Trust Accounts Act 1973*.

The provisions of the Act were therefore binding upon him in respect of the "trust monies" of the B Trust. It follows that he had an obligation to keep, or cause to be kept, accounts in respect of those trust monies which included an account of the investments of the trust. He was obliged to keep those accounts pursuant to s6(1) of the *Trust Accounts Act 1973*.

The practitioner gave oral evidence to the effect that notwithstanding that a firm of accountants actually lost accounts for the trust, he did for a time have some records but he was not able to locate those and that those records which he had retained are also now lost.

It is clear from his oral evidence that for a substantial period of time he did not keep trust account records required to be kept pursuant to s6(1) in respect of the "trust monies" of the B Trust.

The Findings

For the reasons we have expressed we have concluded that the provisions of the *Trust Accounts*

Act 1973, and in particular s6(1), applied to the "trust monies" of the B Trust and that for a substantial period of time on and after 1 November 1991 the practitioner did not keep the appropriate accounting records as required by that section and we find charge number 1 proved.

Charge No 2

It is the finding of the tribunal that the conduct of the practitioner was such that over a long period he failed to provide to Mr O'B, his solicitors and the Society the requested information on the affairs of the B Trust.

The tribunal does not accept as normal practice the methodology that the practitioner used in the balance sheets that he prepared for the trust for the years ending 30 June 1992, 1993 and 1994 in relation to "Interest in Common Investments". The inevitable result of the methodology adopted was that a person would be misled. The tribunal has taken into account that the practitioner is not an accountant but notes that the practitioner himself in evidence acknowledged that on reflection the accounts could have been presented in a better manner.

The tribunal does not accept the interpretation that the practitioner seeks to put on his correspondence concerning the state of the investments of the B Trust. Adopting a normal interpretation of the correspondence would have the effect of misleading the recipients as it does not accurately reflect the state of affairs of the investments at the time correspondence was written. The reason being that some of the investments had in fact been lost at the date the correspondence was written, eg letter practitioner to Mr and Mrs O'B on 4 May 1995.

The tribunal does not accept the alleged interaction that the M litigation had on the trust affairs. It appears to the tribunal that the reference to the M litigation amounted to a delaying tactic.

The practitioner had ample opportunity to inform the parties of the true state of the investments of the B Trust but failed to do so.

It was not until 11 September 1998 that the practitioner in a telephone communication with the solicitors of Mr and Mrs O'B, adverted for the first time to the solicitors that his stewardship of the B Trust had not gone well.

The tribunal finds that there was a lack of frankness in the practitioner's correspondence with Mr and Mrs O'B, their solicitor and the Society. The tribunal finds charge no 2 proven.

Appeal

The Attorney-General has lodged a Notice of Appeal.