

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**

**AT SUVA**

**ILSC CASE NO. 02 of 2021**

**BETWEEN: CHIEF REGISTRAR**

**APPLICANT**

**AND: SHELVIN SINGH**

**RESPONDENT**

**Counsel:** Ms. Anish Sharma for the Applicant  
Mr. Amit Nand for the Respondent

**Date of Hearing (Pleading) :** 11<sup>th</sup> April, 22<sup>nd</sup> June & 1<sup>st</sup> December 2022

**Written submissions :** 10<sup>th</sup> January 2023

**Date of Judgment :** 21<sup>st</sup> March 2023

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**DETERMINATION**

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**Introduction**

1. The Chief Registrar has in this application filed against the Practitioner Mr. Shelvin Singh preferred the following allegation:

**COUNT 1**

**UNSATISFACTORY PROFESSIONAL CONDUCT;** *Contrary to section 81 of the Legal Practitioners Act 2009.*

**PARTICULARS**

**SHELVIN AMIT SINGH**, legal practitioner and principal practitioner of **SHELVIN SINGH LAWYERS**, failed to protect the interest of his client namely **OMAR NIAZI** by failing to prepare and have the parties namely Omar Niazi and

*Mohammed Towhir execute a Deed of Settlement, after a partial settlement was reached between the said parties on the 13<sup>th</sup> day of June 2019.*

2. Section 81 of the LPA provides:

*81. For the purposes of this Act, 'unsatisfactory professional conduct' includes conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, occurring in connection with the practice of law that falls 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 or law firm.*

3. It is well settled that not every professional failing constitutes unsatisfactory professional conduct. [**Legal Services Commissioner v Bone**: [2013] QCAT 550]. In **Legal Services Commissioner v Laylee & Anor**, [2016] QCAT 237 Thomas J said:

*"The test required to determine whether conduct is unsatisfactory professional conduct is such that the relevant "falling short" does not embrace all cases of error but must be sufficiently substantial. There must be an appreciable departure from the standard for the conduct to be unsatisfactory professional conduct. An isolated instance, not involving unethical conduct, and more in the nature of conduct which might give rise to an assertion of negligence, is less likely to amount to unsatisfactory professional conduct. Serious, or repeated instances, are more likely to amount to unsatisfactory professional conduct or professional misconduct.*

(<https://www.queenslandjudgments.com.au/caselaw/qcat/2016/237>)

#### The standard of proof

4. As set out in the Hong Kong case of **A Solicitor v Law Society of H.K.** [2008]2HKLRD and endorsed in **Chief Registrar V Adish Kumar Narayan**, ILSC No. 009 of 2013 (2nd October 2014) and adopted by this Commission in **Haroon Ali Shah** [007 of 2011] evidentiary test in professional disciplinary matters will be as follows;

*"The test is not proof beyond reasonable doubt, but a varying standard of the civil standard referred to at times as the preponderance of probabilities. The more serious an act or omission alleged the more improbable it must be regarded and in proportion to the improbability the evidence will need to be more compelling". (emphasis added)*

#### Facts and evidence

5. The hearing of the matter took place between 11 April 2022 and 01 December 2022. The Applicant called only the Complainant, Dr. Omar Niazi whilst the Respondent gave evidence on his behalf.
  
6. The Respondent Shelvin Amit Singh is a legal practitioner who is the principal of Shelvin Singh Lawyers. The basis of the allegation against Respondent is that he failed to prepare and enter into a Deed of Settlement following a meeting of 13 June 2019 when parties had agreed to a partial settlement of the dispute and thereby failed to protect the interests of the complainant Dr. Omar Niazi. It is common ground that Respondent Mr. Shelvin Singh a practitioner represented Dr. Niazi, in a dispute between the Complainant and his former business partner, Mr. Towhir.

