

IN THE INDEPENDENT LEGAL SERVICES COMMISSION

AT SUVA

No. 004 of 2021

BETWEEN: CHIEF REGISTRAR

Applicant

AND: LEENA GOUNDAR

Respondent

Counsel: Mr. R. Lal for the Applicant
Mr. A. Chand for the Respondent

Date of Hearing: 23rd May 2022
Written submissions: 22nd June and 31st October 2022
Date of Ruling: 10th November 2022

SANCTION RULING

Introduction

1. The Respondent Practitioner Leena Goundar was charged with 4 counts of professional misconduct contrary to Section 82 (1) (a) the Legal Practitioner's Act 2009. The charges are as follows:

COUNT 1

PROFESSIONAL MISCONDUCT: Contrary to 82(1) (a) of the Legal Practitioners Act 2009.

LEENA GOUNDAR, a legal practitioner, being the principal of **Leena Goundar Lawyers**, from the 2nd of November 2017 to date, having received instructions from Usha Devi in relation to the estate of her late father, failed to provide the said Usha Devi with an explanation of the unreasonable delay in carrying out Usha Devi's instructions, contrary to rule 8.1 (1) (c) of the Rules of Professional Conduct and Practice which conduct was a contravention of

section 82(1) (a) of the Legal Practitioners Act 2009 and was an act of Professional Misconduct.

COUNT 2

PROFESSIONAL MISCONDUCT: Contrary to 82(1)(a) of the Legal Practitioners Act 2009

PARTICULARS

LEENA GOUNDAR, a legal practitioner, being the principal of **Leena Goundar Lawyers**, since the 2nd of November 2017 to date, whilst in practice, failed to complete **Usha Devi's** instructions received in relation to the estate of her late father despite having obtained legal fees in the sum of \$4,000.00 which conduct was a contravention of section 82(1) (a) of the Legal Practitioner Act 2009 and was an act of Professional Misconduct. The following periods were where Leena Goundar held a valid practicing certificate which entitled her to practice:

Date Practicing Certificate issued	Practicing Certificate Valid Till
21 st March 2017	28 th February, 2018
15 th March 2018	30 th April, 2018
1 st June, 2018	30 th June, 2018
4 th July, 2018	28 th February, 2019
19 th December, 2018	Practicing Certificate cancelled by the Chief Registrar
12 th February, 2019	28 th February, 2019
11 th June, 2019	30 th September, 2019
29 th January, 2020	28 th February, 2020
4 th September, 2020	30 th September, 2020

COUNT 3

PROFESSIONAL MISCONDUCT: Contrary to 82(1) (a) of the Legal Practitioners Act 2009.

LEENA GOUNDAR, a legal practitioner, being the principal of **Leena Goundar Lawyers**, failed to respond to a complaint lodged by one **Usha Devi** dated 4th July, 2019, as required by the Chief Registrar by a Notice dated 21st October 2020, pursuant to section 106 of the Legal Practitioners Act 2009 and thereafter failed to respond to a subsequent reminder Notice dated 10th November, 2020, issued by the Chief Registrar pursuant to section 108 (1) of the Legal Practitioners Act 2009 and is a contravention of section 82(1) (a) of the Legal Practitioner Act 2009 and was an act of Professional Misconduct.

COUNT 4

PROFESSIONAL MISCONDUCT: Contrary to section 82 (1) (a) of the Legal Practitioners Act 2009

PARTICULARS

LEENA GOUNDAR, a legal practitioner, being the principal of **Leena Goundar lawyers**, on the 1st of September, 2020, failed to attend a meeting scheduled by the Chief Registrar's office pursuant to section 109(1) (b) of the Legal Practitioners Act 2009 in relation to Usha Devi's complaint lodged on 4th July, 2019, without offering any reasonable explanation for the non-attendance which caused delay in reaching a resolution in the matter which conduct was a contravention of section 82(1)(a) of the Legal Practitioner Act 2009 and was an act of Professional Misconduct.

