

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

**NO. 008/2009**

**BETWEEN: CHIEF REGISTRAR**

*Applicant*

**A N D: HAROON ALI SHAH**

*Respondent*

**Applicant: Ms V. Lidise & Mr A. Chand**

**Respondent: Ms N Khan**

**Date of Hearing: 15<sup>th</sup>, 16<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup> September 2010**

**Date of Judgment: 30 September 2010**

**JUDGMENT**

1. The Respondent comes before the Commission on an application initially comprised of 12 complaints and a total of 24 allegations, 6 of which were for Unsatisfactory Professional Conduct and 18 for Professional Misconduct.
2. At the commencement of the hearing the appellant filed an amended application omitting complaint no 3 and making minor amendments, by consent, to other complaints.
3. For completeness complaint no 3 which was withdrawn will be dismissed.
4. In the course of the hearing the Applicant withdrew complaints 4, 7 and 9 and each of these complaints will be dismissed.

**STANDARD OF PROOF**

5. The relevant standard of proof to be applied to disciplinary proceedings was considered at length by The Court of Final Appeal of the Hong Kong Special Administrative Region in A Solicitor and The Law Society of Hong Kong Final Appeal No. 24 of 2007 (Civil). There the court considered inter alia relevant authorities from the Privy Council, the High Court of Australia and the High Court of New Zealand (whose decision in Z and Dental

Complaints Assessment Committee [2007] NZAR 343, was subsequently confirmed by the Supreme Court of New Zealand [2008] NZSC 55).

6. The Privy Council in Campbell v Hamlet [2005] UKPC 19 held that the criminal standard of proof was to be applied in all disciplinary proceedings concerning the legal profession.

7. The High Court of Australia in Reifek v McElroy (1965) 112 CLR 517 held that the civil standard of proof applied but said at paragraph 10:

*"The "clarity" of the proof required where so serious a matter as fraud is to be found, is an acknowledgment that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved: see Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J.."*

8. And at paragraph 11 the court said:

*"No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge: see Hellon v Allen (1940) 63 CLR 691 per Dixon, Evatt and McTiernan JJ."*

9. The Supreme Court of New Zealand in Z v Dental Complaints Assessment Committee [2008] NZSC 55 in applying the flexible application of the civil standard said at paragraph 116:

*"We acknowledge the serious impact that adverse disciplinary decisions can have on the right of individuals to work in their occupation and on personal reputations. The flexible application of the civil standard will, however, give all due protection to persons who face such proceedings."*

10. In A Solicitor and The Law Society of Hong Kong the Chief Justice at paragraph 116 said:

*"In my view, the standard of proof for disciplinary proceedings in Hong Kong is a preponderance of probability under the Re H approach. The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public*

*interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation."*

11. I am therefore of the opinion that the appropriate standard of proof to be applied is the civil standard varied according to the gravity of the fact to be proved, that is the approach adopted in amongst other places, Australia, New Zealand and Hong Kong.

#### **PROFESSIONAL MISCONDUCT**

12. Professional misconduct is relevantly conduct of a legal practitioner occurring in connection with the practice of law that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice or unsatisfactory professional conduct involving a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

#### **UNSATISFACTORY PROFESSIONAL CONDUCT**

13. Section 81 of the decree defines "unsatisfactory professional conduct" as including

*"conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, appearing in connection with the practice of law that falls short of the standards of confidence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner or law firm".*

#### **COMPLAINT NO 1**

- A** *Haroon Ali Shah a legal practitioner, on the 8<sup>th</sup> of May 2007 billed Sunview Motel & Youth Hostel Limited excessive legal fees in the matter of the instructions relating to the sale and purchase of land registered under CT No. 20655, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.*
- B** *Haroon Ali Shah a legal practitioner on the 8<sup>th</sup> of May 2007 in rendering his bill of costs to Sunview Motel & Youth Hostel Limited incorrectly represented a balance of \$7,348.46 when a proper accounting of the amounts therein and the purposes for which they were deducted should have shown a balance of \$10, 7348.46, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.*
- C** *Haroon Ali Shah a legal practitioner between the 23<sup>rd</sup> of October 2006 and*

December 2006 having acted for both the vendor and purchasers, namely Sunview Motel & Youth Hostel Limited and Joo Young Lee and Soon Ae Huh respectively, in a transaction for the sale and purchase of land registered under Certificate of Title 20655, subsequently initiated a civil suit against the vendors Sunview Motel & Youth Hostel Limited on behalf of Joo Young Lee and Soon Ae Huh the purchasers, at the Lautoka High Court in the matter Joo Young Lee and Soon Ae Huh v Isireli Werekoro and Sunview Motel & Youth Hostel Limited HBC 63 of 2007, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.

