IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 102

Originating Summons No 13 of 2019

In the matter of Sections 94(1) and 98(1) of the Legal Profession Act (Cap 161)

And

In the matter of Jonathan Tan See Leh an Advocate and Solicitor of the Supreme Court of the Republic of Singapore

Between

The Law Society of Singapore

… *Applicant*

And

Jonathan Tan See Leh

… *Respondent*

EX TEMPORE JUDGMENT

[Legal Profession] – [Duties] – [Supervision of paralegal]
[Legal Profession] – [Professional conduct] – [Breach] – [Failure to supervise] – [Fee-sharing agreement]
[Legal Profession] – [Show cause action] – [Sanction]

Law Society of Singapore
v
Tan See Leh Jonathan

[2020] SGHC 102

Court of Three Judges — Originating Summons No 13 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Woo Bih Li J
18 May 2020

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Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 Having carefully considered the parties' submissions, we find the respondent's misconduct to be sufficiently serious to warrant the imposition of a sanction under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act"). In line with the submissions of the Law Society, we impose a three-month suspension starting from the date of this judgment. We note that the respondent conceded this position before us this morning. We think that this concession was well-founded. We now set out the oral grounds for our decision.

Facts

2 The respondent was admitted to the Roll of Advocates and Solicitors of the Supreme Court of Singapore on 21 March 1998. In January 2015, Mr Colin Craig Lowell Phan Siang Loong ("Colin Phan") began working as the respondent's paralegal while the respondent was a consultant at Whitefield Law

Corporation. Mr Colin Phan told the respondent a month before that he had been unable to renew his practising certificate to practise as an advocate and solicitor. It was not disputed that Colin Phan was an unauthorised person under s 32(2) of the Act. Between January and February 2015, Colin Phan sent five emails to three individuals where he represented himself to be an advocate and solicitor. The respondent was copied in the emails. The respondent was charged under s 83(2)(*b*) and in the alternative, s 83(2)(*h*) of the Act for his failure to exercise adequate supervision of Colin Phan.

3 The respondent and Colin Phan also had an agreement to share approximately 50% of the respondent's fees for the legal work that Colin Phan had performed. The precise percentage of the fees shared was decided on a case-by-case basis. The respondent had paid Colin Phan a few hundred dollars pursuant to this agreement. The respondent was charged under s 83(2)(*b*) and in the alternative, s 83(2)(*h*) of the Act for sharing his legal fees with Colin Phan.

The respondent's misconduct was sufficiently serious to impose a sanction

4 The respondent did not contest the underlying facts of the charges against him, in particular, the Law Society's Statement of Case dated 26 March 2019 ("the Statement of Case"). We are satisfied that the respondent's misconduct was sufficiently serious to warrant the imposition of a sanction under s 83(1) of the Act (see *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [30]). Due cause has been made out for the following reasons.

5 First, the respondent has a duty to exercise proper and constant supervision over Colin Phan, who was employed as his paralegal (see r 32 of the Legal Profession (Professional Conduct) Rules (2010 Rev Ed) ("PCR")). It

is a criminal offence for Colin Phan, being an unauthorised person, to represent himself to be an advocate and solicitor (see s 33 of the Act). Proper supervision is vital for the protection of the public. It ensures that clients receive legal advice only from those duly qualified and authorised to carry on legal work. This preserves public confidence in the legal profession which is an indispensable element in the fabric of the justice system (see *Law Society of Singapore v Tan Chwee Wan Allan* [2007] 4 SLR(R) 699 ("*Allan Tan*") at [38]; *Law Society of Singapore v Seah Li Ming Edwin and another* [2007] 3 SLR(R) 401 at [25]). The respondent's failure to supervise Colin Phan undermined public confidence in the legal profession.

6 Second, the respondent has a duty not to share his fees with an unauthorised person for any legal work performed (see r 39 of the PCR). It is an offence for an unauthorised person to hold himself out as an advocate and solicitor. Such a person is not entitled to, and cannot recover any fees done in relation to any legal work he performs (see ss 33(1), 35A and 36(1) of the Act). The fee arrangement between the respondent and Colin Phan facilitated the commission of this offence. Such unethical and unprofessional conduct cannot be condoned as it undermines the integrity and dignity of the legal profession (see, for example, *Law Society of Singapore v Lee Cheong Hoh* [2001] 1 LR(R) 197 at [46] and Jeffrey Pinsler SC, *Legal Profession (Professional Conduct) Rules 2015: A Commentary* (Academy Publishing 2016) at [19.009] and [34.009]).

7 At the hearing before the Disciplinary Tribunal, the respondent submitted that due cause had not been shown in the circumstances. The crux of his submission was that Colin Phan was not an advocate and solicitor only because of a mere technicality, which was his failure to renew his practising certificate. Therefore, Colin Phan was for all intents and purposes, a lawyer, and

the respondent's misconduct (*ie*, his failure to supervise and his fee sharing agreement) was not sufficiently serious.