2. The said allegations were preferred and this application was instituted by the Chief Registrar (CR) on 26th March, 2021. After several mention dates when the hearing was to commence the Legal Practitioner took a progressive approach on 23rd May, 2022 and admitted all four allegations of professional misconduct.
3. The Applicant CR filed their submissions on sanctions and the Legal Practitioner tendered the submissions in mitigations on 31/10/2022. Accordingly, I would now proceed to consider and impose a suitable sanction. In determining the sanction a three step approach was laid down in **Fulgers and Others v Solicitors Regulation Authority [2014] EWHC 179 Admin**. They are:
 1. assess the seriousness
 2. to consider the purpose for which sanctions are imposed

3. to choose the most appropriate sanctions that befits the purpose for the seriousness of the conduct.

The incident

4. The conduct which resulted in these charges may be summarized as follows. Respondent receives instructions from Ms. Usha Devi in respect of Estate of late father. Said Estate consisted of a land at Taveuni. Services required by Ms. Devi was for the transfer of the said land to the complainant's mother Sushil Wati through administration. It is common ground and admitted that a sum of \$1,000 was paid as a retainer on 02/11/2017 then on 19/04/2019 a sum of \$3,000 was paid to carry out instructions. Since making the said payments the complainant has not been informed of the steps taken. The practitioner nor her employees were unable to inform with certainty.
5. Though it was Leena Goundar Lawyers who was the Law Firm in practice the clerks or employees are not responsible or could not be expected to know the status unless the practitioner informs. It is for the practitioner to provide that information to her employees or her clerk/s. In the case of **Legal Provisional Board of Tasmania vs Barclay** [2022] TASSC 14. This principal was accepted and endorsed as follows.

“..... It is also relevant to this consideration that the respondent's failure to maintain a reasonable standard of competence and diligence not only related to the conduct of the case but also involved lengthy and persistent failure to communicate with and respond to enquiries from, or on behalf of, the complainant. The respondent must have appreciated the effect that such failure was likely to have on his client. The distress anxiety and frustration arising from the ongoing delay and failure to communicate.....”
6. Despite the agreed legal fees being paid the practitioner has failed to carry out the instructions to administer the Estate of the complainant's father to her mother remains incomplete and in the interim the complainant's mother too died. Due to the lack of communication and the failure of the practitioner the matter had not been attended to and also Ms. Devi had not been able to retain the services of another practitioner to have the administration of her deceased's father's Estate finalized. Devi's complaint is

that due to the Respondent's negligence and delay her mother could not obtain the letters of administration of her father's Estate.

7. On the 4th of July, 2019 Ms. Devi lodged a complaint with the Chief Registrar seeking redress for the harm suffered due to the misconduct of the Respondent practitioner. Upon receiving this complaint, the Legal Practitioner's Unit (LPU) has sent the notice dated 21st October, 2020 under Section 106 of the LPA requesting for a copy of the entire client file. As the practitioner failed to respond within the allotted 14 days a notice under Section 108 of the LPA had been sent on 13th November, 2020. The practitioner failed to respond to the second notice too. In view of this non-response and the failure the CR preferred this application with 4 charges as aforesaid. The respondent admitted that she has acted in violation and committed the acts of misconduct as alleged by allegations number 1 and 2 and also admitted the failure to respond to the notices as alleged in charges 3 and 4.

