

DT 1 OF 2021
IN THE MATTER OF NAIDU PRIYALATHA
AN ADVOCATE & SOLICITOR
AND
IN THE MATTER OF THE LEGAL PROFESSION ACT
(CHAPTER 161)

DECISION OF THE DISCIPLINARY TRIBUNAL

Disciplinary Tribunal:

Mr Kenneth Michael Tan Wee Kheng, SC – President
Ms Audrey Chiang Ju Hua – Member

Counsel for the Law Society of Singapore Counsel for the Respondent

Mr Saw Seang Kuan Matthew
Lee & Lee

Mr Siva S Krishnasamy
Mr Anand Kumar s/o Toofani Beldar
Pathway Law Practice LLP

Dated

1 October 2021

Between

THE LAW SOCIETY OF SINGAPORE

...Applicant

And

NAIDU PRIYALATHA

...Respondent

THE DISCIPLINARY TRIBUNAL'S DECISION

1. Ms Wong Siew Lan ("**the Complainant**") lodged a complaint against the Respondent with the Law Society on 29 November 2019, on the ground that the Respondent had breached an undertaking given by her ("**the Complaint**").
2. The Respondent is a senior member of the profession: she was admitted as an advocate and solicitor of the Supreme Court of Singapore on 8 October 1980, and at the material time, was a sole proprietor of the firm Messrs P. Naidu.
3. As a consequence of the Complaint, the Law Society brought the following charges against the Respondent:

Charge

That you, Naidu Priyalatha, are guilty of grossly improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of

the Legal Profession Act (Chapter 161) to wit, that, on 18 April 2017, despite having given your solicitor's undertaking not to release a cashier's order for the sum of \$26,896.45 made in favour of Balestier Hui Kee Pte Ltd to your clients (Ng Kar Kui and Chang Lien Siang) until a comprehensive agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong, in full and final settlement of all issues and claims between them, you in breach of your solicitor's undertaking released the said cashier's order to your clients when no such agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong.

Alternative Charge

That you, Naidu Priyalatha, are guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83(2)(h) of the Legal Profession Act (Chapter 161) in that you, on 18 April 2017, despite having given your solicitor's undertaking not to release a cashier's order for the sum of \$26,896.45 made in favour of Balestier Hui Kee Pte Ltd to your clients (Ng Kar Kui and Chang Lien Siang) until a comprehensive agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong, in full and final settlement of all issues and claims between them, you in breach of your solicitor's undertaking released the said cashier's order to your clients when no such agreement had been reached between your clients, and Wong Siew Lan and Seah Sai Hong.

4. On 7 June 2021, the Respondent pleaded guilty to the Charge of grossly improper conduct in the discharge of her professional duty within the meaning of s 83(2)(b) of the Legal Profession Act ("**the LPA**").

Agreed Statement of Facts

5. The parties signed an Agreed Statement of Facts on 4 June 2021, which was tendered at the hearing on 7 June 2021. The following are the undisputed facts forming the background to the Charge, as stated in the Agreed Statement of Facts.:
- a. The Complainant, Ng Kar Kui ("**Ng**"), and Chang Lien Siang ("**Chang**") were the shareholders and directors of Balestier Hui Kee Pte Ltd ("**the Company**"). Ng and Chang (who were married to each other) each held 30% of the shares of the Company, and the Complainant held 40% of the shares of the Company.
- b. Subsequent to the incorporation of the Company, the Complainant was employed by the Company as a cook. The Complainant engaged Seah Sai Hong ("**Seah**") as an assistant to be employed by the Company.

Factual Background

- c. The Company operated a wanton mee stall, and the Complainant and Seah worked at the stall.
- d. Initially, the Company's cash takings from the stall were deposited into the Company's bank account.
- e. However, the Complainant and Seah had a dispute with Ng and Chang. The Complainant made allegations that Ng and Chang had issued cheques from the Company's bank account without the knowledge or consent of the Complainant. The

Complainant stopped depositing the Company's cash takings from the stall into the Company's bank account.

