IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 270

OS 790/1993

Between

Whitehouse Holdings Pte Ltd

… *Plaintiff*

And

The Law Society of Singapore

… *Defendant*

GROUNDS OF DECISION

Legal Profession — Professional conduct; Legal Profession — Disciplinary procedures

Version No 1: 11 Sep 2026 (01:05 hrs)

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Whitehouse Holdings Pte Ltd v The Law Society of Singapore

[1993] SGHC 270

OS 790/1993
Lim Teong Qwee JC
16 November 1993

1 Tham Kok Leong (`Tham`) was admitted as an advocate and solicitor of the Supreme Court in 1974 and practised as Thomas Tham & Co as sole proprietor. From 1990 he practised at 32 Maxwell Road #04-01, Whitehouse, Singapore 0106. He was retained by the complainant, Whitehouse Holdings Pte Ltd, in and about the lease to it by the state of the whole of the premises at 32 Maxwell Road, which is the old Custom House just across the street from Tanjong Pagar MRT station. The lease was for three years commencing 1 November 1990. Parts of the premises were then sublet but because of restrictions in the head lease some of the agreements for subtenancies were called service agreements and the subtenants were allotted one share each in the capital of the complainant. Tham was also retained in and about the subtenancies. Choy, an assistant solicitor employed by him, attended to the subtenancies and prepared all the service agreements. In about September 1990 Tham, who held one share in the complainant, entered into a service agreement in respect of his premises at Whitehouse. The service agreement was prepared by Choy and it was substantially the same as all the other service agreements except that Tham was to take an area of 3,200 sq ft shown on a plan attached for 36 months from 1 November 1990 at the monthly rent of $2 described as $1

for hire of fittings and fixtures and $1 for maintenance. The monthly rent is only $2 and not $2 per sq ft. The plan attached appears to be for part of level one of the building but in fact Tham occupied a different and larger part of level four although he says that it is not as large as 4,154 sq ft as alleged by the complainant. Three other service agreements were entered into in about July 1990 and were also for 36 months from 1 November 1990. For the whole of level three with an area of 1,580 sq m (approximately 17,008 sq ft) the monthly rent was about $2 per sq ft, for level two it was about $4.50 per sq ft for 2,400 sq ft and about $3.50 per sq ft for 10,000 sq ft. For level four (other than the area occupied by Tham) it was about $4.80 per sq ft for 7,431.8 sq ft. The monthly rent was variously described as partly for maintenance and the rest for furniture or for fixtures and fittings as in Tham`s case but there is no stipulation for the provision of maintenance or inventory or description of any items of furniture or fittings or fixtures in any of the service agreements. Tham incurred a substantial sum of money for renovation works in respect of his premises which were paid for as an advance by the complainant. He admits the advance but alleges that part of the charges were not incurred by him. The complainant also entered into three hire-purchase agreements for some equipment used by Tham. He admits that he must pay all hire and other charges and indemnify the complainant. He has not paid any part of the advance or the hire or other charges because he claims that the complainant owes him more than what is due to it.

2 On 22 December 1992 the complainant lodged a complaint with the Law Society of Singapore and in accordance with s 86 of the Legal Profession Act (Cap 161, 1990 Ed) the complaint was inquired into by the inquiry committee and its report was considered by the Council of the Law Society in accordance with s 87. On 10 August 1993 the Council informed the complainant that it had accepted the inquiry committee`s report that the complaint did not merit a

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formal investigation by a disciplinary committee and dismissed it. The complainant applied under s 96 for an order directing the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee. I dismissed the application but made no order as to costs and the complainant now appeals against my decision.

3 Section 87 provides:

> (1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall, within one month of the receipt of the report, determine -
>
> (a) that a formal investigation is not necessary;
>
> (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 88;
>
> (c) that there should be a formal investigation by a Disciplinary Committee; or
>
> (d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration.
>
> (2) …
>
> (3) The Council shall inform the advocate and solicitor and the person who made the … complaint of the manner in which it has determined the … complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of the person furnish him with its reasons in writing.

4 On 6 August 1993 the Council `accepted and adopted the findings of the inquiry committee` and on 10 August 1993 it caused a letter to be written to the complainant. The material part of this letter reads:

> *The inquiry committee of the Law Society has met and inquired into your complaint and has reported to the Council of the Law Society that your complaint does not merit a formal investigation by a disciplinary committee. The Council has accepted this report and the complaint is, therefore, dismissed.*

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5 This does not accurately represent what the Council did on 6 August 1993. More significantly this is not what the Council is required to do by s 87. The Council must consider the report and according to the circumstances of the case it must come to a determination as to the matters set out in paras (a) to (d) of sub-s (1). It is not sufficient to `accept` or to `adopt` the inquiry committee`s findings. This may be and often is an important step leading to the determination but it is not the determination.

6 At the first hearing I was informed that the complainant asked for the reasons in writing of the Council but these were not before me. At the further hearing an affidavit filed during the interval exhibited a letter from the Law Society dated 17 August 1993 which was said to contain the reasons in writing. The material part of this letter reads:

> *We enclose a copy of the report of the inquiry committee.*

7 The Council took into consideration the report of the inquiry committee in arriving at its determination that ***no cause of sufficient gravity existed for a formal investigation*** into your client`s complaint. [Emphasis added.]

8 I find this quite strange. In her affidavit filed on 9 September 1993 the executive director of the Law Society said that `the Council was of the view that a formal investigation ... was not necessary`. This suggests that if any determination was arrived at it was under s 87(1)(a). In its written reasons the Council appears to have arrived at a determination under s 87(1)(b) except that no penalty was ordered to be paid.