14. The complainant Isireli Werekoro, now deceased, was with Sekaia Nakautia owner of the shares in Sunview Motel & Youth Hostel Limited, the owner and operator of the Sunview Motel & Youth Hostel at Martintar, Nadi.
15. In 2006 the property was subject to an attempted mortgagee sale. The houses occupied by the complainant and Sekaia Nakautia were collateral security for the mortgage advance.
16. To protect the houses attempts were made by the owner to sell the motel. The first attempt was to Fulluck Trading and Tour Company, for whom Sherani & Co. solicitors were acting.
17. The Respondent was engaged by Isireli Werekoro on behalf of the vendor.
18. Due to the urgency, from the vendor's point of view, it was concluded that the prospective purchaser was not moving quickly enough and when a further purchaser was introduced to Isireli Werekoro instructions were given by him to the Respondent to terminate the agreement with Fulluck and proceed with a sale & purchase agreement to sell the motel for the sum of \$400,000 to Joo Young Lee and Soon Ae Huh.
19. The Respondent acted for both the vendor and the purchasers (with consent) and a sales & purchase agreement [Ex A13] was prepared and executed on the 23<sup>rd</sup> October 2006.
20. A caveat was lodged on the title by Fulluck to protect its interest as purchaser under an earlier sale & purchase agreement.
21. The Respondent acting for the vendor had correspondence and phone calls with the solicitors for Fulluck and the solicitors for the mortgagee in the course of the transaction.
22. The sale & purchase agreement to Lee and Huh provided for a deposit of \$100,000, which was paid on the 23<sup>rd</sup> of October 2006 and for settlement with payment of the balance to take place within two weeks.

23. On the 8<sup>th</sup> of November 2006 Isireli Werekoro, Lee and Huh attended the Respondents office and purchaser paid the sum of \$300,000 to the Respondents trust account.
24. A dispute arose as to the amount of the costs payable by the purchasers and when they threatened to pull out of the agreement Isireli Werekoro agreed to pay \$10,000 towards the purchasers costs. This is evidenced on [Ex A38].
25. The purchaser paid the sum of \$25,000 by way of costs to the Respondent on 9<sup>th</sup> November 2006 [Ex A39] for which the Respondent issued a receipt on 9<sup>th</sup> November 2006 [Ex A40].
26. The Plaintiff went into possession on the 8<sup>th</sup> of November 2006 after obtaining the keys from Isireli Werekoro and from then on ran the business of Sunview Motel & Youth Hotel Limited.
27. The transfer to the purchasers was registered on the 20<sup>th</sup> March 2007 after a caveat lodged by Fulluck was cancelled on 19<sup>th</sup> March 2007 [Ex A33].
28. On the 5<sup>th</sup> February 2007 Sunview Motel & Youth Hostel Limited wrote to the Respondent advising that Isireli Werekoro was withdrawing all instructions and uplifting all documents that day [Ex A86].
29. On the 27<sup>th</sup> of February 2007 Isireli Werekoro attempted to take possession of the motel and locked Soon Ae Huh and others in the premises. Soon Ae Huh contacted the Respondent by phone and he obtained an injunction from the High Court Lautoka to restrain Isireli Werekoro [Ex A84]. Soon Ae Huh was most stressed at the action of Isireli Werekoro.
30. Isireli Werekoro subsequently engaged Tevita Fa & Associates who on 3<sup>rd</sup> May 2007 wrote to the Respondent [Ex A138].
31. The Respondent replied by letter dated 9<sup>th</sup> May 2007 [Ex A67] enclosing a trust account cheque for the balance of the purchase price in the sum of \$7,348.46 and a bill of costs detailing the calculation of that amount.
32. By letter dated 25<sup>th</sup> June 2007 Tevita Fa & Associates advised the Respondent that the bill of costs was incorrect and that the correct calculation resulted in a balance of \$17,348.46 [Ex A140].
33. The additional \$10,000 was paid to Tevita Fa & Associates.

34. The error made by the Respondent was careless but appears to have been remedied immediately it was drawn to his attention.

35. I do not consider the failure to pay the correct amount in these circumstances to amount to unsatisfactory professional conduct.