- f. The Respondent acted for Ng and Chang.
- g. Messrs Linus Law Chambers initially acted for the Complainant and Seah.
- h. By their without prejudice letter dated 28 February 2017 to the Respondent's firm, Messrs Linus Law Chambers proposed a settlement on behalf of the Complainant and Seah which included a term that they would pay the cash takings from the stall for the period 19 December 2016 to 11 February 2017 amounting to the sum of \$26,896.45 by way of a cashier's order in favour of the Company ("**the Cashier's Order**"), and provide a detailed statement of accounts for that period.
- i. By her letter dated 29 March 2017 to Messrs Linus Law Chambers, the Respondent asked for, *inter alia*, the Cashier's Order by 6 pm that day, failing which legal action would be commenced.

The Undertaking

- j. By their letter dated 29 March 2017 to the Respondent, Messrs Linus Law Chambers stated that the Cashier's Order was being handed over to the Respondent subject to an undertaking by the Respondent not to release the Cashier's Order to her clients until a comprehensive agreement was reached by the parties in full and final settlement of all issues and claims between them ("**the Undertaking**").
- k. In her letter dated 30 March 2017 to Messrs Linus Law Chambers, the Respondent stated that she would not release the cashier's order to her clients. The Undertaking

was given by the Respondent, as the sole proprietor of her firm, in her capacity as solicitor.

- l. On 24 April 2017, Ng and Chang commenced legal proceedings against the Complainant and Seah in DC/DC 1100/2017 (**"the DC Suit"**).
- m. On 2 May 2017, Messrs Allen & Gledhill LLP entered an Appearance for the Complainant and Seah in the DC Suit.

Breach of Undertaking

- n. By their letter dated 4 May 2017 to the Respondent, Messrs Allen & Gledhill LLP asked for the return of the Cashier's Order given that Ng and Chang had commenced the said legal proceedings.
- o. By her letter dated 9 May 2017 to Messrs Allen & Gledhill, the Respondent stated that she had held the Cashier's Order until 18 April 2017, and that the Cashier's Order was then deposited by her clients into the Company's bank account to pay for the Company's overheads that have fallen due.
- p. The above release of the Cashier's Order by the Respondent to her clients when there was no comprehensive agreement reached by the parties in full and final settlement of all issues and claims between them amounted to a breach of the Undertaking by the Respondent.
- q. It was about 1 year and 7 months later in April 2018 during the Court Dispute Resolution Process in the State Courts before a District Judge that a settlement was reached between the Respondent's clients and the Complainant and Seah.

The Parties' Submissions

6. The parties filed their respective submissions and further submissions on sanction on 10 June 2021 and 25 June 2021, with both parties taking the position that (a) no cause of sufficient gravity for disciplinary action exists under s 83 of the LPA, and (b) a penalty (or in the alternative a reprimand, as submitted by the Respondent) be imposed in this case.
7. The Applicant submits that there is no cause of sufficient gravity for disciplinary action in this case for the following reasons:
 - a. The Cashier's Order, which the Respondent had undertaken not to release to her clients, did not represent monies that belonged to the Complainant, rather, the monies belonged to the Company. When the Respondent released the Cashier's Order to her clients in breach of the Undertaking, the monies were paid to the Company.
 - b. Reference was made to the Respondent's response submitted to the Inquiry Committee that she was under a lot of pressure from her clients to release the Cashier's Order to them. There does not appear to be any dishonesty on the part of the Respondent.
 - c. When the Complainant subsequently settled her dispute with the Respondent's clients, it was the Complainant who had to pay a further sum of \$18,703 to the Respondent's clients, as agreed.
8. The Applicant in its first submissions directed attention to three cases as reference points as to whether the Respondent's breach of the Undertaking should be regarded

as a cause of sufficient gravity for disciplinary action: *Re Lim Kiap Khee*; *Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("**Lim Kiap Kee**"); *Law Society of Singapore v Tham Kok Leong Thomas* [2006] 1 SLR(R) 775 ("**Thomas Tham**") and *Law Society of Singapore v Chan Chun Hwee Allan* [2016] SGDT 3 ("**Allan Chan**").

