

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 024 of 2013

BETWEEN : **CHIEF REGISTRAR**
Applicant

AND : **ANAND SINGH**
Respondent

Applicant : Mr. M. Waibuta with Mr. V. Sharma
Respondent : Mr. A. Nand (17th of October 2013)
Mr. A. Ravindra Singh with Mr. M. Anthony
(1st November 2013)

Dates of Hearing: 17th October and 1st November 2013
Date of Judgment: 7th November 2013

JUDGMENT

1. The Applicant has proffered the following charge against the respondent ("the Practitioner"):

"Anand Singh a legal practitioner, from the 26th June 2013 till date, failed to respond to a complaint lodged by Federated Airline Staff Association within the time stipulated in the notice issued by the Chief Registrar pursuant to Sections 104 and 105 of the Legal Practitioners Decree 2009, and thereafter failed to respond to a subsequent reminder notice dated 29th July 2013 issued by the Chief Registrar pursuant to Section 108(1) of the Legal Practitioners Decree 2009, which conduct was a contravention of Section 108(2) of the Legal Practitioners Decree 2009 and was an act of professional misconduct."

2. The facts of the case are that the Chief Registrar, having received notice of a complaint about the practitioner from a former client, wrote to the practitioner on the 26th of June 2013 providing him with details of the complaint and requesting pursuant to section 105 of the Decree that he respond by 18th of July 2013. There was no reply to that letter. The Registrar again wrote to the practitioner on 29th of

July 2013 (in terms of s. 108 of the Decree), enclosing a copy of the earlier letter and granting him a further 14 days to offer an explanation for the complaint. That letter was received by a staff member of his office and indeed the practitioner acknowledges receipt of the letter.

3. On the 9th of August 2013, 3 days before expiry of the time given, the practitioner wrote to the Registrar in the following terms: (the letter is a large part of the practitioner's "defence" and is therefore reproduced in full).

"9th August, 2013

Dear Sir,

*Re: Notice section 108 of the Legal Practitioner's Decree 2009
Complaint by Federal Airline Staff Association:-Ref no. 72/13*

I acknowledge your letter dated 29th July 2013.

I wish to seek your indulgence in postponing my response thereto to sometime after the 6th of September, 2013.

The reason for the deferral is that I am suffering from ill health and will be able to attend to the response after my surgery in late August, 2013.

I await after (sic) your response to my request.

Yours faithfully,"

4. There was no reply from the Chief Registrar to this letter.
5. At the first hearing of this charge the practitioner did not appear in person, he claiming through his Counsel that he was "busy in the office with clients". Counsel then told the Commission that he was instructed to plead not guilty to the charge and to **not** agree any of the documents in the Chief Registrar's bundle (even though the Bundle contained copy letters written by the practitioner himself).
6. When the matter was called for full hearing the practitioner appeared with new counsel instructed and the proceedings took a more practicable turn when that Counsel on behalf of the practitioner agreed the underlying facts of the charge, but sought to rely on the defence of "furnishing a reasonable explanation for such failure" contained in section 108 (2) of the Legal Practitioners' Decree ("the Decree").
7. Counsel for the practitioner relied on an affidavit filed by his client deposing as to the serious medical conditions he had been subjected to since 6th of June 2013 to present. After suffering a heart attack on the 6th June, he underwent restorative

procedures both in C.W.M. Hospital and in two different hospitals in Auckland, New Zealand.

