

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO.001/2009**

**BETWEEN: CHIEF REGISTRAR APPLICANT**

**AND: ABHAY SINGH RESPONDENT**

**APPLICATION IN PERSON**

**RESPONDENT IN PERSON**

**DATE OF HEARING: 27<sup>th</sup> January, 2010, 29<sup>th</sup> January, 2010**

**DATE OF JUDGMENT: 1<sup>st</sup> February, 2010**

**JUDGMENT**

1. By applications filed on the 15<sup>th</sup> of October 2009, the Applicant brings four complaints before the Commission.
2. On the 25<sup>th</sup> January, 2010 judgment was delivered with respect to complaints 1, 3 and 4. This judgment relates to complaint number 2.

3. The Applicant proceeds only with an amended complaint filed on the 25<sup>th</sup> January, 2010. The Respondent denies the allegation.
4. The complaint alleges that the Respondent is guilty of Unsatisfactory Professional Conduct contrary to s. 81 of the Legal Practitioners Decree 2009 in that between the 1st day of June, 2004 and the 13<sup>th</sup> June 2005 delayed the payment of the sum of \$6,750 to Kishore Kumar which had been deposited into Abhay Singh's Trust Account as rent money received from Eagle Boy's Pizza in relation to the tenancy agreement between Kishore Kumar and Eagle Boy's Pizza, Suva dated the 2<sup>nd</sup> day of October 2004, which conduct occurred in connection with Abhay Singh's practice of law, falling 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.
5. The complainant, Dr Kishore Kumar gave evidence that as the owner of premises at Savilla House, Valelevu he rented premises to the Respondent in 2004.
6. He says that the Respondent occupied those premises for approximately two years and was engaged during that time to do legal work for him.
7. In 2004 instructions were given by or on behalf of Dr Kumar for the preparation of a lease of premises within Savilla House for the operation of an "Eagle Boys" pizza franchise.
8. The lease prepared by the Respondent in accordance with those instructions was executed by both parties on the 2<sup>nd</sup> October, 2004 but was first executed by Dr. Kumar.
9. The lease [Ex. A13] provides for all legal costs and disbursements relating to the lease to be paid by the lessee [cl.4.15] and for the payment of a deposit in the sum of \$6750 to the lessor to be retained by the lessor until the expiry of the lease [cl.5.1].

10. Schedule one to the lease provides that the lessee shall be "Ranjev Rajveer Yashodra Proprietary Trading as Eagle Boys Pizza Suva" and that the lease shall commence on 1 January 2004 but that there shall be 4 months rent free with rent commencing on 1 May, 2004.
11. The rent is stated to be "\$3000.00 (three thousand dollars) plus vat" per month which equates to \$3375.00 per month.
12. On the 29<sup>th</sup> August, 2004 the complainant received the sum of \$6000.00 from the Respondent [Ex. A15] and on the 14<sup>th</sup> June, 2004 the sum of \$6750.00 [Ex. A16]
13. The complainant says that the sum of \$6000.00 was received after a request was made to the Respondent in June, 2004.
14. Dr.Kumar says he was aware that the sum of \$12,750.00 was paid to the Respondent by the lessee. Despite repeated requests by the wife of Dr Kumar that the bond be paid to her husband it was not paid until 14<sup>th</sup> June,2005, approximately 12 months after it was paid to the Respondent and approximately 9 months after the lease was executed.
15. The Respondent in his sworn evidence says that it is the practice in Fiji for instructions to be given by the lessee for the preparation of a lease and for the one solicitor to act.
16. He says that when he received the sum of \$12,750.00 he did so on behalf of the lessee and that he had no authority to pay any part of that money to his other client the lessor; the person who on the evidence had given instructions for the preparation of the lease.
17. By letter dated 13 July 2004 [Ex. R13] the lessee gave authority to the Respondent to pay some money to the lessor in the following terms:

*"I hereby give you authority to give Savilla Kumar the 2 months rent \$6,750.00 Fijian. As for the \$6,000.00 bond money we as a overseas company would prefer that such money is kept in the Trust account for safekeeping till the period of the lease. Please keep that funds in the trust account and we will require a receipt from you stating the funds are with you."*