#### Agreed Facts

7. The following facts are agreed and not in dispute:
  1. *The Respondent is a legal practitioner who is the principal of Shelvin Singh Lawyers situated at 38 Mac Gregor Road, Suva.*
  2. *Sometimes in early January 2019, the Respondent was engaged by his client namely Omar Niazi ("the Complainant") to defend a claim by his former partner namely Mr. Towhir ("Towhir").*
  3. *That the Complainant and Towhir entered into a business venture and registered a limited liability company named and styled as "New Pacific Cold Storage Pte Limited."*
  4. *That Towhir was responsible for the construction of the shed for the cold storage facility, installation of the cold storage facility and to obtain all relevant documents such as the approved plan and EFL reports.*

5. *That issues arose between the Complainant and Towhir whereby Towhir then demanded a sum of \$39,234.84 for work he had carried out on the Cold Storage building. This excluded the price for the cold facility which the Complainant paid to New Mart Auto Sales Ltd during the construction stage.*
6. *That Mr. Niazi then engaged legal services of the Respondent to write to the said Towhir to deny the claim for \$39,234.84 and counter claim for damages should Towhir not withdraw his claim.*
7. *On 16 January 2019, the Respondent provided a draft demand notice to the Complainant who approved the draft requesting certain amendments to the draft notice.*
8. *On 25 January 2019, the Respondent served a demand notice to Towhir as instructed by the Complainant.*
9. *The demand notice was responded to threatening to take the matter to Court if Towhir was not paid the sum of \$39,234.84.*
10. *In early February, the Complainant met the Respondent and instructed him to ask for evidence of Towhir's claim and he will pay the claims for which evidence is provided by Towhir.*
11. *On the 13<sup>th</sup> of February 2019, the Respondent made inquiries with O'Driscoll & Co about Towhir's grounds of claim and O'Driscoll & Co provided evidence and supporting documents in relation to the claim.*
12. *On the 7<sup>th</sup> day of March 2019, the Respondent and the Complainant had a meeting at the Respondent's office whereby the Complainant provided a cheque (ANZ Cheque No. 000125) for the sum of \$18,109.14 to be paid to O'Driscoll & Co Trust Account.*
13. *By letter dated 11<sup>th</sup> April 2019, the Respondent wrote to O'Driscoll & Co admitting the matters for which payments were being made, disputing the matters for which payments were not being made and asked for further information and evidences for the disputed items.*
14. *A mediation was arranged to be held on the 13<sup>th</sup> of June 2019 where the parties were to meet with their solicitors at O'Driscoll & Co office at 22 Carnavon Street, Suva.*

15. *The said "without prejudice meeting" was held on the 13<sup>th</sup> of June, 2019 between the Complainant and Towhir whereby both counsels were also present at O'Driscoll & Co's office situated at 22 Carnavon Street.*
16. *In the said "without prejudice meeting", parties agreed to resolve the matter whereby Towhir was to furnish all relevant documents pertaining to the cold storage shed and the Complainant was to make payments to Towhir to clear the balance of the disputed amount.*
17. *By email dated 28 July 2019, Towhir's son, Saizad informed the Complainant that he had arranged for Nausori Town Council certification but they needed some more information so he asked the Complainant to obtain the cyclone engineers certification while Saizad would arrange for the balance of the requirements of Nausori Town Council.*
18. *On the same date, the Complainant responded to Saizad along the following lines:*

*"Hi Mr. Saizad*

*When we had a meeting in the presence of our lawyers it was decided that you will get the cyclone engineer's certificate as the building was built by you and I will pay his charges. All the record is with you, copies of amended plan and EFL, Plumber certificate etc. I cannot do remaining work as cold storage is still locked and you have the key. I requested if cyclone engineer visits the buildings and ask for further job so please get your cyclone panel registered engineer to visit it and give me the list of work scope. I am ready to pay council fee and engineer's fee whenever you ask me. If you give me the time that cold storage people will come and show to my cold storage specialist that how the plant was installed and all the things mentioned were installed and it is in working order. If still anything needs further clarification you can ask your Attorney to give us time for a meeting to make some progress. Or if your lawyer decides that we should sit together to facilitate the process then advise me accordingly and if we will not be able to sort it out then we can have joint meeting again.*

*Thanks Dr Omar."*

19. *On the 31<sup>st</sup> of July 2019, Saizad responded to the Complainant's email as follows:*

*"Hi Doctor,*

*Your email is noted.*

*I have sent a copy of the plans to the engineer yesterday Mr. Vijay Krishnan regarding the cyclone engineer's certificate. I have spoken with him today and was advised that there is no need for engineer's certificate for that shed. If you still want to have engineers certification please liaise with him. I have paid the fees yesterday to the Nausori Town Council regarding the approval which they will obtain form Town and Country Planning.*