#### **OVERCHARGING**

36. Section 83 of the Legal Practitioners Decree relevantly provides:

*(1) without limiting section 81 and 82, the following conduct is capable of being 'unsatisfactory professional conduct' or 'professional misconduct' for the purposes of this Decree:*

*(b) Charging of excessive legal costs or fees in connection with the practice of law;*

37. The issue is to determine what is 'excessive'. In some other jurisdictions the relevant legislation provides that an expert be engaged to furnish a report as to the reasonableness of the fees charged. No such provisions exist in the Legal Practitioners Decree.

38. I am unable to determine that fees charged are in the circumstance of a particular matter reasonable or excessive. There are many circumstance and events that may impact upon the reasonableness or otherwise of fees in any particular instance.

39. It is my opinion that for the Applicant to show that the fees or costs charged in any particular matter are excessive it is necessary to qualify an expert to furnish a report and give evidence in that regard. Without such evidence allegations of charging excessive fees cannot be proved.

#### **ACTION AGAINST FORMER CLIENTS**

40. The issue of lawyers acting for both parties to a conveyancing or commercial transaction is wrought with danger. It is impossible to anticipate the situations that may develop before the matter is concluded.

41. The duty of confidentiality owed to a client does not come to an end with the termination of the retainer. The duty of confidentiality is designed to encourage full and frank disclosure between client and lawyer. It conveys the assurance that clients can seek and obtain legal advice without the apprehension of being prejudiced by its

subsequently disclosures – Fruehauf Finance Corporation Pty Ltd v Feez Ruthning (a firm) [1991] 1 Qd R 558 at 565.

42. In Prince Jefri Bolkiah v KPMG (a firm) [1999] 2 AC 222 at 234; the court said :-

"the court's jurisdiction cannot be based on any conflict of interest, real or perceived, for there is none. The fiduciary relationship which subsists between solicitor and client comes to an end with the termination of the retainer. Thereafter the solicitor has no obligation to defend and advance the interests of his former client. The only duty to the former client which survives the termination of the client relationship is a continuing duty to preserve the confidentiality of information imparted during its subsistence."

43. In this instance there is no evidence that any confidential information was used in the action against Isireli Werekoro and the vendor company.

44. I am not satisfied that acting against Isireli Werekoro and the vendor after instructions had been withdrawn in the circumstance described in the evidence amounts to professional misconduct.

## COMPLAINT NO 2

- A Haroon Ali Shah a legal practitioner on the 8<sup>th</sup> of November 2006 charged Soon Ae Huh and Joo Young Lee the purchasers in a transaction for the sale and purchase of land registered under Certificate of Title No. 20655 on Lot 14, DP 4509 at Waqadra, and the Sunview Motel & Youth Hostel (Fiji) Ltd thereon, the sum of \$4000 for the transfer of liquor licence when in actual fact no liquor licence had been issued to the Motel, which conducted involved a substantial failure to reach a reasonable standard of competence and diligence.
- B Haroon Ali Shah a legal practitioner between the 23<sup>rd</sup> of October 2006 and the 20<sup>th</sup> of March 2007 acted for both parties in a transaction for the sale and purchase of land registered under Certificate of Title No. 20655 on Lot 14, DP 4509 and the Sunview Motel & Youth Hostel (Fiji) Ltd thereon, and failed to adequately protect the interests of the purchasers Soon Ae Huh and Joo Young Lee, by failing to ensure that all debts and or encumbrances accrued by the vendors were completely paid off before the transfer of the title, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.
- C Haroon Ali Shah a legal practitioner on the 8<sup>th</sup> of November 2006 charged Soon Ae Huh and Joo Young Lee the purchasers in a transaction for the purchase of Certificate of Title No. 20655 on Lot 14 on DP 4509 and the Sunview Motel & Youth Hostel (Fiji) Ltd thereon, excessive legal fees.