8. The practitioner called a medical officer from CWM, a Dr. Shaheen Ahmed Nusair to give sworn evidence on his behalf.
9. Dr. Nusair testified that the Practitioner has been a patient of his since he first presented at A. & E. in C.W.M. on 6th of June 2013 with an acute heart attack. He was admitted to the hospital from 6th to 14th of June 2013, and apart from the heart, he diagnosed him to have other illnesses such as diabetes, obesity, hypertension, kidney disease and high cholesterol. His arteries were so blocked that it was recommended that he have by-pass surgery. The practitioner/patient elected to have that procedure performed in Auckland. After that procedure on August 29th he returned to Fiji and, according to the Dr, he "had no problems" until the 23rd of September when he presented again, complaining of more chest pain. He was assessed then to be suffering from continued angina and his medical advisors recommended that he undergo an angiogram which is not available locally but will be available from visiting overseas medics in mid-November 2013. He now awaits that procedure. In the meantime he had been medically advised on discharge from CWM on the 24th of September not to stress either mentally or physically and certainly not to work.
10. Counsel for the practitioner relies on that medical evidence to submit that the gravity of his client's condition precluded him from being capable of making an appropriate response to the demand of the Registrar for an explanation of the complaint against him. He was in the course of treatment or recuperation and therefore not in a position to respond.
11. Counsel for the Registrar submitted that the letter written on 9th of August, providing no proof or certification of the "illness" claimed, did not need to be responded to, the practitioner having had full notice of his requirements under the Decree.
12. The Registrar further relied upon the fact that the practitioner, despite his precarious state of health, was regularly appearing in the Court of Appeal and the High Court and that being so, he had the capacity to write to the registrar as required by the section 108 letter served on him. The practitioner admitted before the Commission that he had indeed appeared in the Court of Appeal on the 28th of June 2013 and had appeared in the High Court on the 16th and 18th October 2013. He said that he "may" have appeared in other cases in July but if he did he would then go to the office for an hour afterwards. He had been endeavouring to brief out cases that he was involved in.
13. As the Judge presiding over proceedings against Mahendra Pal Chaudhry, I am well aware that the practitioner appeared before me in the High Court for Mr. Chaudhry on the 14th and 22nd August, 13th and 18th September and the 16th and 18th October.

14. It is also a matter of public record that the practitioner appeared before Temo J. on the 9th of July representing Mr. Chaudhry. That the practitioner may have appeared in other Courts for other matters is unknown.
15. In evidence the practitioner admitted that he did go to his office in that period, albeit for an hour or so at a time and he said that he had to appear for Mr. Chaudhry because no other practitioner would accept the brief.
16. In final submissions for the practitioner, Mr Ravindra-Singh said that his client was the "walking dead", conditions were not normal and he was not meant to be appearing in Court or having anything to do with work. He had cause to appear when he did for Mr. Chaudhry because he tried to the best of his ability to brief the matter to another counsel but because of the nature of the case (or the nature of the accused) no counsel was prepared to accept the brief and he therefore **had** to appear.
17. Counsel further added that his client had written to the Registrar and was awaiting a reply and while still waiting he was served with notice of the instant proceedings. His client had never tried to be evasive and in any event the proceedings have been brought prematurely because it is clear from this very hearing that the Registrar is still trying to establish when the practitioner appeared in Court at relevant times this year.
18. Mr Ravindra-Singh then attempted to offer an explanation for the original complaint but did not advance that point when told it was irrelevant.
19. In closing submissions for the Registrar, Mr Sharma submitted that there was no substantiation for the medical excuse proffered in the letter of the 9th of August and that the letter being written just a few days before the expiry of the time limit, there was not felt any need to reply. He added that if he was able to write the letter that he did, there was no reason why he could have not offered a satisfactory explanation of the original complaint.
20. There being no such explanation received, the charge was laid in terms. Counsel stressed that the elements of the charge have been made out, that the practitioner has put forward a defence of reasonable excuse and therefore it cannot be said that the charge is premature.
21. Mr. Sharma submitted that the admitted fact that the practitioner was at the relevant time working and appearing in Court meant that he was giving priority to the running of his business ahead of responding to the request of the Registrar. By that he was showing disrespect to the Regulatory Head of the Profession. In conclusion Mr. Sharma submitted that the "reasonable explanation" defence has not been made out.

ANALYSIS

22. It must be stated that the Commission accepts the medical evidence contained in the practitioner's affidavit and given by the expert cardiologist, Dr. Nusair. There is no doubt whatsoever that the practitioner, although perhaps not the "walking dead" that his Counsel would have him be, was seriously incapacitated medically at the relevant time he has given evidence of.
23. However the matter does not stop there. In spite of his physical impairment and in spite of the instructions of his medical advisors, he continued to work, going to his office and briefing out files to other practitioners. He appeared regularly in Court and those appearances in Court were not just "appearances"; he was at all times filing intricately worded applications and accompanying affidavits on behalf of his client, Mr Chaudhry and when attending Court making detailed submissions on those applications which involved difficult points of law. That he was fit enough and capable enough to perform those feats is germane to his claim of reasonable excuse.
24. He had time to compose not one but several interlocutory applications, had time and capacity to draft accompanying affidavits and to draft submissions to argue those applications in Court; yet he claims to be incapacitated enough not to write one letter to the Registrar with a satisfactory explanation of the complaint made against him by a former client.
25. Although I deemed it irrelevant, the attempt by Counsel for the practitioner to put forward an explanation to me for the original complaint means that there is an explanation and therefore it could have been given to the Registrar in a letter by way of compliance with the provisions of the request made under the Decree.
26. I find that the letter that the practitioner did write on the 9th of August is disingenuous. Knowing that he had until 12th of August to respond, he wrote just three days before that asking for more time, not a fixed period, but "sometime after the 6th of September", which of course was a time limit in infinity. Having received the section 108 letter of 29th of July, and knowing that time was of the essence and that it was about to expire, he then at the last minute seeks further time. We know now that the reasons given in the letter were genuine, apart from the fact that there was to be no "surgery", but a procedure involving an overnight hospital stay but in any event he made no attempt to furnish any evidence of that to the Registrar and it was unreasonable for the practitioner to expect a response within the two days remaining to furnish his satisfactory explanation. The fact that the Registrar did not respond is remiss and discourteous but had he responded and said - no more time, where did that leave the practitioner? Just one day to comply with the section 108 notice. Compliance with the Registrar's request was on on-going duty and the Dr.'s evidence is that there were "no problems" between August 24th and September 23rd. Between the 9th of August, when he wrote the letter and 23rd of September when he suffered an attack of angina he is known to have appeared in Court on at least 3