*Please note the building is all complete only thing left to be done is the facia board and hip batterns.*

*We can operate and show you the cold storage any time convenient to you. Please let me know at least two days before so that we can make arrangements.*

*Please note when we had a joint inspection with the Nausori Town Council we found that the lock placed in the cold storage has been tampered and damaged. We can see visible hammer marks on it.*

*We hope you are well informed."*

20. *On the 31<sup>st</sup> of July 2019, the Complainant said the following to Saizad:*

*"Hi Saizad sahib*

*When we will get Insurance of the building then Insurance Company will ask for cyclone and structure engineer's certificate. So we will need that as we discuss in our meeting. We had never attempt to open your lock whatever you are saying is not correct. Due to rust your lock was not opening your people who came for inspection they did it what you are saying. I will talk to refrigeration company to check the cold storage with all the list of things mentioned in sales receipt. If you give me tentative date, possibly Saturday or Sunday then I can arrange their visit. Have blessed day.*

*Dr Omar"*

*Sent from my iPhone.*

21. *On 14 August 2019, Saizad wrote the following email to the Complainant:*

*"Hi Doctor Sahab,*

*I have delivered 3 copies of Nausori Town Council application forms this morning. Requesting if you can have all those signed and let me know so that I can pick them up.*

*We have to lodge the applications with plans so that town council can process with the completion certificate.*

*Thank you.*

22. *That the Complainant asked the Respondent to provide him a copy of the minutes of the meeting, however, the same was not delivered on time by the Respondent.*
23. *That the Complainant lodged a complaint at the Applicant's office against the Respondent on the 20<sup>th</sup> of August, 2019.*

8. The issues for determination at this inquiry are:

- a) Whether the Respondent owed a duty to the Complainant to enter into a deed of partial settlement on the 13<sup>th</sup> of June, 2019?
- b) Was a deed of partial settlement mandatory to be signed on the 13<sup>th</sup> of June 2019?
- c) Whether the failure of the Respondent to unilaterally get the parties Towhir and the Complainant to enter into a Deed of Partial Settlement following the mediation of 13 June 2019 resulted in a breach of Section 81 of the Legal Practitioners Act 2009?

#### Evaluation

9. The allegation is that the Respondent practitioner failed to protect the interest of Mr. Niazi by the failure to have a deed of settlement entered between Mr. Niazi and Mr. Towhir. On the 13<sup>th</sup> June 2019 both parties met in the presence of their respective solicitors. On or about the 19<sup>th</sup> April 2019, a payment of \$18,109.14 was made by Mr. Niazi to Mr. Towhir. The said payment was made through Mr. Shelvin Singh and was paid to Mr. O'Driscoll who was the Solicitor looking after the interests of Mr. Towhir. It was also decided between them and agreed that Mr. Towhir was required to obtain the engineer's certificate, cyclone cover, approvals from Nausori Town Council and documentation for the installation for 3-phase power supply with a certificate from the EFL certified electrician. Mr. Niazi was required to facilitate by submitting the applications to the relevant authorities, according to the minutes.

