

Chief Registrar v Qetaki - Judgment on Sanctions
ILSCJ09/2017; [2017] FJILSC 9 (18 April 2017)

This summary is not intended to be a substitute for the reasons of the Independent Legal Services Commission or to be used in any later consideration of the Commission's reasons

Facts

Mr Alipate Qetaki opened a trust account with the Bank of the South Pacific ('BSP'), without obtaining written approval from the Minister of Justice, leading to breaches of sections 3(1) and (1B) of the *Trust Accounts Act 1996* ('TAA'). Mr Qetaki was charged with two counts of professional misconduct, pursuant to sections 82(1)(a) and 83(1)(h) of the *Legal Practitioners Act 2009* ('LPA'), for which he was found guilty. This judgment concerns the sanctions which were to be imposed.

Judgment

In determining the appropriate sanction, the Commissioner applied the three-stage test from *Fulgers and Others v Solicitors Regulation Authority* [2014] EWHC 179, namely:

1. assessing the seriousness of the conduct, which involves considering Mr Singh's culpability, along with the harm caused and any aggravating or mitigating factors;
2. considering the purpose for imposing sanctions; and then
3. combining the first and second stage into determining the appropriate sanction which involves its deterrent purpose and reflects the seriousness of the legal practitioner's conduct.

First Stage

Culpability

It was held that two factors tended towards reducing Mr Qetaki's culpability, namely that:

1. he did not have an intention to engage in the misconduct and it was a spontaneous breach; and
2. he also did not attempt to conceal his action from the Chief Registrar, there was no dishonesty involved.

Harm Caused

It was held that the impact of Mr Qetaki's was minimal, given that no member of the public was harmed, nor was the client's money ever at risk (as there were no transactions through the account once it was established). However despite this, the Commissioner emphasised that obtaining approval to open trust accounts is a mandatory requirement for all practitioners, and should not be taken lightly

Aggravating Factors

It was held that there was one relevant aggravating factor, namely that Mr Qetaki ought reasonably to have known that his actions were in breach of his statutory obligations.

Mitigating Factors

It was held that there were two relevant mitigating factors, namely that:

1. there was transparency in the sense that Mr Qetaki kept the Legal Practitioners Unit informed about his actions;
2. the misconduct only occurred once; and
3. the misconduct only occurred for a brief period.

Second Stage

The Commissioner emphasised two main purposes for which for sanctions are imposed:

1. as a general deterrence to other legal practitioners; and
2. as a means of upholding public confidence in the legal profession.

Third Stage

The Commissioner declined to impose any sanctions upon Mr Qetaki, noting that the level of culpability was low in relation to both counts and minimum harm was caused by the actions. As such, Mr Qetaki's name was not entered into the "Discipline Register". Additionally, pursuant to section 124 of the *LPA*, Mr Qetaki was ordered to pay (within 28 days) two sums of \$1000 to the Chief Registrar and the Commission respectively, as compensation for their reasonably incurred costs.

In making these orders, the Commissioner accepted that it was the conduct of BSP in this matter which was truly blameworthy, namely its failure to obtain a copy of the approval letter from Mr Qetaki, who was a trustee. This failure had amounted to a breach of section 3(1) of the *TAA*, for which the bank had already been prosecuted (in accordance with section 28(1)(a) of the *TAA*), found guilty, and ordered to pay a fine of \$1,500.