occasions to argue complicated interlocutory applications. He made no effort in that period to comply with the Chief Registrar's request, knowing that it was incumbent on him to do so.

27. The practitioner did have an explanation for the complaint because his Counsel tried to offer it to me. That could have just as easily been offered to the Registrar within the time limit given him instead of the letter written. The Commission finds that this letter has been written to the Registrar by way of "tactical delay" and does not accept his waiting for a reply to it as "reasonable excuse".

28. Nor does the Commission accept the proven medical evidence as "reasonable excuse", given the known activities of the practitioner after diagnosis. The practitioner was arrogantly dismissive of the medical advice not to work, just as he was arrogantly dismissive of the legislative requirement to respond in appropriate terms to the Registrar's section 108 request.

29. The elements of the charge have been proved and they were proved as at the 12th of August 2013, fourteen days after the Registrar's 108 letter. Any suggestion that the charge is premature or misconceived is groundless.

30. The allegation against the Practitioner is **established**.

PENALTY

31. At the time of hearing, Counsel for the practitioner was afforded the opportunity to mitigate, should the Commission find against his client. Counsel chose not to do so and in actuality there is very little to be said for the practitioner apart from his proven dire medical straits, for which this Commission has every sympathy.

32. It is however a finding of the Commission that the practitioner had every opportunity before charge to comply with the Registrar's request and it has been shown that he knew that and that he even did have an excuse but he never responded. His vigorous Court attendances at the time preclude him from saying he was too incapacitated.

33. Previous decisions of this Commission have established a "tariff" for this dereliction of legislative duty; that tariff being suspension of practice from one to three months. In [Matter No 014 of 2013] a one month suspension was ordered for a practitioner who admitted his failing from the very beginning and was most remorseful before the Commission. In [Matter No 013 of 2013] the practitioner displayed a total lack of remorse and offered an excuse to the Commission that was not only unreasonable but which was arrogantly disdainful of his own client. His certificate was suspended for a period of three months.

34. When the application against this practitioner was first called before the Commission on the 17th of October, he chose to not appear, sending word through Counsel that he had instructed that he was too busy to attend because "he had clients with him." He had been served with notice of the proceedings on the 14th of October, so he had three days notice to make alternative arrangements for his "clients". Such non attendance, while his right, shows arrogant scorn for the proceedings here and is evidence of total lack of remorse. In addition, he had instructed the young Counsel appearing that he would be pleading not guilty, putting the Registrar to strict proof of all the documentary evidence (including his own letter) and that he needed a long adjournment to instruct overseas Counsel.
35. The practitioner's present Counsel, Mr Ravindra-Singh, now wishes on behalf of his client to resile from that intransigent position on the basis that his client in his medical obfuscation was not able to properly formulate appropriate instructions. It is a finding of this Commission however that the practitioner was well able to think and to operate on an enhanced intellectual basis and would regard the initial stance of the practitioner to be totally lacking in remorse.
36. The Commission takes a starting point of three months' suspension of the practising certificate of the practitioner. Given his dire medical condition however, for which the Commission has every sympathy, a one third discount of that period is deducted as an act of mercy. That is as lenient as the Commission can be in the circumstances.

ORDERS

1. The Practising Certificate of the practitioner is suspended for a period of two months from the date of this Judgment.



**JUSTICE PAUL MADIGAN
COMMISSIONER**



7 NOVEMBER 2013