

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

NO. 027 of 2013

**BETWEEN** : **CHIEF REGISTRAR** Applicant  
**AND** : **SAIMONI NACOLAWA** Respondent

Applicant : Ms. L Vateitei  
Respondent : In Person

Dates of Hearing: 11<sup>th</sup> December 2013 & 24<sup>th</sup> February 2014  
Date of Judgment: 11<sup>th</sup> March 2014

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**JUDGMENT**

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1. The Respondent ("the practitioner") was charged by the Registrar with unsatisfactory professional conduct contrary to section 83(1)(a) of the Legal Practitioners Decree 2009 ("the Decree") in that he instructed a firm to audit his trust account when that firm was not a properly registered accounting firm.

The charge read:

*"Mr Saimoni Nacolawa a legal practitioner being the principal of the law firm Nacolawa & Co, while presenting his Trust Account audit report to the Office of the Attorney General and the Chief Registrar, without making proper enquiry about Glory Finance, Business & Management Consultant, dishonestly engaged the services of the said accounting firm to prepare his Trust Account audit report when said accounting firm was not a member of the Institute of Accountants nor holds a certificate to offer accounting services to the public, which conduct was an act of professional misconduct."*

2. On first appearance before the Commission on the 11<sup>th</sup> of December 2013 the practitioner readily admitted the charge and asked for time to mitigate. He has now

filed written mitigation and the Commission has heard from counsel for the Registrar in response.

3. The facts are that on the 30<sup>th</sup> of November 2012 an entity styled "Glory Finance, Business & Management Consultant" submitted what purported to be an auditor's report dated 28<sup>th</sup> of November 2012 to the Chief Registrar, being a report of the audit of the trust account of the practitioner's sole practice for the period 1<sup>st</sup> of March 2012 to 31<sup>st</sup> of October 2012.
4. Enquires subsequently revealed that neither the entity Glory Finance, nor its "accountant", George Zaniel Prince, were registered as accounting firm or accountant respectively with the Fiji Institute of Accountants.
5. In mitigation the practitioner submits that he had never been aware that his auditors were not certified; and he had no reason to believe otherwise. He had met Mr George Prince, formerly known as Prasad, when he was working at a tourist resort and he was his client. Mr Prince was then working for a Mr Singh who was a tax agent but Mr Singh had died and he had never been informed. He was a sole practitioner and before that he had no experience of trust account matters. He knew that Mr Prince and Glory Finance were carrying out accounting work and therefore assumed they were registered accountants.
6. The practitioner is 63 years of age, never been disciplined before and had entered a plea of guilty at first opportunity.
7. Counsel for the Registrar submits that every practitioner must exercise due diligence in ensuring that their auditors are registered as professional accountants; and that laxity with their trust account matters could lead to severe harm to the general public. Furthermore, she submits, the audit report is the ultimate responsibility of the practitioner/ trustee.

## ANALYSIS

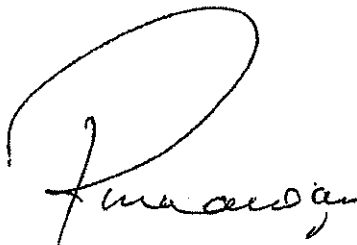
8. I agree with counsel to the Registrar that every practitioner be he/she a sole practitioner or a partner in large practice has the responsibility and statutory duty to be cognizant of the Trust Account Rules as they pertain to legal practitioners. By the terms of section 3 of the Trust Account Act 1996 (as amended by the Trust Accounts (Amendment)(No 2) Decree 2009), every practitioner whether solely or in partnership must establish and keep a trust account.
  
9. By the terms of clause 7.2 of the Rules of Professional Conduct and Practice (as scheduled in the Decree) a practitioner shall comply with the provisions of the Decree, and any legislation dealing with the regulation of trust accounts. Section 11(1) of the Trust Accounts Act 1996 makes it compulsory for a trustee to appoint a person or firm as auditor to audit the trust accounts. It is a statutory requirement (by section 11(3)(a) of the Act) that the person appointed be the current holder of a practising certificate issued by the Accountant's Institute.
  
10. It is not in dispute that neither George Prince nor the entity Glory Finance were so certified and the practitioner then is in breach of the statutory requirements, and the complaint by the Chief Registrar is therefore **established**.
  
11. It has been often said by this Commission that breaches of trust account requirements will be visited with very serious penalties but that is in cases where the members of public are put in danger or the potential for danger by practitioners who are in default of trust account regulations. The default in this case is somewhat different. There is no evidence that the practitioner has taken steps with his trust account that would prejudice his clients; his default applies to the audit of his accounts. He prays in mitigation that he was totally unaware of the incapacity of his auditor who was holding himself out to be a duly certified accounting practitioner. While this failure on the part of the auditor may well be a disciplinary matter for the Institute of Accountants, it is nevertheless incumbent on a legal practitioner to ensure that his auditor(s) are properly certified. The requirement of the Registrar and the Minister for Justice to see properly audited accounts of practitioners is an

important requirement that allows proper supervision and regulation of a practitioner's practice and would those accounts be audited by uncertified persons then the accounts could be abused and defeat the legislative purpose of the Act.

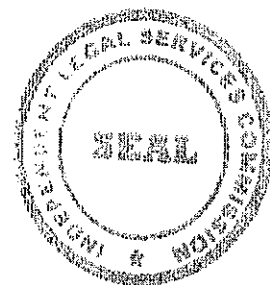
12. The practitioner's co-operation with the Commission by his ready acceptance of the complaint must be to his credit. It is also to his credit that there has been no defalcation in respect of the accounts of any of his clients; the failure on his part is but a procedural failure which of course could have the potential to allow abuse of his accounts. Practitioners should note that it is incumbent of each of them to ensure that those professionals that they instruct to comply with legislative requirements are properly certified to so act and this must apply particularly to those dealing with the most important function of certifying and auditing their trust accounts.

**ORDERS**

1. The practitioner is publicly reprimanded.
2. He is fined the sum of \$1,500 to be paid to this Commission by 30<sup>th</sup> of April 2014, failing which his practising certificate will be suspended until the fine is paid.



**JUSTICE PAUL MADIGAN  
COMMISSIONER**



**11<sup>th</sup> MARCH 2014**