9 I turn now to the report. The inquiry committee identified three specific complaints:

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> (1) Tham `had acted fraudulently or had displayed gross improper conduct in the discharge of his professional duty by fraudulently charging $2 for the use and occupation of ... 32 Maxwell Road #04-01`.
>
> (2) Tham `had displayed improper conduct in taking undue advantage of his position as ... solicitor ... by inducing the [complainant] to pay ... for the renovation works`.
>
> (3) Tham `had displayed improper conduct in taking undue advantage of his position as ... solicitor ... by inducing the [complainant] to enter into three hire-purchase agreements`.

10 As to the first complaint the inquiry committee said:

> *The committee finds no reason not to accept Choy`s evidence and the committee cannot, on the evidence produced before the committee, find that the respondent had been fraudulent in his conduct. The committee accordingly recommends that the complaint be dismissed.*

11 It said nothing about grossly improper conduct. The report appears to have ignored the fact that a solicitor received a very substantial benefit from his client under an agreement prepared by his assistant who attended the client and who said in evidence before the inquiry committee that he did not advise the client to be independently advised. The rent charged by the complainant to its other subtenants did not range from $1.20 per sq ft to $2.90 per sq ft as stated in the report. This is only in respect of that part said to be for furniture or for fixtures and fittings in respect of which there was no inventory. Taking into account the other part said to be for maintenance the rent ranged from about $2 per sq ft for the whole of level three of 1,580 sq m (about 17,008 sq ft) to $4.80 per sq ft for the whole of level four (other than the part occupied by Tham) of 7,431.8 sq ft. Tham did not say that he or anyone else in his office advised the complainant to be independently advised and he did not deny the benefit. In fact he attempted to justify it on the ground that in consideration of the nominal charge of $2 per month he would provide certain services which were of a non-

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professional nature. This is not recorded in any document and there is no evidence of the value of such services.

12 As to the second complaint the inquiry committee said `[t]he committee finds no merit in the second complaint` and as to the third complaint it said `[t]he committee is also unable to find any merit in the third complaint`.

13 If the determination of the Council under s 87(1) is that a formal investigation is not necessary then I am unable to affirm it. The inquiry committee has not considered the second limb of the first complaint as to grossly improper conduct. Since the Council accepted and adopted the findings of the inquiry committee it would appear that the Council also did not consider the second limb of the complaint. It could not have come to any determination on this complaint. The Council ought to have determined in accordance with s 87(1)(d) that the matter be referred back to the inquiry committee. If it is found that a solicitor derives a substantial benefit other than his proper remuneration under a document prepared by him for his client to execute and he has not advised his client to obtain independent legal advice on it before the document is executed by the client it would be open to a disciplinary committee to hold that the solicitor has been guilty of grossly improper conduct in the discharge of his professional duty. It would also be open to the Council to determine that the solicitor should be ordered to pay a penalty under s 88 should it take the view that no cause of sufficient gravity exists for a formal investigation.

14 Section 96(4) provides:

> *At the hearing of the application, the judge may make an order -*
>
> (a) affirming the determination of the Council; or

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> (b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,
>
> *and such order for the payment of costs as may be just.*

15 For the reasons given above I declined to affirm the determination of the Council. On the question of grossly improper conduct either the Council had made no determination in which case there was no determination to be affirmed or it had made a determination without having considered the matter because the inquiry committee had not reported on it and the Council had merely accepted and adopted the inquiry committee`s findings in which case its determination cannot stand. Mr Ramakrishnan submitted that I ought to make an order directing the Law Society to apply to the Chief Justice for the appointment of a disciplinary committee. I declined to do so. In ***Wee Soon Kim Anthony v Law Society of Singapore*** Chan Sek Keong JC (as he then was) said at p 12:

> *The statutory scheme gives the advocate and solicitor concerned a right to be judged first by his own peers, ie the inquiry committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge. Section 93(4) should not be construed in such a manner as to deprive the advocate and solicitor concerned of these rights. In my view, a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry.*

16 I respectfully agree.

17 It is no light matter for a solicitor to have to appear before a disciplinary committee. The scheme for disciplinary proceedings under the Act requires that a complaint be inquired into by an inquiry committee first except where otherwise provided. The inquiry committee reports to the Council and in accordance with s 86(7) the report is required to deal with the necessity or otherwise of a formal investigation by a disciplinary committee and if no formal

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investigation is required the inquiry committee must either recommend a penalty sufficient and appropriate to the misconduct committed or that the complaint be dismissed. The report is then considered by the Council and the Council makes a determination in accordance with s 87 as set out above. Where as in this case the inquiry committee has not in its report dealt with the necessity or otherwise of a formal investigation in respect of a substantial complaint and it does not appear from the report that such complaint has been investigated or considered and the Council has merely accepted and adopted the inquiry committee`s report it would be wrong for the court on an application under s 96 to make an order for the appointment of a disciplinary committee. That would be to deprive the solicitor concerned of the safeguards provided by law.

18 In the circumstances I dismissed the application. It was an omission of the inquiry committee that has led to these proceedings but the Council ought to have referred the report back and so I made no order as to costs.

19 ***Order accordingly.***

Lim Teong Qwee JC

V Ramakrishnan (V Ramakrishnan & Co) for the plaintiff
N Sreenivasan (Derrick Ravi & Pnrs) for the defendant

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