The Respondent's plea in mitigation

8. Whilst the respondent admits the allegations as preferred by charges 1 to 4, her explanation is based on ill-health of her daughter and also ill-health and psychological trauma suffered herself during this period. In a compressive and detailed submission in mitigation the practitioner submitted the following reasons for the failure and the inability to complete the work. As on 07/04/2018 the practitioner had been 4 months pregnant and due to a fall, she lost her fist pregnancy. Then she herself has fallen ill and had undergone a surgery on 09/04/2018. She has resumed her practice and admits receiving instructions from Ms. Devi and also a retainer of \$3,000. However, her practicing certificates (PC) had been cancelled on 19/12/2018 and she claims to have been 6 weeks pregnant as at that day.
9. With the cancellation of her PC the respondent closed the office and informed her clients. The respondent's position is that she only failed to respond to one of the notices and that she was in practice for 11 years by then. She admits that there were a number of similar complaints during this period. It is submitted that all these events were inter-related and was during the same period and due to the cancellation of the PC she was faced with numerous refund issues and was financially in a precarious situation and in an extreme disturbed state of panic.

10. Subsequent attempts and discussions with the CR to revive her PC had been unsuccessful. On 27/06/2019, she had been admitted to the CWM with complications of her second pregnancy. She had been recommended maternity leave for 98 days until 6/10 /2019 and it was during this period namely on 4/7/2019 that this complaint was made to LPU. She had received several notices in respect of several matters and on 12/7/2019 a notice in respect of ILC 10/2019 was received. She had immediately requested for one day to respond as she was unwell and was on the verge of child birth. The LPU had not granted her request in mid July 2019 when she so requested for time.
11. By February 2020 she had been making various attempts to revive her practice, obtain finances and her PC. However, due to the COVID pandemic in March 2020 her attempts have been frustrated and her family was not able to help her. Then on the 18/06/2020 she had once again made the request for the renewal of her PC. During this period, she had suffered burn injuries due to blender explosion and was admitted and treated at the CWM Hospital. In September 2020 she had been granted a limited renewal of a PC for a period up to 30th September 2020. However when she was in the process of recommencing he practice she had been informed that a receiver had been appointed for her law firm by letter dated 13/11/2020. She submits that the appointing of the receivership was due to disappointing the CR in view of the failure to respond to the notices of the present case. She goes on to submit that she was *bullied and intimidated* by some clients in view of the appointing of the receiver.
12. All her pleas to withdraw the receivership made to CR have been unsuccessful. On 20th March, 2021 she was suspended by the ruling in ILSC 10/2019 for 6 months and then on 26/03/2021 she had been charged in the respect of present matter ILSC 4/2021. It is submitted that her subsequent requested for her PC made on 25/8/2022 too had been refused and she was required to submit the Trust Account Audit Reports for the past 2 years.
13. This is basically her predicament and the plea in mitigation. However according to the submission of the Applicant (CR), Ms. Usha Devi has not been able to have the Estate of her father administered and transferred to her mother Sushil Wati due to the delay. Her mother too has passed away subsequently. She had been prevented from obtaining

the services of an alternate practitioner. She had made two payments of \$1000 and \$3000 on the 02nd November 2017 and on the 19th April 2018 respectively. The respondent is alleged to have not communicated with Ms. Devi. It is submitted that whatever may be the predicament and the difficulties respondent may have faced during that period there was nothing to prevent her from communicating with her client. The respondent has been periodically accepting legal fees. These events had long preceded the appointing of the receiver. It is also submitted that the practitioner had not returned the file nor has she refunded any part of the legal fees to allow the complainant to seek a remedy and the services of another practitioner.

14. This conduct clearly falls far below the expected minimum standard of a legal practitioner even when she herself was facing certain personal difficulties. It is by any standard a serious professional misconduct which the following authorities confirm.

In the case of **Legal Professions Board of Tasmania v Barley [2022] TASSC 14**, it was said that;

..... It is also relevant to this consideration that the respondent's failure to maintain a reasonable standard of competence and diligence not only related to the conduct of the case but also involved lengthy and persistent failure to communicate with and respond to enquiries from, or on behalf of, the complainant. The respondent must have appreciated the effect that such failure was likely to have on his client. The distress, anxiety and frustration arising from the ongoing delay and failure to communicate....."