9. In *Lim Kiap Kee*, the respondent solicitor, who acted for the sub-purchaser of a property, gave an undertaking to hold 13% of the purchase price as stakeholder, and to release 8% and 5% of the purchase price to the developer on certain dates. The respondent solicitor failed to release the 8% and the 5% of the purchase price on the specified dates. He released the 8% only after considerable delay and reminders. He released the 5% only after enforcement action had been taken out by the developer (including the institution of bankruptcy proceedings). The disciplinary tribunal found that there was cause of sufficient gravity for disciplinary action against the respondent solicitor.
10. In *Thomas Tham*, the complainant needed banking facilities to import cars into Thailand. The complainant approached the respondent solicitor's client, Dr Wang, who represented a company which could assist opening letters of credit for a fee. The parties agreed that the complainant would deposit US\$60,000 with the respondent solicitor to be released to Dr Wang's company upon the issue of a letter of credit for the import of cars. The respondent solicitor confirmed to the complainant's solicitors that his law firm would hold the US\$60,000 and release it only when the letter of credit was issued. After the sum was deposited with the company, Dr Wang requested that the respondent solicitor release US\$54,000 to him that very same day. The respondent solicitor relented on the condition that Dr Wang give him a personal cheque for US\$54,000 and an indemnity in favour of the respondent solicitor's law firm. Subsequently, the respondent solicitor released the remaining US\$6,000 to Dr Wang with a similar requirement of a cheque and indemnity from Dr Wang. The respondent

solicitor had breached his undertaking by releasing the US\$54,000 and US\$6,000 to Dr Wang. The disciplinary tribunal found that there was cause of sufficient gravity for disciplinary action.

11. In contrast, in *Allan Chan*, the disciplinary tribunal found that the breach of undertaking by the respondent solicitor was not cause of sufficient gravity for disciplinary action. In *Allan Chan*, the respondent solicitor provided undertakings to the complainant to provide security for costs in the total sum of \$35,000 in an appeal, when his client had not put him in funds. His client thereafter changed lawyers and withdrew the appeal. The Court ordered his former client to pay costs of \$30,000 to the complainant. The respondent solicitor only paid costs of \$5,000. After the complaint was made, the respondent paid the balance \$25,000 with interest before the matter came up for hearing at the inquiry committee; an investigation by the disciplinary tribunal later ensued. The disciplinary tribunal found the respondent solicitor guilty of grossly improper conduct in the discharge of his professional duty within the meaning of s 83(2)(b) of the LPA for his breach of undertaking, but determined that there was no cause of sufficient gravity for disciplinary action; the respondent solicitor was ordered to pay a penalty of \$15,000 and costs of \$5,000 .
12. The Applicant in its further submissions referred to another instance where the disciplinary tribunal had found that a breach of undertaking by a respondent solicitor was not cause of sufficient gravity for disciplinary action. In *Law Society of Singapore v Shanmugam* [1988] SGDSC 14 ("**Shanmugam**"), the complainant complained that the respondent solicitor did not pay him \$2,500 that he had deposited with the respondent solicitor. The respondent solicitor had given a written undertaking to the chairman of the inquiry committee that he would pay the \$2,500 to the complainant. As a result of the undertaking, the inquiry committee reported to the Council that the complaint did not merit formal investigation by a disciplinary tribunal. The respondent

solicitor however breached his undertaking and did not pay the complainant till after a complaint by the Law Society for the respondent solicitor's breach of undertaking was before the disciplinary tribunal.