45. This complaint is directly related to complaint no 1. The complainant was one of the purchasers of Sunview Motel & Youth Hostel Limited.
46. The complainant and her husband Joo Young Lee are Korean nationals who came to Fiji looking for investment properties.
47. On an earlier visit they met Shailend a taxi driver and clerk to Babu Singh & Associates solicitors of Nadi.
48. Shailend forwarded the mortgagee sale notice with respect to the property to them in Korea and they came to Fiji with a Korean interpreter to inspect the property and if satisfied to purchase it.
49. Negotiation for the purchase took place with Isireli Werekoro and when agreement had been reached Isireli Werekoro suggested that they all go to his lawyer, the Respondent.
50. This they did on 23<sup>rd</sup> of October 2006 when the sale & purchase agreement was prepared and executed and a deposit in the sum of \$100,000 was paid.
51. The complainant in her evidence appeared to well understand financial matters but had greater difficulty and less interest in understanding the details of the transaction as set forth in the sale & purchase agreement.
52. She acknowledged being an experienced property dealer in Korea.
53. The interpreter was present throughout the day of the 23<sup>rd</sup> of October 2006 when the sales & purchase agreement was prepared and executed.
54. The sale & purchase agreement [Ex A13] states in clause 4:-
- "(ii) The vendor will hand over to the purchaser receipts or show sufficient evidence of payment of all land rent, city rates, telephone charges, electricity charges and water rates paid up to the date of settlement...*
- (v) The vendor will give vacant possession to the purchaser upon settlement date."*
55. Clause 14 of the agreement provides: -
- "all costs and disbursements for preparing and stamping this agreement and all documents necessarily made thereunder and the registration thereof shall be paid by the purchaser. Provided however that the vendor shall pay his own solicitor's cost and any Land Sales Tax, which may be assessed by the Commissioner of Inland Revenue".*



56. On the 8<sup>th</sup> of November 2006 the complainant attended upon the office of the Respondent and paid the balance of the purchase price, \$300,000.
57. At that time she was presented with a statement of fees [Ex A38].
58. She says in her evidence that the fees and disbursements of \$35,000 were excessive and she threatened to withdraw from the transaction. Isireli Werekoro, she says, then agreed to pay \$10,000 towards the purchasers' costs.
59. This agreement was endorsed on the document [Ex A38] and the document was signed by Isireli Werekoro, Joo Young Lee and the complainant.
60. The next day the complainant paid the sum of \$25,000 to the Respondent [Ex A39, A40].
61. The complainants' evidence is that she was given possession of the property on 8<sup>th</sup> of November 2006 and commenced operation of the business on behalf of the purchasers at that time.
62. Sometime later the telephone was cut off and she says she realized the account had not been paid. Shortly thereafter Isireli Werekoro left for her an envelope containing unpaid bills for electricity, water, rates and telephone.
63. Outstanding bills totalling \$10,913.99 she said were paid by her.
64. The Respondent says that he was unaware that the complainant had taken possession at that time. He says he became aware of the unpaid bills when the complainant wrote to him on the 3<sup>rd</sup> of April 2007 [Ex A15] demanding that the amount of \$10,913.99 be deducted from the vendor's proceeds of sale.
65. Vacant possession was given not in accordance with the sale & purchase agreement but on the 8<sup>th</sup> of November 2006 when the balance of purchase monies were paid to the Respondents trust account. There then appears to be a staggered settlement process which appears to have taken from 8<sup>th</sup> of November 2006 until the 20<sup>th</sup> of March 2007 when the transfer was finally registered. This is most unsatisfactory but not to the subject of a complaint.
66. It appears that the vendor's mortgage was discharged promptly after the 8<sup>th</sup> of November 2006 but that delay was occasioned in removing a caveat lodged by the previous prospective purchaser, Fulluck.

67. In the course of the transaction the Respondent says he ascertained there was no liquor licence attached to the premises, contrary to the instructions given to him by Isireli Werekoro.
68. The statement given to the complainant on the 8<sup>th</sup> of November 2006 [Ex A38] shows an entry 'transfer of liquor licence' but shows no fees directly opposite that entry. Grouped with that entry is an item 'transfer hotel licence'. Both entries have brackets next to them with a sum of \$4,000 opposite the later entry.
69. The Respondent says the sum of \$4,000 relates only to the 'transfer hotel licence' and that no fee was charged for 'transfer liquor licence'. He further says that if a fee were to be charged for that item it would be \$6,000 to \$8,000 as the purchasers were 'foreigners' and the requirements are extensive.
70. The document [Ex A38] shows in my opinion that the sum of \$4,000 was charged for both the transfer of the hotel licence and the transfer of the liquor licence. I am of the opinion that this allegation is established.
71. In February 2008 the complainant engaged M K Sahu Khan & Co to write a letter dated 28<sup>th</sup> of February 2008 [Ex A131].
72. Mr M A Sahu Khan gave evidence and stated that the letter was written to reflect his clients' instructions. He acknowledged that he had never acted on the purchase of a motel or hotel and had no experience in that regard.
73. As discussed above to established that fees and costs are excessive it is necessary for the Applicant to call expert evidence. This was not done and I therefore cannot determine that the fees and costs charged are excessive.
74. I am of the opinion that some adjustment must be made for the rates, telephone, electricity and water up to the date the complainant took occupation. Documents tendered and the evidence before the Commission causes some difficulty in performing such a calculation. I am however of the opinion that the amount is something less than that detailed by the complainant.

