

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 001 of 2014

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

SILIKA VUILAGI WAQABITU

Respondent

Applicant : Mr V Sharma and Mr M Waibuta

Respondent : No appearance

Dates of Hearing : 16th June 2014

Date of Judgment : 28th July 2014

JUDGMENT

1. The practitioner has been charged with the following two allegations by the Chief Registrar:

"COUNT 1

PROFESSIONAL MISCONDUCT: *Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009*

Silika Vuilagi Waqabitu, a legal practitioner and trustee of the bank account "Waqabitu Law Trust Account" held with the Bank of South Pacific, between the month of February to date, failed to ensure that the trust monies received for the purpose of making payments to Home Finance Company Limited on behalf of Mr & Mrs Cakaukevuya were utilized for unauthorized purposes, which conduct constitutes Professional Misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.

COUNT 2

PROFESSIONAL MISCONDUCT: *Contrary to Section 82(1)(a) of the Legal Practitioners Decree 2009*

Silika Vuilagi Waqabitu, a legal practitioner and trustee of the bank account "Waqabitu Law Trust Account" held with the Bank of South Pacific, through the trustee's Report for the period 1st of October, 2012 to the 30th of September 2013, made misrepresentation to the Minister for Justice and the Chief Registrar, which conduct was an act of professional misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

2. The facts of the case are that the practitioner was the principal of the firm "Waqabitu Law" and trustee of the firm's accounts. She was admitted to the High Court of Fiji in 1998.

3. Mr Viliame and Mrs Luisa Cakaukevuya instructed her on 3rd of January 2013 to repay a mortgage held over their property by the HFC. They sent the sum of F\$23,000 by telegraphic transfer to the trust account of the practitioner. It was understood between the parties that the practitioner would pay \$1,000 each month to the HFC on their behalf because they were residing temporarily in Papua New Guinea.
4. Payments were made until July 2013 and no further payments were made after that. She did not correspond with the clients and actively avoided them when they tried to contact her.
5. On the 4th of October 2013 after numerous failed attempts to contact her, the practitioner finally emailed the clients to inform them that her staff had "misappropriated" \$27,000 from 3 of her clients. She failed to mention if they were one of the prejudiced "clients". After heavy pressure, from October to December 2013 the practitioner repaid some arrears on the HFC mortgage but not the agreed \$1,000 monthly sum instructed.
6. In response to enquiries from the Chief Registrar the practitioner wrote on 10th of January 2014 saying that she had closed her practice and had moved abroad to further her studies. She acknowledged the complaint of the Cakaukevuya's and wrote "as mentioned we had an agreement in place and the funds were not used. There (sic) were mishandled by my staff that caused the whole problem".
7. When this matter first came before the Commission on the 30th of January 2014, Mr Vakaloloma appeared on instructions of the practitioner, who had instructed him by email to appear. He had no further instructions. Despite being given two further extended dates for plea on 24th of February 2014 and the 10th of April 2014, Mr Vakaloloma still did not have instructions and as a consequence he withdrew.
8. The staff, both of the Commission and of the Chief Registrar attempted to contact her to no avail and therefore the Commission proceeded to an ex parte hearing on the 16th of June 2014 pursuant to section 112(4) of the Legal Practitioner's Decree.
9. On the 19th of December 2013, auditors for the firm Waqabitu Law completed a trust account report for the period 1st October 2012 to 30th September 2013 and presented the same to the Minister for Justice and the Chief Registrar; the report obviously being false and misleading to a particular degree in that it failed to state that all trust funds were not applied for the purpose instructed.
10. The Commission after reviewing the evidence presented by counsel for the Chief Registrar finds that the two complaints are **established**.
11. In contemplation of an appropriate penalty for this abuse of a clients trust account, the Commission is reminded of the dicta from the South Australian Supreme Court v Bayes [2001] SNSC 319 where it was said:

"All practitioners must take very seriously the obligations imposed on them with respect to trust accounts. Maintaining a trust account is a basic professional obligation in relation to the charging of clients and accounting to them."
12. Trust account defalcations have been dealt with by the Commission in the cases of Haroon Ali Shah (No 007 of 2011), Kini Marawai (No 006 of 2012), Jolame Uludole (No 025 of 2013) and

Luseyane Ligabalavu (No 002 of 2013 and No 003 of 2013). The principles established by these cases are that offending with regard to trust accounts matters by a practitioner is very serious professional misconduct and it is offending which would attract the severest of penalties available to the Commission.

13. Apart from disciplining aberrant practitioners, there remains to the Commission the additional role of protection of the consumer public. The client couple in this case had entrusted the practitioner with monies to repay their mortgage and within months of those instructions the payments stopped because the money had in the words of the practitioner been "misappropriated by my firm". This should never happen to any clients of any firm.

14. To compound matters in this case, the practitioner actively avoided communication with the clients after they had discovered that repayments were not being made on the mortgage. They tried visiting her, calling her and emailing her without success. Finally on the 4th of October 2013, the practitioner wrote an email to the clients telling them that a total of \$27,000 had been "misappropriated" from the trust account.

15. The difficulties in corresponding with the practitioner extended to the proceedings before the Commission. Counsel for the Chief Registrar was eventually able to serve her with the charges and notice of the extended hearing date, but she chose not to engage with the Commission thereafter.

16. It is obvious that the audit report to the Minister is false and misleading, but the auditors are not necessarily at fault. It could well be that the "misappropriation" of funds was covered up by false documentation within the firm, and the missing funds would have been accounted for. A lot more evidence would be needed to establish the veracity or otherwise of the report.

17. However the first allegation being proved by admission and documentation, there is but one penalty that can be imposed against the practitioner. As a sole practitioner, she alone is responsible for operation of the trust account and it is not acceptable to blame the staff and deny responsibility. Her decision not to appear before the Commission means that there is no evidence of remorse nor are any reasons given for the defalcation.

18. All practitioners can see from this case the perils of failing to communicate with clients, even if to communicate is embarrassing or awkward. If the client can't speak to you, he will speak to the disciplinary head of the profession.

ORDERS

1. The name of the practitioner is to be struck off the roll of practitioners held by the Chief Registrar.

**JUSTICE PAUL MADIGAN
COMMISSIONER**

28TH JULY 2014