

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CIVIL DIVISION

Cause No: LPDC 1 of 2017

6 IN THE MATTER OF SECTION 7 OF THE LEGAL PRACTITIONERS LAW (2015
7 REVISION)

8 AND IN THE MATTER OF MR. A, ATTORNEY AT LAW

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11 **Appearances:** Ms. Claire Allen of the Attorney General's
12 Chambers

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14 Mr. A in Person

15 **Before:** The Hon. Justice Paul Worsley (Actg.)

16 **Heard:** 22nd and 24th – 26th February 2021

17 **Verdict Judgment:** 8th March 2021

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19 **HEADNOTE**

20 *Civil Division – Section 7 of the Legal Practitioners Act– Disciplinary*
21 *Proceedings.*

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24 **JUDGMENT**

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- 1 1. Following my written Decision finding unprofessional conduct proved against Mr. A
2 in his capacity as an attorney at law I have invited submissions in writing from both
3 parties as to the appropriate sanction and also on the question of costs. The Attorney
4 General's Chambers (the AG) advises that this is the first contested disciplinary
5 hearing to be held in the Cayman Islands. Thus there are no local precedents.

- 6 2. Counsel on behalf of the AG has supplied a comprehensive and careful submission in
7 writing. I have also considered *The Bar Tribunals & Adjudication Service (BTAS)*
8 *Sanction Guidance* (2019) (92 pages) and the *Solicitors Disciplinary Tribunal*
9 *Guidance Note on Sanctions* (2020) (24 pages), both of which have persuasive
10 authority for a decision maker in the Cayman Islands. Any Sanction imposed should be
11 designed to protect the public, maintain high professional standards and promote
12 confidence in the disciplinary process. The totality of the breaches should be
13 considered.

- 14 3. I have taken into account considerations of culpability, harm, aggravating and
15 mitigating factors as they apply in this case.

- 16 4. Mr. A has indicated in writing his concerns about the conduct of the case. Those he
17 may pursue elsewhere. At the 11th hour he has provided a letter setting out matters of
18 mitigation but no submissions on principle, penalty or costs, save to submit that a
19 Formal Warning would suffice as Sanction.

- 20 5. It is sad to see an attorney of Mr. A's undoubted experience fail so badly. He is a well-
21 established practitioner with a practice and staff to maintain, and was charging up to
22 \$450 per hour for his services. He is of hitherto good character. He has family
23 commitments, undertakes charitable work and tells me these proceedings have weighed



1 heavily upon him. There are no similar findings against him. I bear in mind that these
2 findings do not establish dishonesty. There is no suggestion of undue enrichment.

3 6. The charge of unprofessional conduct has been proved under five different heads of
4 evidence. The gravamen of this charge is that this was not an isolated lapse. These
5 were lapses perpetuated over several years.

6 7. The Plaintiffs' claim for damages should have been brought to trial by 2007. The trial
7 did not take place until 2011.

8 8. All monies received by Mr. A should have been promptly paid and accurately
9 accounted for. They were not.

10 9. From February 2012 there were repeated requests for payment of \$30,000.00 owing to
11 the Plaintiffs. Mr. A paid that money into the Plaintiffs' account. They had changed
12 their account. When he received repeated requests thereafter for the money he should
13 have checked with his bank so see if the funds had been returned. They had. It was not
14 until almost 4 years later, in November 2015, that he finally resolved the matter by
15 transferring the \$30,000.00 to the new account. I note that I accept Mr. A's
16 submission that there was no late payment of the sum of \$822,000.00. That sum was
17 paid to the Plaintiffs in late 2011.

18 10. Mr. A failed to ensure that adequate steps were taken to preserve his case files.
19 Without them, he could not track the conduct of the case and payment of all monies
20 received.

21 11. A Fee Note and accurate Final Accounts should have been presented to the Plaintiffs
22 by 2012. They are still incomplete in 2021.



1 12. Mr. A should have responded promptly in 2012 to the Honourable Chief Justice's
2 concerns over his handling of the Plaintiffs' case. He did not. He has claimed that he
3 spoke with the Chief Justice in about 2013 and believed that he needed to respond no
4 further. It was clear from the further requests thereafter that the matter had not been
5 resolved to the satisfaction of the Chief Justice. It was some 3 years before Mr. A saw
6 it fit to respond in any detail, and then not satisfactorily.

7 13. The Plaintiff was vulnerable. He was cognitively damaged as a result of the injuries he
8 had sustained. From being a computer analyst he was reduced to carrying out only
9 menial duties.

10 14. The Plaintiff was not a resident of the Cayman Islands or familiar with its legal system.
11 He was totally dependent on the integrity of his Attorney. He was badly let down. Mr.
12 A does not have the mitigation that he was a newly qualified practitioner unused to the
13 pressures of litigation or the demands of clients.