#### COMPLAINT NO 5

- A *Haroon Ali Shah a legal practitioner on the on or about the 2<sup>nd</sup> of August 2006 charged Ramend Prasad and his wife Suruj Kumari excessive legal fees in respect of instituting proceedings against one Satya Prakash.*
- B *Haroon Ali Shah acted for the complainant Ms. Suruj Kumari on behalf of her*

husband Mr. Ramend Prasad. The complainant has an amputated foot while her husband is bedridden with stroke. With the fees required of \$23,000, Ms. Shah failed to move the case since 2006 and there has been considerable delay in the case reaching hearing stage.

75. The evidence of Suruj Kumari, the complainant, is that her late husband Ramend Prasad, in 2005 agreed to sell a building in Tavua for \$180,000 but it was in fact transferred for \$80,000.
76. At that time the complainant says her husband was paralysed for 10 years and was sick at the time.
77. She says the solicitor Chandra Singh, and the purchaser came to their house and had the documents executed.
78. Sometime later instructions were given to SahuKhan & SahuKhan to take action to recover the building. These instructions were subsequently withdrawn and in 2006 the Respondent was instructed.
79. The Respondent was paid the sum of \$2,500 on the 2<sup>nd</sup> of August 2006 which he says was to obtain and read the material from Dr Sahu Khan and to advise as to the future action that might be taken.
80. A further sum of \$15,000 was paid to the Respondent on 10<sup>th</sup> August 2006 as a retainer in the matter.
81. In April 2007 the sum of \$6,000 was sought by the Respondent. The complainant says this amount was to facilitate a psychiatric examination of her husband.
82. The Respondent says that the amount was to arrange a psychiatric examination, report and do all matters necessary to progress the action to trial.
83. Dr Narayan, psychiatrist, says he attended the Respondent's chambers and examined the complainant's husband but that he did not charge a fee and no report was prepared.
84. Ramend Prasad died on 17<sup>th</sup> October 2009.
85. The Lautoka High Court file 264 of 2006 [Ex A127] shows that the Respondent filed a writ of summons on 31<sup>st</sup> August 2006 and that the matter appears ready for trial but is apparently awaiting a grant of probate to facilitate instructions being given.

86. Two applications were made to strike out the action by the defendants which were opposed and in one instance settled by discontinuing the action against that defendant.
87. There is nothing in the court file to suggest that the matter has not been progressed and readied for trial in a proper manner.
88. The complainant says that the only monies she maintains is an excessive charge is the sum of \$6,000 and she seeks a refund of that sum to use it for her own medical expenses, she having had some toes amputated.
89. As discussed earlier it is not possible to determine if legal fees were excessive without an expert analysis of the work done and the fees charged in the circumstances of the particular matter.
90. The standard of proof being as it is and the fact as to whether the fees are excessive or not being such a significant fact I am unable to find that the fees are excessive on the totality of the evidence before the Commission.

#### COMPLAINT NO 6

- A *Mr. Haroon Ali Shah was instructed to act for the complainant in a compensation case for wrongful dismissal against Housing Authority. There was a consistent failure to reach or maintain a reasonable standard of competence and diligence. The complainant's case was dismissed by Justice Byrne for want of prosecution and delay on the lawyer's part to prosecute the case.*
- B *Mr. Haroon Ali Shah received \$1,000 as legal fees from Mr. Suresh Prasad to take up his case of No. HBC 172/93 against Housing Authority. Mr. Shah failed to bring the case to a hearing date.*
91. The complainant alleges that in 1993 he was terminated from the Housing Authority in Lautoka and that he engaged the Respondent to commence proceedings for wrongful dismissal.
92. He said he paid the sum of \$1,000 by way of retainer and that the Respondent told him that he would take 20% of any award as fees.
93. The Lautoka High Court file HBC 172 of 1993 [Ex A129] shows that the proceedings were commenced in 1993 and that appropriate steps were taken to prepare the matter for

trial. The file shows that the matter was listed for trial on 10<sup>th</sup> November 1994 but that the hearing date was vacated due to the Respondent being committed to a part heard rape trial in the High Court.