13. The respondent solicitor explained that he had taken steps to pay the \$2,500. He was resident in London and had asked Ms Irene Tan who was resident in Singapore and was holding some monies for the respondent solicitor to pay the \$2,500 on his behalf. Ms Tan however had a nervous breakdown and did not make the payment. The respondent solicitor did not receive notice of the Law Society's complaint of his breach of undertaking till after it had been referred to the disciplinary tribunal for investigation; he made payment thereafter.
14. The Applicant in essence submits that the Respondent's breach of the Undertaking is less serious than the breaches in *Lim Kiap Kee* and *Thomas Tham*, and she is less culpable than the respondent solicitors in those two cases. In the two cases, the monies that the respondent solicitors held belonged to the complainants. In the present case, the cashier's order that the Respondent held did not represent monies that belonged to the Complainant; rather they belonged to the Company. When the Respondent released the cashier's order to her clients in breach of her undertaking, the monies were paid to the Company.
15. The Applicant therefore submits that the Respondent should be ordered to pay a penalty of \$15,000 and costs of \$6,000 (inclusive of disbursements) to the Applicant. The Applicant appears to be using *Allan Chan* as a reference point: there the penalty was stated as \$15,000 and costs of \$5,000 (inclusive of disbursements).
16. The Respondent's reasons for her submission that there is no cause for sufficient gravity for disciplinary action in her case are as follows:

- a. The breach of the Undertaking was not deliberate. It was essentially a bare breach or a technical breach, which did not cause “any turmoil in anyone [*sic*] lives, the standing of the Law Society, or that of the Bar or that of anyone of us”.
- b. The Respondent contended that in determining whether there has been a breach of undertaking the court will put itself in the position of the parties in the exact circumstances at the time the undertaking was given and accepted.
- c. In this regard, the Cashier's Order which was the subject of the Undertaking was made in favour of the Company, and not the Respondent or her firm. There was “no prolonged delay of any sort”. The delay was that of the Complainant in levying the Complaint.
- d. The Respondent did not benefit from the funds as these belonged to the Company. There was no loss suffered by anyone.
- e. Although the Cashier's Order was not to be released until a comprehensive settlement was reached by the parties, no settlement was forthcoming. “... [W]hat other alternative does the Respondent have but to give the [cashier's order to her clients] since the very purpose of the undertaking was to have a meeting for a ‘comprehensive agreement’ that was never achieved given ... the Complainant was prevaricating”.
- f. When Allen & Gledhill LLP wrote to the Respondent on 4 May 2017 for the return of the Cashier's Order, the Respondent replied in writing on 9 May 2017 stating that the Cashier's Order had since been deposited into the Company's bank account. There was no surreptitiousness in this case, unlike the facts of *Thomas Tham*.

- g. The performance of the Undertaking by the Respondent was impossible as the Cashier's Order had already been deposited into the Company's bank account.
- h. The Respondent's conduct in releasing the Cashier's Order was not so egregious as to bring dishonour to the profession. Her conduct was also not such that it lacked the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.
- i. The Respondent, like the Applicant, referred to *Allan Chan*, as a reference point, and contended that there was no cause of sufficient gravity for disciplinary action.
- j. The Respondent in her further submission also referred to *Shanmugam* and contended that as in the case of *Shanmugam*, there was no dishonesty on the part of the Respondent in her breach of the Undertaking.

The Tribunal's Determination

- 17. A solicitor's word is her bond; all the more so when the solicitor gives a formal undertaking.
- 18. As the Court of Three Judges in *Lim Kiap Khee* made clear at [21]: "...It is of utmost importance that a solicitor should abide by the undertaking he formally gives. It is the very foundation of an honourable profession that its members act honourably. To deliberately breach an undertaking solemnly given would seriously undermine the integrity of the profession and bring it into disrepute..."
- 19. The Court of Three Judges in *Thomas Tham* at [29] repeated the above passage from *Lim Kiap Kee*.