10. According to exhibit A9 letter dated 18<sup>th</sup> March, 2020 written by Mr. Niazi to the Chief Registrar, Mr. Niazi has expected the above matters to be attended to by Mr. Towhir. When the said matters were satisfied, Mr. Niazi was to pay the remaining \$21,220.93 to finally settle this matter. It is his position that since Mr. Singh has not protected his interest by entering a deed of settlement and by releasing the cheque prior to satisfaction of the above requirements, Mr. Singh failed to satisfy his legal obligations. This is the position taken up by him in exhibit A9 the complaint to the CR.
11. However, in evidence, he admits that he agreed to pay this amount and they agreed to get him the documentation. It is his position that he agreed to pay \$18,000 on the condition that they provide him with the cyclone certificate and other documentation. However, it transpired in evidence that to obtain the clearance from the Nausori Town Council, Mr. Niazi was required to submit the signed application to the Town Council. Similarly, he was required to make the application for the engineer's certificate. Mr. Niazi has failed and not provided or submitted these written applications. Therefore, it appears that the settlement has fallen through and the additional claims inter alia have been made due to the failure to obtain the said approvals and the documentations.
12. The complainant Mr. Niazi has made this complaint by his letter dated 18<sup>th</sup> March, 2020 (exhibit AE9). According to which, his complaint is that Mr. Singh has made payment of \$18,010.91 without receiving the engineer's certificate, cyclone cover, Nausori Council approval and installation of electricity supply and certificate. In short, that the cheque had been handed over to Mr. O'Driscoll without securing his rights by way of a deed of settlement. However, Mr. Singh produced in evidence the letter dated 11<sup>th</sup> April, 2019 by which the said \$18,010.91 payment was made to O'Driscoll and Co, Barristers and Solicitors (exhibit DE9). According to this letter, the said payment was in for the complete discharge of all claims referred to in paragraph 6. The said claims referred to are annexed in the form of a schedule annexed to the email of O'Driscoll and Co to Mr. Singh dated 15<sup>th</sup> February, 2019 (exhibit DE11). This email had been forwarded to the complainant on the 21<sup>st</sup> February, 2019. Both these emails refer to the claim of \$33,580.44 in respect of materials used and also a summary in the following form. Materials \$33,580.44,



wages \$5651.40 and the total cost of \$39,231.84. It is common ground that Mr. Singh in consultation with Mr. Niazi decided to agree to certain items out of the said total sum of \$39,231.84. The schedule of the items and the amount that was so agreed is annexed to DE10, letter dated 11<sup>th</sup> April, 2019. Thus, as per these documents it is apparent and obvious that the payment of \$18,109.14 was made for the work done and accepted and agreed to by Mr. Niazi. This letter had been emailed to Mr. Niazi on the same day. He had discussed this with Mr. Sing prior to determining and has agreed to pay of \$18,010.91.

13. Going further the minutes of the meeting held on the 13<sup>th</sup> June, 2019 (exhibit DE11) confirms the following:

- *“Mr. Shelvin has informed that “on a without prejudice basis the admitted amount of \$18,000 or so have been was paid by doctor on or about 11<sup>th</sup> April, 2019”.*
- *Doctor (Mr. Niazi) has informed that “need Towahir and Saizad to fix these before I release them the balance sum”.*
- *Doctor: has informed that agree to meet the disbursements”.*

14. The above confirms that as on the 13<sup>th</sup> June, 2019 the complainant Mr. Niazi was aware of and privy to the fact that the payment of \$18,109.14 was made in respect of the agreed items of the total claim. Then Dr. Niazi has also confirmed that he will release the balance sum when the other matters are fixed (fulfilled). This being so the position taken by Dr. Niazi before this Commission and in his complaint to the Chief Registrar (exhibit AE9) that the cheque for \$18,109.14 was given to be retained until the other party fulfilled the conditions and the release of the cheque was not authorized by him are inconsistent with his positions and events as evident from the said documents.

15. On the 13<sup>th</sup> of June 2019, the discussion was on the way forward as regards the disputed items and the approvals and certificates. As for the payment of \$18,109.14, it was agreed and paid with the concurrence and knowledge of Dr. Niazi. The crux of Dr. Niazi’s complaint is that Mr. Singh has rushed in to making the payment of \$18,109.14 without putting a deed of settlement in place (vide para 9 of the complaint to CR Exhibit AE 9). It appears that Dr. Niazi has himself actively involved with Mr.

Towhir's son and Mr. Towhir in negotiating the settlement. Mr. Towhir had been a patient of Dr. Niazi and they were not strangers or just business partners. In these circumstances and the documentary evidence proves that the \$18,109.14 payment for work, was made *on or about 11<sup>th</sup> April, 2019* with the concurrence and knowledge of Dr. Niazi.

