

IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

THE BAR COUNCIL

Applicant

and

LAI, ODY MORALES APOSTOL

Respondent

REASONS FOR SENTENCE
[Pursuant to section 37A of the
Legal Practitioners Ordinance (Cap. 159)

Background

1. By its Statement of Findings dated 7th April 2016 this Tribunal found the Respondent guilty of 10 complaints laid by the Applicant. These complaints were:
 - (i) Complaints 1 and 6 alleged that the Respondent acted in a professional capacity without instructions from or intervention of a solicitor, contrary to the Bar Code paragraph 50(a).
 - (ii) Complaints 2 and 7 alleged that the Respondent issued fee notes in respect of professional work that she had performed for her lay client directly, contrary to the Bar Code paragraph 73(F)(1).
 - (iii) Complaints 3 and 8 alleged that the Respondent received her professional fees directly from her client, contrary to the Bar Code paragraph 73(F)(2).

- (iv) Complaints 4 and 9 alleged that the Respondent failed to issue any receipt of payment for her fee notes and to send the same to a solicitor upon receiving payment directly from her lay client, contrary to the Bar Code paragraph 73(F)(3).
 - (v) Complaint 5 alleged that the Respondent acted in a professional capacity for two parties with potentially conflicting interests, contrary to the Bar Code paragraph 57.
 - (vi) Complaint 10 alleged that the Respondent engaged in conduct that may bring the Bar into disrepute, namely handling her lay client's monies, contrary to the Bar Code paragraph 6(b).
2. The evidence relating to each of these complaints and our analysis and conclusions about the same are set out in the Tribunal's Statement of Findings dated 7th April 2016, and we will not repeat the same herein.
 3. On 7th June 2016, the Tribunal convened for the purposes of considering the appropriate penalties to be imposed upon the Respondent in respect of the complaints of which she had been found guilty. The Applicant was represented by Mr Steven Kwan of Counsel. The Respondent did not attend the hearing nor provide any written submissions to the Tribunal for its consideration. The Tribunal is satisfied that every proper effort was made to serve the Respondent with notice of this hearing together with a copy of the Tribunal's findings dated 7th April 2016.
 4. The Tribunal is indebted to Mr Kwan for his fair and balanced submissions to the Tribunal on 7th June 2016, in which he fully reviewed for the Tribunal the applicable case law and principles together with previous relevant cases in which barristers were disciplined by the Barristers Disciplinary Tribunal.
 5. The Tribunal enquired of Mr Kwan whether he could identify any matters of mitigation on behalf of the Respondent. In the event none was identified. The Tribunal itself considered whether there are any mitigating factors in this case and has concluded that there are none. There is no suggestion of any remorse by the Respondent, indeed her deliberate absence from any participation in these proceedings is an indication that she is not in any way remorseful.

6. Mr Kwan informed the Tribunal that the Respondent has been involved in 3 disciplinary matters since 2006 which were dealt with by the Bar Council under section 8 of the Code of Conduct as follows :

Date of complaint	Complainant	Nature of complaint	Date of finding by the Bar Council	Sanction
6 October 2006	Mr Ian Polson for Ms Lyne Verada	Acting for the complainant in a divorce case without any instructing solicitor and receiving various sums of money from the complainant in breach of ¶50 of the Code of Conduct.	4 April 2007	Admonishment by the Chairman of the Bar
17 March 2010	Ms Chin Wai Yee Winnie	Putting forward in cross-examination an untrue collateral factual allegation for the purpose of discrediting the complainant as a witness, contrary to ¶¶131 & 139 of the Code of Conduct.	30 June 2010	Attendance before the Chairman of the Bar for advice
16 August 2013	Registrar of the District Court	Failing to seek permission from the District Court to be absent from a criminal trial and unilaterally returning a case in the magistrates' courts leaving an accused undefended, contrary to ¶¶133 & 151(a) of the Code of Conduct.	9 January 2014	Admonishment by the Chairman of the Bar

Analysis

7. We proceed on the basis that the Respondent is an experienced barrister, having been called to the Bar on 22nd January 2005. Furthermore, the admonishment by the Chairman of the Bar on 4th April 2007 set out aforesaid makes clear that the Respondent must have been well aware that she should not act without the instructions of a solicitor, nor receive or deal with sums of money belonging to a member of the public.
8. Having considered all of the evidence, and the legal principles applicable to disciplinary sanctions and in particular the dicta set out in *Bolton v. Law Society* [1994] 1 WLR 512 we conclude as follows :

Complaints 1, 2, 3, 4, 6, 7, 8 and 9

9. (i) Complaints 1 and 6 : acting without the instructions of a solicitor;

- (ii) Complaints 2 and 7 : issuing fee notes directly to clients;
- (iii) Complaints 3 and 8 : receiving fees directly from client; and
- (iv) Complaints 4 and 9: failing to issue receipts for fees.

All these complaints come from the same root, i.e. the absence any participation or instructions by a solicitor in these matters.

Accordingly the Tribunal concludes as follows:-

- (a) As to the Complaints 1 and 6 that the Respondent be suspended from practicing as a barrister for a period of 6 months;
- (b) As to Complaints 2 and 7 that the Respondent be suspended from practicing as a barrister for a period of 6 months;
- (c) As to Complaints 3 and 8 that the Respondent be suspended from practicing as a barrister for a period of 6 months;
- (d) As to Complaints 4 and 9 that the Respondent be suspended from practicing as a barrister for a period of 6 months.