14 15. The Plaintiff has lost out as a result of having to wait for the balance of his damages to
15 be paid. He still does not know the final bill. In an early email to Mr. A the Plaintiff
16 said he was left 'suicidal' as a result of waiting for his case to be finally concluded. Mr.
17 A was unmoved by that plea.

18 16. Mr. A has said that the Plaintiff contributed to the delay himself by 'a gross
19 misrepresentation' to Dr. Godsall, his Neuropsychologist, over academic qualifications
20 20 years earlier. If Mr. A believed that the Plaintiff was being dishonest all the more
21 reason to ensure that his own dealings were transparent, timely and accurately
22 recorded. Instead he allowed three and a half years to elapse before the relevant records
23 were retrieved.

1 17. It was always open to Mr. A to sever his professional retainer in writing, draw up a
2 Final Account, submit his Fee Note, hand over the balance of monies due and apply to
3 come off the record. He did none of these. I do not accept that in 2012 Mr. A told the
4 Plaintiffs that he no longer acted for them. After being retained for 10 years it is
5 inconceivable that this should nowhere be formally recorded.

6 18. The fact that this hearing has taken place in 2021 is in part down to busy court
7 schedules and to the Covid-19 lockdown. Nonetheless Mr. A has dragged his feet by
8 seeking adjournment after adjournment and yet further time to meet these allegations.
9 He has had four years since he was charged in March 2017 to prepare his case and
10 rectify any omissions.

11 19. There is still no Final Statement of Account. There is still no Fee Note. On the face of
12 Mr. A's documents the sum of \$70,000.00 appears to be still outstanding. He suggests
13 that he is entitled to retain such monies as part of his fees. A Fee Note justifying such a
14 claim has yet to be produced, let alone scrutinised and approved by the Plaintiffs.

15 20. In my judgment the power to strike off an Attorney should be reserved for the most
16 serious cases of dishonesty or worse. This is not such a case. But this unprofessional
17 conduct cannot be overlooked with a reprimand.

18 21. Sir Thomas Bingham in the case of *Bolton v The Law Society*¹ clearly set out the
19 approach of the Courts to cases such as this, where there is no dishonesty [p.518A]:

20 *"It is required of lawyers practising in this country that they should discharge*
21 *their professional duties with integrity, probity and complete trustworthiness.....If*

¹ [1994] 1 WLR 512



1 *a solicitor is not shown to have acted dishonestly, but is shown to have fallen*
2 *below the required standards of integrity, probity and trustworthiness, his lapse is*
3 *less serious but it remains very serious indeed in a member of a profession whose*
4 *reputation depends upon trust.....Only in a very unusual and venial case of*
5 *this kind would the Tribunal be likely to regard as appropriate any order less*
6 *severe than one of suspension.....The second purpose is the most fundamental of*
7 *all: to maintain the reputation of the solicitors' profession as one in which every*
8 *member, of whatever standing, may be trusted to the ends of the earth."*

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10 22. Needless to say that includes lawyers here in the Cayman Islands where their
11 reputation is of the highest importance for all who come to do business with them, be
12 they international companies or unversed laymen. Should unprofessional conduct be
13 treated with impunity it would undermine confidence not only in the profession but in
14 the legal services offered in the Cayman Islands.

15 23. I accept that any period of suspension will cause hardship financially and
16 professionally for Mr. A. But his conduct is a serious fall from grace under each of the
17 five heads set out in my Judgment of the 8th March 2021.

18 24. The Attorney General invites me to consider separate penalties in respect of each of the
19 5 heads of misconduct. I do not agree. There is one charge against Mr. A, namely
20 conduct unbecoming an Attorney, as evidenced under the 5 heads. I shall impose one
21 penalty to meet the one charge.

22 25. I have considered with care the aggravating factors outlined above and that a signal
23 needs to be sent to Mr. A and the profession generally that such conduct is
24 unacceptable. In light of the matters of mitigation set out in his email of 11th March
25 2021, I do not agree with the Attorney General's submission that a period of
26 suspension for 12 months should be imposed.

1 26. **The Order of the Court is that Mr. A be suspended from practising as an**
2 **Attorney at Law in the Cayman Islands for a period of 6 months with immediate**
3 **effect.**

4 27. I see no reason in principle why an order for costs should not follow. Mr. A brought
5 these proceedings on himself by his unprofessional conduct as an Attorney. He was
6 free to contest them as he has done. In such a case the Attorney General should not
7 have to meet all the costs of bringing this case. I order that Mr. A pay KY\$17,100.00
8 by way of costs to the Attorney General.

9 28. The Court has already lifted the ban on publication of the proceedings.

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11 **Dated this the 12th day of March 2021**

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Paul Worsley
The Honourable Mr. Justice Paul Worsley
Acting Judge of the Grand Court