In **LSC V Morgan, (Legal Practice) [2009] VCAT 2020 (28 September 2009)** this tribunal said that at par 15 & 16

"[15]..... The seriousness of the conduct will depend and turn upon all relevant factors brought to the attention of the Tribunal, and to the manner in which similar factors have been treated in previous cases....."

In the case of **Legal Services Commissioner v Dingwall [2017] QCAT 76 (21 March 2017)**, it was said at par [26]:

"[26] A solicitor is required to act with competence and diligence in the service of the client. A legal practitioner should not accept instructions unless the legal

practitioner is confident that it will be possible to provide prompt efficient service to the client."

15. The respondent takes up the position that the original complainant Ms. Devi has not suffered to that extent as the ownership or a document to prove title or ownership had not been made available. To that extent the respondent states that the client been deprived of a land is false and extremely misleading. She further qualifies this by stating that Ms. Devi knew her mother could not have suffered any harm as she had failed to provide any document to establish ownership to the properties at the time instructions were given. To my mind this is no defence or a valid reason to mitigate the negligence and the failure to attend to the obtaining the letters of administration as per instructions of Ms. Devi. If there was a lacunar or any incompleteness in the instructions it is for the practitioner to advise the client accordingly and take necessary action. In any event in the normal course testamentary proceedings any issue as to title will be considered at a subsequent stage. Be that as it may, the incompleteness of the instructions will not justify a total inaction and not communicating with the client for 20 months and also obtaining further fees after the initial retainer was obtained.

Previous finding by the Commissioner

16. It is admitted that the respondent has been charged twice before as follows:
 - a. CR vs Solicitor ILSC 13 of 2015 failure to respond; admitted liability in mitigation medical grounds have been stated and a fine had been imposed;
 - b. CR vs Leena Goundar 10/2019 ILSC [2021] FJILSC 3 [20th March 2021] failure to respond; admitted liability and fine imposed;
17. The respondent practitioner appears to have been faced with a series of health and other personal issues of an unfortunate nature since 2015 onwards. It certainly has seriously affected her legal practice. The personal misfortunes certainly when there are health issues may be considered sympathetically however this cannot continue indefinitely. Thus, if a practitioner is continuously plagued with such health issues however unfortunate that may be such person cannot be permitted to continue in that form if it affects the diligent performance of her professional duties. As mentioned earlier the failure to respond to the Chief Registrar cannot be directly attributed to any such health issue. If a practitioner is in receipt of a notice it takes no more than an email to respond

or at least seek time to respond. Therefore, it is more in the nature of acting with callous disregard to the authority of the CR. This conduct is totally unacceptable, especially as the practitioner being repeating the same notwithstanding, she been dealt with leniently on previous occasions.

18. In assessing the sanction in this instance, the Commission will be conscious that the practitioner has freely admitted her errors as alleged. She will be imposed with and subjected to a reasonable sanction considering the submissions and the circumstances of this matter.
19. Accordingly, the following sanctions are imposed and ordered on the Respondent; Orders of the Commission are:
- (i) The legal practitioner is publicly reprimanded.
 - (ii) The legal practitioner is fined \$500.00 to be paid this Commission.
 - (iii) The legal practitioner is to pay costs to the Chief Registrar, which I summarily assess in the sum of \$500.00.
 - (iv) The Respondent is directed to reimburse a sum of \$ 1900 from the retainer and the fees paid by Ms. Usha Devi,
 - (v) The fine, costs and the reimbursement must be paid within 3 months of this ruling i.e on or before 10th February 2023.
 - (vi) If the legal practitioner fails to pay the fine and costs in full as afore ordered, it is sanctioned that the Practising certificate if issued to her by the Chief Registrar shall ipso facto be suspended from the of 14th February 2023 until the 10th of February 2024 for a period of 1 year thereof unless and until payment is made in full as afore ordered and if and when so paid, form such day the suspension will cease. The Chief Registrar should not renew or issue the practitioner's practising certificate during such period of suspension.

Dated the 10th day of November, 2022.


Justice Gihan Kulatunga
Commissioner