All the aforesaid periods of suspension are to run **concurrently** so that the total time of suspension in respect of these aforesaid complaints is a period of 6 months.

Complaint 5

10. As is apparent from the Tribunal's Statement of Findings, the Respondent purported to act at various times for both F&B represented by Mr Berner and DVS represented by Mr Massimo Gavina. As the Tribunal has noted in its Statement of Findings, an obvious conflict arose between Mr Berner and Mr Gavina in respect of the legal matters that the Respondent was purporting to assist both of them with. Nonetheless, the Respondent continued to act for both of them. This matter is made all the more serious because at one stage the Respondent began to give legal advice to Mr Berner which was designed to secretly disadvantage Mr Massimo Gavina and to correspondingly advantage Mr Berner in the parties' commercial dealings. We refer to, in particular, the Respondent's own email dated 8th June 2013, the content of which is set out at paragraph

119 of the Tribunal's Statement of Findings. We note that the tone and partisan content of this email is entirely unacceptable and makes clear the depth of the conflict between Mr Berner and Mr Gavina, and the Respondent's active and in our view dishonest involvement in the same.

11. Further, in paragraph 123 of the Tribunal's Statement of Findings, we noted and accepted Mr Berner's evidence that the Respondent represented both F&B (Mr Berner's company) and DVS (Mr Gavina's company) in negotiations. In this respect, Mr Berner has produced the email dated 7th February 2014 which was copied to Mr Berner and Mr Gavina by the Respondent. The same is set out in paragraph 69 of the Tribunal's findings.
12. It is plain from the totality of the evidence that whilst the Respondent purported to act for both Mr Berner's company, F&B and Mr Gavina's company, DVS, that the Respondent's involvement and conduct in the continuing conflict between the parties, and which the Tribunal has set out in its Statement of Findings was nothing less than disgraceful. However, we bear in mind that in this respect, the Respondent has been charged with acting for parties with conflicting interests only, and not with anything else, and we confine ourselves to the current charge. Nevertheless in the Tribunal's view this is a serious breach of section 57 of the Bar Code.

Complaint 10

13. The Tribunal noted in paragraph 139 of its findings, the dangers inherent in a barrister receiving and handling client's money and placing the same in the Respondent's personal bank account without in any way involving a solicitor. In the Tribunal's view, it is fundamental to the practice of a barrister that this never occurs, and we have no doubt that the Respondent was well aware that in acting as she did, was a serious and a fundamental breach of her conduct as a barrister which correspondingly would bring the Bar into disrepute. In our view, this is conduct that cannot be tolerated and a deterrent sentence is appropriate.
14. The Tribunal concludes as follows:
 - (i) In respect of Complaint 5:- The Respondent will be suspended from practice as a barrister for a period of 2 years.
 - (ii) In respect of Complaint 10:- The Respondent will be suspended from practice as a barrister for a period of 2 years.

The sentences in respect of Complaints 5 and 10 are to run **consecutively** but will run **concurrently** with the suspension of 6 months referred to paragraph 9 above.

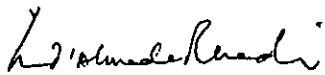
15. The Tribunal wishes to note that it has given serious consideration to ordering the Respondent to be struck off the roll of barristers. Her overall conduct was in the Tribunal's view very near to the mark of making such an order. In the event however the Tribunal has concluded that a lengthy suspension and fine is appropriate.

The Tribunal's Orders:

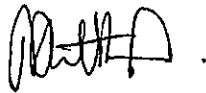
16. The Tribunal orders that the Respondent will be suspended from practicing as a barrister for a period of **4 years** from the twenty-sixth day of September 2016.
17. Additionally, the Tribunal is of the opinion that in view of the Respondent's conduct in this matter and the fact that she received "professional fees" to which she was not entitled, that an order under section 37(3) of the Legal Practitioners Ordinance (Cap.159) is appropriate. The Tribunal orders the Respondent to pay a penalty to The General Revenue in the sum of \$200,000 within 28 days from the date of this Order.
18. The Tribunal further orders that the Respondent will pay to the Applicant the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigations in relation to matters before the Tribunal to be taxed (if not agreed) by a Master of the High Court on a full indemnity basis.
19. The complaints, the conviction and the sentence will be published by way of a Bar Circular and also be published on the Bar Website in the part which is accessible by the public generally, for a period of **4 years**.
20. The Statement of Findings and Reasons of Sentence will be sent to the Complainant and the Registrars of the High Court and of the District Court; to the Chief Judge of High Court, the Chief District Judge, the Chief Magistrate, all members of the BDT Panel, the Department of Justice (the Secretary for Justice, the Civil Litigation Unit and the Director of Public Prosecutions), the President of the Law Society, the Director of Legal Aid, the Administrator of the Duty Lawyer Service, and the Official Receivers Office.

21. A copy of the Statement of Findings and the Reasons for Sentence will be kept in the Bar Secretariat and copies of the same will be available to the public upon request.
22. There will be liberty to apply in respect of the orders made herein.

Dated this 26th day of September 2016.



Ms Lisa D'Almada Remedios
Member of the Tribunal



Robert Whitehead, SC
Chairman of the Tribunal



Dr Chan Siu Kun Alex
Member of the Tribunal