94. The matter appears to have been called on occasions to fix a hearing date but as appears common in the High Court Lautoka at that time no hearing date was fixed.
95. The file then shows that on 22<sup>nd</sup> of October 2002 the matter was listed for hearing of the defendant's motion to strike out for want of prosecution.
96. The judge's notes merely note the appearances and the order. There are no notes of the argument.
97. The complainant says he sought advice and was told that it was the fault of the Respondent that the action was dismissed. The Respondent says he advised the complainant to appeal the decision but no instructions were received.
98. There is nothing in the court file apart from the order of the 22<sup>nd</sup> of October 2002 to indicate that the Respondent had been dilatory in the preparation of the matter for trial.

#### COMPLAINT NO 8

*Haroon Ali Shah having received the sum of \$3,000 on the 26<sup>th</sup> July 2005 from Magan Lal on behalf of General Machinery Group of Companies to institute civil proceedings on behalf of Industrial Supplies (Fiji) Limited against the company Bolt Fastners, subsequently failed to institute civil proceedings against Bolt Fastners and has not refunded General Machinery Group of Companies the sum paid, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.*

99. The complainant is the accountant of the General Machinery Group of Companies and he says that in 2005 the sum of \$3,000 was paid to the Respondent by a way of deposit of fees of \$10,000 and instructions were given to claim monies from another company, Bolt Fastners, for the value of stolen goods allegedly received by that company.
100. Criminal proceedings were and are still pending against Dinesh Prasad for receiving stolen goods.
101. The complainant says he sought a refund of the \$3,000 as no action had been taken by the Respondent and that payment has not been made. When asked for a refund the Respondent says he told the complainant that work had been done on this and other matters and that he should speak to the director Ajneel Singh.

- 102 The complainant was not aware if any written request had been made for a refund but said he had spoken to the Respondent on several occasions. The Respondent says that the complainant spoke to him in the street on one occasion only.
- 103 Ajneel Singh gave evidence that he being a director of the company and with his brother the owner of a soccer club sought the Respondents help for the soccer club.
- 104 The Respondent was engaged to appear before a disciplinary tribunal on a Saturday in Lautoka and was accompanied by Ajneel Singh.
- 105 There is a dispute as to the period of time the Respondent was engaged. He says several hours and Ajneel Singh says 15 - 20 minutes.
- 106 The Respondent says he rendered no memorandum of fees for the matter but appropriated the remainder of the \$3,000 paid on the company's instructions.
- 107 No action has been taken in the matter and the criminal proceedings are still pending and no written request for the refund has been received nor have any further instructions been received.
- 108 Ajneel Singh says he expected regular reports and that he did not authorise the use of the \$3,000 for the purposes of the soccer club.
- 109 The failure to render a memorandum of fees would appear to be a major cause of disputes such as this.
- 110 The proceedings have not being commenced but the Respondent offers an explanation that does not appear to have been communicated to the complainant.
- 111 The general manner in which this and other matters are conducted is most unsatisfactory but does not on the evidence enable an adverse finding to be made.

#### COMPLAINT NO 10

- A *Haroon Ali Shah a legal practitioner between the 18<sup>th</sup> of February 2005 and the 26<sup>th</sup> of March 2008 failed to protect his client Dalip Kumar's interests in the manner he carried out the instructions to purchase a night club in Lautoka, which conduct involved a substantial failure to reach a reasonable standard of competence and diligence.*

**B** *Haroon Ali Shah a legal practitioner between the 18<sup>th</sup> of February 2005 and the 26<sup>th</sup> of March 2008, failed to keep Dalip Kumar reasonably informed of the matters he had been instructed in respect of being the purchase of a night club in Lautoka, which conduct occurred in connection with Haroon Ali Shah's practice of law, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.*

**C** *Haroon Ali Shah a legal practitioner between the 18<sup>th</sup> of February 2005 and the 26<sup>th</sup> of March 2008 failed to meet his client Dalip Kumar on several occasions when Dalip Kumar attempted to meet him to discuss the instructions in respect of the purchase of a night club in Lautoka, which conduct occurred in connection with Haroon Ali Shah's practice of law falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner.*

112 The complainant and his wife, Madhur Kant Kumar sold their house in New Zealand and entered in an agreement in New Zealand with Sunil Chand to purchase the Bollywood Night Club and Sannu's Entertainment Centre in Lautoka for the sum of \$215,000. They paid a deposit of \$17,517 [Ex A130].

113 The complainant and his wife engaged the Respondent to act on the purchase and various associated matters including obtaining work permits.

114 The Respondent advised that the tenancy of the premises in which the Bollywood Night Club was conducted was limited and that a new tenancy was required.