8 We find that the respondent's argument involved what was, in substance, a *non sequitur*. The fact that Colin Phan was a lawyer did not lead inexorably to the conclusion that the respondent's misconduct was any less serious. The law does not make any distinction between the various types of unauthorised persons (see s 32(2) of the Act) and therefore the breach is not merely technical. Further, there will always be prejudice in allowing an unauthorised person to conduct himself as an advocate and solicitor, *even if* such person had once been a lawyer. An unauthorised person who operates without a practising certificate exposes his or her clients to possible loss in the process because such an unauthorised person does not possess the necessary professional indemnity insurance cover (see *Law Society of Singapore v Mahadevan Lukshumayeh and others* [2008] 4 SLR(R) 116 at [39]). The respondent clearly failed to appreciate this point in arguing before the Disciplinary Tribunal that Colin Phan's failure to renew his practising certificate was one of mere technicality. The public interest in ensuring that clients receive legal advice only from those duly qualified and authorised to carry on legal work must be protected. Indeed, a reasonable person or member of the public would, if he or she had *full knowledge* of the situation (*ie*, that Colin Phan was an unauthorised person under the Act and would therefore be guilty of an offence under s 33 of the Act), have *unhesitatingly* considered the respondent's conduct (*ie*, his failure to supervise Colin Phan and the fee sharing agreement) to be serious misconduct.

9 For the reasons above, we are satisfied that the respondent's conduct fell within ss 83(2)(*b*) and 83(2)(*h*) of the Act. His misconduct was sufficiently

serious to warrant the imposition of sanctions under s 83(1) of the Act. We turn to the appropriate sanction.

The appropriate sanction

10 Cases involving grossly improper conduct without dishonesty or deceit generally attract a monetary penalty. That, however, depends on the overall circumstances of the case. The presence of aggravating factors may justify the imposition of more severe sanctions, such as a suspension from practice or being struck off the roll (see *Law Society of Singapore v Ezekiel Peter Latimer* [2020] SGHC 38 at [3]; *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5 at [44]–[45]).

11 In our judgment, the blatant nature of the respondent's misconduct warrants a period of suspension. The respondent *knew*, a month before hiring Colin Phan, that he had not renewed his practising certificate and was an unauthorised person under s 32(2) of the Act. Nevertheless, the respondent proceeded to hire Colin Phan as his paralegal, and entered into an arrangement with Colin Phan to take over and clear some of Colin Phan's files as the latter had failed to renew his practising certificate. This arrangement involved the sharing of legal fees. The respondent also knew, or ought to have known, at the relevant time, that Colin Phan represented himself to be an advocate and solicitor to three other individuals but he did nothing. In fact, the respondent *facilitated* Colin Phan's misconduct through their arrangement by effectively allowing Colin Phan to function as an advocate and solicitor, contrary to what he knew was permitted under the Act and without regard to the interests of the clients affected by this arrangement. The respondent's misconduct is not a simple case of negligence, but a *blatant disregard* of the professional and ethical

standards that are meant to preserve the dignity of the legal profession and to protect the public.

12 There are three mitigating factors in favour of the respondent. First, the respondent admitted without qualification to all the facts as set out in the Statement of Case. This ensured that there was no unnecessary wastage of time and resources. Second, the respondent has no similar antecedents. Third, the respondent had voluntarily ceased to practise from 1 April 2019. This is a weighty mitigating factor that is indicative of the respondent's remorse and guilt in relation to his misconduct (see for example, *Allan Tan* at [51]). We note that there is no aggravating factor in the form of harm caused to any of the respondent's clients as a result of his misconduct.

13 In the circumstances, we are satisfied that a three-month suspension is appropriate. Absent the mentioned mitigating factors, a longer period of suspension would have been imposed. Any sanction we make must not only have a punitive, but also a deterrent effect. A fine is not appropriate in these circumstances as the respondent's misconduct was not mere inadvertence. He *knew* that Colin Phan did not have a practising certificate but nonetheless entered into a fee-sharing agreement with him, failed to supervise him and thereby disregarded the interests of clients affected by their arrangement. A three-month suspension registers this Court's strong disapproval of the respondent's misconduct and protects the public against similar misconduct by like-minded solicitors (see *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [11] and *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859 at [40]).

14 This suspension shall commence from the date of this judgment. We will hear the parties on costs.

Sundaresh Menon	Andrew Phang Boon Leong	Woo Bih Li
Chief Justice	Judge of Appeal	Judge

Siraj Omar SC and Audie Wong Cheng Siew (Drew & Napier LLC)
for the applicant;
The respondent in person.