20. In determining whether there is sufficient cause for disciplinary action, the evidence before us was confined to the Agreed Statement of facts. Although the parties had filed Affidavits of Evidence-in-Chief, they were not admitted in evidence.
21. On the evidence before us, the Respondent gave the Undertaking in the context of facilitating the resolution of the dispute between her clients on the one hand, and the Complainant and Seah on the other.
22. The Complainant and Seah did not want to deposit the cash takings of \$26,896.45 earned from the stall into the Company's bank account as they alleged that the Respondent's clients were issuing cheques from the Company's bank account without the knowledge or consent of the Complainant. The Respondent held the Cashier's Order, which embodied the cash takings of \$26,896.45, as a stakeholder; she was not to release the Cashier's Order to her clients until a comprehensive settlement had been reached by the parties.
23. The Respondent however released the Cashier's Order to her clients on 18 April 2017, and her clients deposited it into the Company's bank account to pay for the Company's overheads that had fallen due.
24. The Respondent admits that the release of the Cashier's Order by her when there was no comprehensive agreement reached by the parties in full and settlement of all the issues and claims between them amounts to a breach of the Undertaking by her.
25. We accept that the Respondent did not act dishonestly when she breached the Undertaking. She was forthright in telling Allen & Gledhill, when they requested the return of the Cashier's Order, that she had released the Cashier's Order to her clients.

The Respondent did not benefit personally from her release of the Cashier's Order: it was made out in the name of the Company and deposited into the Company's bank account.

26. We do not accept the Respondent's submission that her breach of undertaking was not deliberate. The Agreed Statement of Facts do not refer to any uncertainty on the part of the Respondent, or any dispute by her as to the meaning of the Undertaking. Her handing over the Cashier's Order to her clients was a deliberate act, as opposed to an accidental or inadvertent act.
27. We also do not accept the Respondent's submission that any breach was a bare or technical breach as there was no settlement forthcoming, and she had no alternative but to give the Cashier's Order to her clients as the purpose of the Undertaking to have a meeting for the comprehensive agreement, was not achieved.
28. First, it is not correct that the Respondent had no alternative but to give the Cashier's Order to her clients. She could have continued to hold on to the Cashier's Order to maintain the contemplated platform for the parties to resolve their disputes, or she could have simply returned the Cashier's Order to Messrs Linus Law Chambers. Instead, she chose to release the Cashier's Order to her clients on 18 April 2017, less than a month after the Cashier's Order had been given to her.
29. Secondly, of the alternatives she had, the choice to release the Cashier's Order to her clients was not open to her; the very purpose of the Undertaking was to ensure that the Respondent would not release the Cashier's Order to her clients if there was no comprehensive agreement.

30. We further do not accept the Respondent's submission that it was impossible for her to perform the Undertaking as the Cashier's Order had already been deposited into the Company's bank account. With respect, this submission has no merit whatsoever. Such impossibility was created by the Respondent's act of handing over the Cashier's Order to her clients in breach of the Undertaking.
31. We now address the submission made by both the Applicant and the Respondent that in the present case no loss was suffered by the breach of the Undertaking as the Cashier's Order did not represent monies that belonged to the Complainant (or Seah); rather the monies belonged to the Company, and the monies were paid into the Company's bank account. The Applicant also submitted that when the parties finally agreed to a settlement, it was the Complainant who had to pay a further sum of \$18,703 to the Respondent's clients.
32. In our view, the fact that Cashier's Order did not represent monies that belonged to the Complainant or Seah is not central to the culpability of the Respondent's breach of the Undertaking. The dispute among the parties was whether the Respondent's clients were entitled to issue cheques from the Company's bank account without the Complainant's knowledge or consent. The Complainant and Seah accordingly did not want to deposit the cash takings of \$26,896.45 into the Company's bank account until there was a comprehensive agreement of all issues and claims between them and the Respondent's clients. The Undertaking therefore required the Respondent to hold the Cashier's Order which embodied the \$26,896.45 as stakeholder. By breaching the Undertaking, the Respondent facilitated her clients paying the \$26,896.45 into the Company's bank account which was precisely what the Complainant and Seah had objected to in the absence of a resolution of the disputes.