115 The sum of \$40,000 was sought by the Respondent as a retainer and this amount was transferred by telegraphic transfer from New Zealand to the account of Madhur Kant Kumar with Westpac Fiji then a cheque was drawn in favour of the Respondent's trust account.

116 The evidence of the complainant and the Respondent shows that considerable work was done and time was spent in getting possession of the premises from the vendor to obtain a fresh tenancy.

117 In the meantime the complainant and his wife purchased the Rangeela Night Club in Nadi without engaging the Respondent. This purchase was, on the evidence of the complainant, done in the name of the complainant's wife.

118 The complainant and his wife separated and the complainant moved to Australia in

September 2005.

- 119 The purchase of the Bollywood night club did not proceed but the purchase of Sannu's Entertainment Centre did and that business was conducted by Madhur Kant Kumar who subsequently sold the business.
- 120 Instructions were given to the Respondent by Madhur Kant Kumar to reserve a company name, register a company in Fiji together with various matters relating to the entertainment centre and the night club.
- 121 The Respondent says no monies have been paid for the work detailed in [Ex A134] amounting to \$25,875.
- 122 The complainant in his evidence says that all he seeks is an accounting of the monies held in the Respondent's trust account on behalf of he and his wife.
- 123 He acknowledges that he is unaware of the instructions given to the Respondent by his former wife, they having divorced in the intervening period.
- 124 There appears no dispute that the complainant attended on the Respondent weekly until his departure for Australia in September 2005. Since then his visits have been intermittent and the Respondent acknowledges that he may have been engaged on other matters at time when the complainant attended his office on visits to Fiji.
- 125 The evidence of the Respondent is that Madhur Kant Kumar has been in regular contact and still gives instructions to him.
- 126 The breakdown in the relationship between the complainant and his wife would appear to be the real basis for the dispute. Madhur Kant Kumar has given a direction to the Respondent not to disperse the money in the trust account [Ex A97].
- 127 Whilst the complainant says that the funds can only be used as detailed in his authority of 1<sup>st</sup> March 2005 [Ex R20].
- 128 The entitlement to the funds in the trust account cannot be determined by this tribunal.
- 129 The interests of the complainant would appear to have been protected in accordance with his instructions and I cannot be satisfied that he was not kept informed either directly or via his wife and similarly I am not satisfied that there was any deliberate intent not to meet with him on his infrequent visits to Fiji.



## COMPLAINT NO 11

- A** Mr. Haroon Ali Shah acted for Mr Jagat Singh in High Court civil case action against his brother Lala Kishore Singh. The dispute in question is in regards to the cane proceeds received from the two (2) farms number 1413 & 1425. The complainant had obtained the services of Young & Associates where the file was transferred but Mr. Shah failed to transfer the monies held in his trust account.
- B** Mr. Haroon Ali Shah acted for Mr. Jagat Singh in a High Court Civil case action against his brother Lala Kishore Singh. The dispute in question is in regards to the cane proceeds received from the two (2) farms number 1413 & 1425. The complainant had obtained the services of Young & Associates where the file was transferred. Mr. Shah had failed to properly account for all the money received from the cane proceeds where a certain sum of money is still unaccounted for which is yet to be paid to Mr. Singh.

130 The Respondent did not give evidence on this complaint.

131 The Applicant acknowledged at the conclusion of the hearing that complaint A had not been made out and it will accordingly be dismissed.

132 With respect to complaint B it is acknowledged that there is a discrepancy of \$4,838 between the Fiji Sugar Corporation records [Ex 141, 142] and the amount set forth in the letter from the Respondent to SahuKhan & SahuKhan of 19<sup>th</sup> August 2008 [Ex A105].

133 It is also acknowledged that the sum of \$4,060 is currently held in the Respondent's trust account.

134 The evidence before me does not enable a determination of the cause of the discrepancy of \$778.

135 All other monies were accounted for in 2008 [Ex A105].

136 There has been a failure to properly account for all moneys received and I am of the opinion that the complaint is established.

## COMPLAINT NO 12

- A** Mr. Haroon Ali Shah acted for both Mr. Madhua Reddy (purchaser) and Mr. Vishwa Nandan (vendor) in a sale and purchase agreement. Mr. Madhua bought a taxi and its permit for \$13,000 and after 2 ½ months requested another

\$1500 and promised to transfer the vehicle and the permit in three 3 weeks time. Mr. Shah had failed to execute the agreement and also failed to fulfil his duties to his client by making all sorts of false promises.