18. The respondent later acknowledged in his evidence that the lessee was in fact a company registered in Fiji.
19. The Respondent says that no written request was received from the lessor for payment of the bond (\$6,750.00) but only verbal requests from the wife of the complainant lessor.
20. Whilst he maintained that the money was held by him in his trust account on behalf of the lessee he asserted that the trust account legislation required a written request from the lessor for payment to be made.
21. By letter dated 12 June, 2005 [Ex. R15] the lessee authorized the Respondent to pay the sum of \$6,750.00 to the lessor and payment was then made and acknowledged on the 14th June, 2005 [Ex. R16].
22. The Respondent when granted consent to re-open his case tendered a copy of the lease bearing the consent of the Housing Authority as head lessor [Ex.R19] and a copy of a letter from the Housing Authority to him dated 3<sup>rd</sup> August, 2005 enclosing the document. This letter refers to an application for consent "dated 4<sup>th</sup> June, 2005".
23. There is no evidence before me as to why consent to the lease was only sought on the 4<sup>th</sup> June, 2005 when the lease was executed by both parties on 2<sup>nd</sup> October, 2004. The document [Ex. A13] shows that stamp duty was paid on 20<sup>th</sup> October, 2004 and that it was registered in the Deeds Registry on 1<sup>st</sup> November, 2004.

24. Whilst the non-payment of the bond to the lessor in accordance with cl. 5.1 of the lease would appear to be a clear breach of the lease no advice was given to the Respondent's client, the lessor in that regard. The Respondent submits that the lease was unenforceable until the Housing Authority consent was granted.

25. The Respondent acting for both parties would appear to have neglected his obligations to his client the lessor.

26. If the lessee was not going to comply with the terms of the lease and the lessor was seeking compliance it was surely incumbent on the Respondent to refer both clients to other solicitors for advice.

27. The Rules of Professional Conduct and Practice under the Legal Practitioners Act 1997 provide in cl. 1.02 and cl. 1.03:

*"A party shall not act for more than one party in the same matter without the prior consent of all parties.*

*On becoming aware of a conflict of interest between clients a practitioner shall forthwith –*

- (i) Advise all clients involved in the matter of the situation;*
- (ii) Continue acting for all clients only with the consent of all clients and only if no actual conflict has occurred;*
- (iii) Decline to act further for any party where so acting would disadvantage any one or more of the clients."*

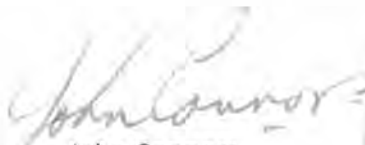
28. The Respondent on his evidence did not act in accordance with these provisions.

29. Whilst the Respondent placed before the Commission evidence of the audit of his trust account in 2004 and 2005 no evidence was given to show on whose behalf the moneys

were held. The obvious evidence would be the trust account ledgers which should show on whose account the funds were held.

30. The Respondent submits that the Commission has no jurisdiction to deal with this complaint as at the time of the hearing he was not a legal practitioner as a consequence of the orders of the Commission of the 25<sup>th</sup> October, 2010 striking his name from the Roll. This submission is rejected. He was a legal practitioner at all relevant times.
31. It would appear from the evidence of the complainant and the Respondent that the sum of \$6,750.00 was held by the Respondent in his trust account from June, 2004 until 14 June, 2005.
32. The Respondent further submits that the particulars of the breach refer to the sum of \$6750.00 as "rent money" and as the evidence shows it to be a bond that the application must fail.
33. I think little hangs on whether the money is "rent money" or a bond. The lease provisions require both to be paid to the lessor and I accept the Applicant's submission that a reasonable person would, in the absence of any indication to the contrary, expect payment to be made within a reasonable period of time.
34. The issue therefore is why was the money not paid to the complainant/lessor in accordance with the lease and following requests on his behalf.
35. The Respondent's explanation is twofold – it was held on behalf of his other client the lessee; and the Housing Authority consent not having been obtained it was not enforceable.

36. The second explanation is rejected as Ex. R18 shows that the consent of the Housing Authority was sought on the 4<sup>th</sup> June, 2005 and granted on 3<sup>rd</sup> August, 2005 whilst Ex. R16 shows payment was made on 14<sup>th</sup> June, 2005.
37. It is clear that notwithstanding the requests from the complainant the Respondent failed to fulfill his obligations pursuant to cl. 1.02 and cl. 1.03 of the Legal Practitioners Act 1997.
38. Did the conduct fall 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?
39. The respondent submits that I should determine the matter relying on the criminal standard of proof. I ruled in my judgment in this matter on the 25<sup>th</sup> October, 2010 that the correct standard of proof is the civil standard modified taking account of the gravity of the facts to be proved.
40. When applying that standard of proof the answer must be that it did.
41. The payment of the sum of \$6,750.00 to the complainant was delayed due to the Respondent acting for both parties and acting contrary to cl. 1.02 and cl. 1.03 of the Rules of Professional Conduct and Practice.
42. I find the Respondent guilty of unsatisfactory professional conduct.

  
John Connors  
**COMMISSIONER.**



Dated: 1<sup>st</sup> February, 2010.