33. Save that a settlement among the parties was reached during the Court Dispute Resolution Process in the State Courts before the District Judge in April 2018 – about a year after proceedings were started – no details of the settlement were provided in the Agreed Statement of Facts. We however take into consideration the Applicant's admission in its submissions that at the settlement, the Complainant agreed to pay the Respondents \$18,703. The context of the negotiations which led to the settlement in 2018 has however changed from the context of any negotiations in 2017 when the \$26,896.45 had not been paid into the Company's bank account. Any settlement may well have taken a different form or contained different terms if the Cashier's Order had not been released by the Respondent in breach of the Undertaking.
34. The Complainant had entrusted the Respondent to hold on to the Cashier's Order in accordance with the Undertaking. However, the Complainant lost any benefit she may have had in being able to negotiate a settlement while the Cashier's Order remained unbanked into the Company's bank account when the Respondent breached the Undertaking.
35. The Court of Three Judges in *Lim Kiap Kee* at [26] drew a distinction between a breach that was an oversight and one that was deliberate. In our view, the Respondent in the present case had deliberately breached the Undertaking.
36. The Court of Three Judges in *Thomas Tham* made clear that even in that case where the respondent solicitor did not intend to benefit personally from a breach of undertaking but wanted to facilitate the performance of the transaction (at [32]), it cannot be lost sight of that the respondent solicitor "had disregarded the trust reposed in him" by the party to whom he had given his undertaking (at [29]).

37. Although the Applicant and the Respondent invited us to draw similarities between the present case and *Allan Chan*, and *Shanmugam* (especially the former), in our view both cases can be distinguished from the present case.
38. In *Allan Chan* the respondent solicitor had furnished an undertaking for security for costs for an appeal to prevent his erstwhile client's case from being struck out by an unless order as the client was overseas at the time, on the faith of his client's promise to put him in funds in due course (at [13]). He has given his undertaking due to the urgency of the appeal timeline. There was no such urgency or Court deadline to meet in the present case.
39. The respondent solicitor had ultimately made good on his undertaking by paying the complainant with interest (at [6(8)] and [16]), and the Complainant was prepared to withdraw her complaint (at [18]). The Respondent in the present case has not made good on the Undertaking, and indeed cannot make good on the Undertaking because, by her own act of handing over the Cashier's Order to her clients in breach of the Undertaking, she has rendered any compliance by her with the Undertaking impossible.
40. The Disciplinary Tribunal in *Allan Chan* found that the respondent solicitor had through his own misjudgement or foolishness extended his undertaking on costs without first securing from his client the funds necessary to make good on the undertaking in the event it was called on. He was unfortunately placed in a position where he was obliged to honour his undertaking without any assurance of repayment from his client (at [29]). This is not the case in the present matter: there is nothing in the Agreed Statement of Facts or any assertion by the Respondent that she had breached the Undertaking out of misjudgement or foolishness.

41. As for *Shanmugam*, the respondent solicitor had taken steps to pay the \$2,500 he had undertaken to pay, but the amount remained unpaid because of unexpected intervening circumstances; he did eventually make good his undertaking and paid the amount. In the present case, the Respondent has not taken any step to make good the Undertaking, because, as stated previously, by her own act of handing over the Cashier's Order to her clients in breach of the Undertaking, she rendered compliance of the Undertaking by her impossible.
42. It bears repeating that it is the foundation of an honourable profession that a member abides by her undertaking. A deliberate breach by a member will seriously undermine the integrity of the profession.
43. The Respondent was entrusted to hold on to the Cashier's Order in accordance with the Undertaking. She disregarded the trust reposed in her as she breached the Undertaking.
44. In the circumstances of the present case, notwithstanding the submissions of the Applicant and the Respondent to the contrary, we find that on the scale of culpability, there is cause of sufficient gravity for disciplinary action under s 83 of the LPA in relation to the Charge.

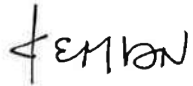
Conclusion

45. For the reasons set out above, and based on the Respondent's acceptance that she is guilty of the Charge, the Tribunal determines, pursuant to s 93(1)(c) of the LPA, that cause of sufficient gravity for disciplinary action exists under s 83 of the LPA.

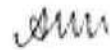
46. The Tribunal also awards costs of \$6,000 (inclusive of disbursements) to be paid by the Respondent to the Law Society.

Dated 1 October 2021

The Disciplinary Tribunal



Mr Kenneth Michael Tan Wee Kheng SC
President



Ms Audrey Chiang Ju Hua
Member

