

Chief Registrar v Singh (No 3) - Judgment on Sanctions
ILSCJ08/2017; [2017] FJILSC 8 (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

See *Chief Registrar v Singh (No 1)* [2016] FJILSC 3 (7 June 2016) and *Chief Registrar v Singh (No 2)* [2017] FJILSC 3 (13 February 2017).

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 five factors tended towards increasing Mr Singh's culpability, namely that:

1. he had attempted to shift blame, both onto his client and the surveyor, in relation to his own inaction;
2. his conduct was deliberate and was not spontaneous;
3. his actions were a breach of trust as Mr Singh's client relied on upon him to resolve the dispute with the vendor;
4. he had direct control of or responsibility for the circumstances giving rise the misconduct; and
5. he had approximately four decades of experience as a legal practitioner.

Harm Caused

It was held that Mr Singh's misconduct had caused significant harm, as his client had been waiting 18 years for the land to be transferred.

Aggravating and/or Mitigating Factors

It was held that there were five relevant aggravating factors, as quoted from the *Guidance Note on Sanctions* (5th edition) published by the Solicitors Disciplinary Tribunal of England and Wales, namely:

1. 'Misconduct continuing over a period of time', namely for a period of 14 years and 5 months;
2. 'Taking advantage of a vulnerable person', as Mr Singh's client was an illiterate cane farmer and had only come to Mr Singh after the police had advised him to do so;
3. 'Misconduct where the respondent knew or ought reasonably to have known that the conduct was in material breach of obligations to protect the public and reputation of the legal profession';
4. 'Previous disciplinary matters before the Tribunal where allegations were found proved' - there have been three findings of professional misconduct and it has not been overturned by the Court of Appeal; and
5. 'The extent of the impact on those affected by the misconduct' - Mr Singh showed a lack of understanding as to the harm done to his client and the legal profession.

There were no relevant mitigating factors.

Second Stage

The Commissioner emphasised two primary objects 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 considered that the most appropriate sanction for Mr Singh would be the suspension of his practising certificate for a period of 15 months ('Order 1'). Further, he was ordered to pay a sum of \$1,155 to the Chief Registrar for its reasonably incurred costs.

It was further ordered however that Order 1 would be deferred on the condition that Mr Singh sign and file a consent order that he would undertake and complete the first 11 steps set out in his own supplementary submission. The matter was adjourned for a further hearing on the 27 November 2017, and if the Commission was satisfied that Mr Singh had completed all 11 steps or that he had used his best endeavours to do so, it would consider reducing his suspension to a period of not less than eight months.