- B** Mr. Haroon Ali Shah acted for both Mr. Madhua Reddy (purchaser) and Vishwa Nandan (vendor) in a sale and purchase agreement. Mr. Madhua bought a taxi and its permit for \$13,000 and after 2 ½ years, the car was seized from him. Mr. Shah requested another \$1500 and promised to transfer the vehicle and the permit in 3 weeks times. After one week, Mr. Shah called the complainant and informed him that the case is an illegal one. Mr. Shah has failed to properly discharge his duties as a legal practitioner in reaching the required standard of that of a professional lawyer.

137 The complainant on 27<sup>th</sup> of April 2006 entered into an agreement with Vishwa Nandan to purchase taxi no LT5690 and taxi permit T5690/08839 for the sum of \$13,000.

138 The agreement [Ex A114] was drawn by the Respondent on behalf of the vendor and the purchaser.

139 The agreement provided in clause 1 that the vendor would transfer the taxi and permit to the purchaser after three years, that is on 11<sup>th</sup> December 2008.

140 It is not disputed that the vendor's intent at that time was to migrate and that the complainant commenced operation of the taxi as if it was his own from that time.

141 A Bill of Sale was prepared and registered to protect the interest of the complainant.

142 On 30<sup>th</sup> of June 2008 the vendor caused the taxi to be seized. The complainant again instructed the Respondent who says in his evidence that he sought and was paid the sum of \$1,500 to recover the vehicle.

143 The complainant says in his evidence that the sum of \$1,500 was not paid only to recover the vehicle but to have the taxi permit transferred to his name.

144 It is apparent that the vendor did not migrate and that there was no other legitimate basis to transfer the taxi permit, hence it would appear that the advice to the complainant that the agreement was 'illegal'.

145 The complainant and the vendor reached an agreement [Ex A117] whereby the vendor paid him \$2,000 and discharged the debt over with the vehicle and further that he executed a Land Transport Authority transfer of the vehicle which was then registered

into the name of the complainant.

146 The real issue appears to be the purpose of the payment of the sum of \$1,500.

147 It would appear that work was done to recover the vehicle and bring about a settlement between the parties and then the subsequent registration of the vehicle into the name of the complainant.

148 It would also seem clear that the agreement of the 27<sup>th</sup> of April 2006 was unenforceable due to the action of the vendor.

149 Again the rendering of a bill of costs detailing the work done for the monies paid would more likely than not avoid complaints of this type as there would be no dispute as to the purpose of the payment.

150 I cannot be satisfied that the Respondent is guilty of professional misconduct as claimed.

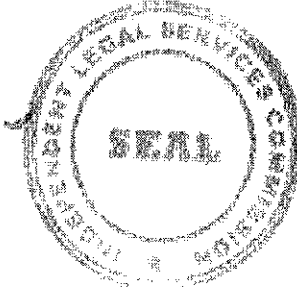
#### **GENERAL**

150. The allegations in this matter highlight the need for there to be a major overhaul of the requirements of legal practitioners with respect to the disclosure of fees at the commencement of matters, fee agreements, and the rendering of memoranda of fees.
151. In other jurisdictions for in excess of 10 years fee disclosure and fee agreements have been mandatory. Without compliance with these requirements fees for work performed are not recoverable from the client.
152. The numerous instances that appear in these complaints of monies being paid without any memorandum of fees being rendered and the subsequent dispute as to the purpose for which the fees were paid (i.e. what work was obliged to be performed for the fees that were paid) begs for proper procedures to be established.
153. Until such time as an appropriate regime is put in place I am certain that complaints of the type highlighted in this matter will continue to be made.

**ORDERS**

1. Complaint No 1 is dismissed.
2. Complaint 2A and 2B are established.
3. Complaint 2C is dismissed.
4. Complaint 3 having been withdrawn is dismissed.
5. Complaint 4A and 4B having been withdrawn are dismissed.
6. Complaints 5A and 5B are dismissed.
7. Complaints 6A and 6B are dismissed.
8. Complaints 7A and 7B having been withdrawn are dismissed.
9. Complaint 8 is dismissed.
10. Complaint 9 having been withdrawn is dismissed.
11. Complaints 10A, 10B and 10C are dismissed.
12. Complaint 11A is dismissed.
13. Complaint 11B is established.
14. Complaints 12A and 12B are dismissed.

*John Connors*  
**JOHN CONNORS  
COMMISSIONER**



**30 SEPTEMBER 2010**