

LEGAL PROFESSION BOARD OF TASMANIA

No. 47 of 2010

COMPLAINANT

“A”

-AND-

LEGAL PRACTITIONER

“B”

DECISION & REASONS FOR DECISION

Decision

The complaint is dismissed pursuant to s.433 (3) of the *Legal Profession Act 2007* (“the Act”).

Reasons for Decision

1. By complaint to the Board dated 30 June 2008 and made under s.427 of the Act, the Complainant made what were later distilled into 10 allegations in relation to the professional conduct of the Practitioner. In summary, these allegations involved:
 - 1.1. The manner in which a notification a change in of the officers of a corporation was handled;
 - 1.2. The inappropriate advancing of trust monies from an estate;
 - 1.3. Failing to obtain security for a loan;
 - 1.4. Signing a property transfer without authority;
 - 1.5. Alteration of transfer and delay in rectification;
 - 1.6. Completing solicitors certifications using a rubber stamp of the Practitioners signature;
 - 1.7. Witnessing statutory declarations without being present when they were made;

- 1.8. Signing blank transfer documentation in anticipation of settlement;
 - 1.9. Preparing documents on the instructions of third parties; and
 - 1.10. Stamp duty irregularities.
2. The conduct in question was, for the most part, alleged to have occurred more than 3 years prior to the complaint being made, whereby s.428 of the Act precluded the Board from dealing with it (otherwise to dismiss it), unless the Board made determinations favourable to the complaint under s.428 (2). The Board sought submissions from the parties on this issue. Having received and considered these submissions, the Board made the determinations necessary to enable it to deal with the matters and delivered written reasons for so doing.
 3. The Board was urged by the Practitioner to summarily dismiss the complaint on other grounds, but having considered submissions from the parties in that regard, the Board was not satisfied that a case for summary dismissal had been made out. It accordingly proceeded to have the complaint investigated as required by s.440 of the Act.
 4. The Board's investigation has been long and painstaking, part of its length being due to the unfortunate need to change investigators in the course of the investigation. The Board is appreciative of the understanding and cooperation of the parties throughout the investigation.
 5. In light of the final outcome of the complaint, it is unnecessary for the Board to detail the findings in its investigators' reports. Suffice it to say, that having considered those reports, the Board is not satisfied that there is any reasonable likelihood that the Practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct in respect of 7 of the 10 matters of complaint, and that the complaint should be dismissed under s.451 (a) in so far as it relates to these matters. However, in relation to the matter referred to in paragraph 1.3 of these reasons the Board considers that the conduct alleged amounted to professional misconduct and should be considered for an application to the Tribunal under s.450 (d) of the Act.

The Board's investigation into matters 1.6 and 1.7 is not yet complete, but the Board's tentative view is that the conduct alleged amounts in each case to unsatisfactory professional conduct and that further investigation might disclose professional misconduct.

6. The Board's investigation being at that advanced stage, the Practitioner has put to the Board a proposal the Board need not complete its investigation and should dismiss the complaint in its totality pursuant to s.433 (3) of the Act on the basis that the Practitioner undertakes to:

- 6.1. Surrender his practising certificate to the Law Society of Tasmania by no later than 30 November 2010;
 - 6.2. In the intervening period not to take on new work or clients;
 - 6.3. Not seek to obtain a practising certificate or undertake paralegal work in the future – as to both in any Australian jurisdiction – without first having obtained the written approval of the Board or any successor to the Board; and
 - 6.4. By 30 November 2010 pay to the Board its (substantial) legal expenses incurred in relation to the investigation of this complaint.
7. That undertaking has been given in writing, without any admission of guilt.
 8. The Complainant has been consulted and is not adverse to the complaint being resolved in the manner proposed by the Practitioner. The Board sought submissions from the Practitioner as to whether s.445 of the Act operated to preclude the Board from taking the course he had proposed. Section 445 provides:

“445. Referral of matters relating to professional misconduct
If, during an investigation under this Part, the Board considers that any matter which is the subject of the investigation may amount to professional misconduct, it is to make an application –
(a) under section 464 for the Tribunal to hear and determine the matter; or
(b) under section 486 for the Supreme Court to hear and determine the matter.”
 9. The submissions requested were provided by the Practitioner’s counsel. The Board is satisfied that s.445 is properly to be regarded as directory rather than mandatory (see 510A (a) (3) of the Act’s *Interpretation Act 1931*) and should not be read as excluding the application of s.433 (3) in appropriate circumstances.
 10. In the Board’s opinion, this is an appropriate case for dismissal of the complaint under s.433 (3). That is because, even if, after completing its investigation, the Board were to send any or all of matters 1.3, 1.6 and 1.7 to a hearing, whatever the forum, and a finding or findings of guilt were to be recorded against the Practitioner, the Board’s view is that an appropriate sanction would be no more onerous than removing the Practitioner’s right to practice and in ordering payment of the Board’s costs. That result is achieved through adoption of the Practitioner’s proposal, which will save the substantial time and expense which a completion of the Board’s investigation and a formal hearing would involve. Recognising that the Board’s role is a predominately protective one, the outcome achieved through adoption of the Practitioner’s proposal is, in the Board’s opinion, sensible and desirable.

11. Accordingly, relying upon the undertakings of the Practitioner, the Board will dismiss the complaint under s.433 (3), having formed the view that it requires no further investigation in the circumstances outlined above.

Determination dated the ^{24th}..... day of November 2010.

Legal Profession Board of Tasmania

Per: 

Chairman

Please note that within 21 days after the date of this determination the complainant or the legal practitioner, the subject of the complaint may apply to the Disciplinary Tribunal or Supreme Court to have this matter heard by the Disciplinary Tribunal or Supreme Court and may make an application to the Disciplinary Tribunal or Supreme Court to stay the determination pending the finalisation of such an application.