16. At the said "without prejudice meeting", held on 13<sup>th</sup> of June 2019, parties have come to an understanding to resolve this matter by Mr. Towhir obtaining and furnishing all relevant documents pertaining to the cold storage shed and the complainant was to make payment to Mr. Towhir to clear *the balance of the disputed amount* (vide minutes of the meeting exhibit DE11).
17. Thus, entering into a deed of settlement to secure \$18,109.14 on or after 13<sup>th</sup> of June 2019 is not realistic or practical for the simple reason that, the payment was made prior to that day and it was for work done and due. Mr. Towahir does not appear to have denied or disputed the receipt of this payment. Thus there is no loss caused to Dr. Niazi by this payment of \$18,109.14. It is admittedly a sum paid for work done, due and agreed. If the balance work was not completed and the approvals and certificates were not provided then Dr. Niazi would not be under any obligation to pay and there is no possible loss that he will suffer except the failure of the principal business venture which is not Dr. Niazi 's complaint against Mr. Singh. The evidence was that with the completion of the cold storage they were to part their ways thus their engagement was only for the construction and obtaining of the certificates.
18. At the meeting, the Complainant has agreed to make payment to Mr. Towhir to clear *the balance sum and has agreed to to meet the disbursements* (vide minutes of the meeting exhibit DE11). The only inference from this admission is that Dr. Niazi has admitted that there was a balanced sum due. The balance sum can mean none other than the disputed amounts on the work done. Thus, at the meeting in July 2021 Dr. Niazi and Mr. Towhir if at all had agreed on matters of a prospective nature and the way forward. This cannot in any way be tied down or conditional and connected to the \$18,000 or so paid for work done.

19. In these circumstances, if a deed of settlement was entered if necessarily would have included the amounts due and agreed to be paid by Dr. Niazi and an undertaking to submit the necessary application by Dr. Niazi. However, according to Dr. Niazi's evidence he has not made any payments up until he gave evidence before this Commission. It was admitted that he did not submit the necessary applications to obtain the certificates and approvals which Mr. Towhir was required to obtain. In these circumstances if a deed of settlement was entered it is more probable that it would have accrued to the benefit of Mr. Towhir and Dr. Niazi would have been in breach of the same. This is why the Respondent Mr. Shelvin Singh in his evidence responded as follows;

*Ms. Sharma: Now Mr. Singh don't you agree if there was a settlement umm deed of settlement prepared the complainant would not be currently umm un or I mean undergoing conversations or liaising with Mr. Towhir or the other party.*

*Mr. Singh: Sorry you're asking me for a opinion.*

*Ms. Sharma: I'm asking you a question, yes.*

*Mr. Singh: Ok an opinion, ok. Look if there was a deed of settlement and it had been signed Mr. Niazi would be the one who would be prejudice because he'd be the one breaching it and he'd be the one sued.*

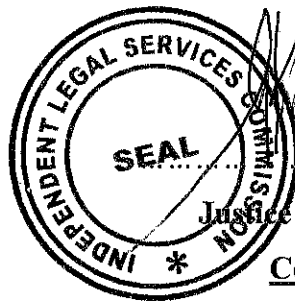
20. In these premises, I see no reason how a deed of settlement would have secured the interests of Dr. Niazi. However, it is necessary to state that if the interests of client requires to be protected by a deed of settlement and the circumstances make it necessary, then it is the duty incumbent upon the legal practitioner or solicitor to determine and so advise his client. There is no reason in logic or otherwise to expect or wait until the client makes a request. The obligation and duty of a competent practitioner demands that he identified this necessity and inform the client on a proactive basis. If the circumstances weren't such a deed of settlement and the practitioner and solicitor has failed to so advise then his conduct would certainly fall short and below the standard of competent expected by the public. This will certainly amount to unsatisfactory professional conduct within the meaning of Section 81 of the Legal Practitioner's Act.

Conclusion

21. However, in the present instance to my mind there is not even a threshold requirement of such necessity to enter into a deed of settlement. In the afore circumstances, there is no failiure to prepare and have the parties namely Dr. Omar Niazi and Mohammed Towhir execute a Deed of Settlement, after a partial settlement was reached between the said parties on the 13<sup>th</sup> day of June 2019. I am of the view that the Respondent Practitioner cannot be held liable to the allegation of unsatisfactory professional conduct on the alleged failure to execute a Deed of Settlement. Accordingly, this Commission is of the view that the Applicant has failed to establish and prove the allegation as charged. Accordingly, I hold that the Applicant has failed to prove the allegation preferred against the Respondent.

22. Accordingly, the Respondent is discharged from these proceedings.

DATED the 21<sup>st</sup> day of March, 2023.



Justice Gihan Kulatunga  
Commissioner