DT 10 OF 2021

IN THE MATTER OF OOI OON TAT,

AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT

(CHAPTER 161)

DECISION OF THE DISCIPLINARY TRIBUNAL

Disciplinary Tribunal

Mr Jimmy Yim Wing Kuen, *SC* – President
Mr Andrew Chan Chee Yin – Member

Counsel for the Law Society

Mr Adrian Wong Soon Peng
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Respondent acting in person

Dated this 20th day of December 2021

DT 10/2021

Between

THE LAW SOCIETY OF SINGAPORE

(No ID Exists)

… Applicant

And

OOI OON TAT

… Respondent

THE DISCIPLINARY TRIBUNAL'S DECISION

Introduction

1. On 18 June 2020, Mr Lim See Meng ("**Mr Lim**") a taxi driver lodged his complaint[1] against his former solicitor Mr Ooi Oon Tat ("**the Respondent**") practising as a sole proprietor under the law firm name of M/s Judy Cheng & Co ("**J&C**"). The Respondent is an Advocate and Solicitor of the Supreme Court of Singapore of some 27 years standing at the material time in 2016, having been called to the Singapore Bar in August 1989.[2]

2. On 10 May 2021, the present Disciplinary Tribunal was appointed. The Law Society of Singapore ("**LSS**") preferred 3 charges against the Respondent. The 3 charges are reproduced below:[3]

[1] 2PB at p. 818

[2] Statement of Case dated 29 April 2021 at [1]

[3] The First Charge was amended by consent on the day of the oral closing submissions on 1 November 2021 by

First Charge

[The Respondent is] charged that whilst acting for [Mr Lim] in DC Suit No. 2679 of 2015 ("the Suit"), [he was] aware of information that would reasonably affect [Mr Lim's] interests in the Suit, which included:-

(1) The letter from United Legal Alliance LLC ("ULA") to Judy Cheng & Co ("J&C") dated 17 August 2016;
(2) DC/SUM 2793/2016 dated 29 August 2016;
(3) DC/ORC 3529/2016 dated 4 October 2016;
(4) The letter from ULA to J&C dated 31 October 2016;
(5) DC/SUM 3586/2016 dated 8 November 2016;
(6) DC/ORC 94/2017 dated 13 December 2016; and/or
(7) That the Suit was struck out on 20 January 2017,

but failed to reasonably inform [Mr Lim] of such information and/or the progress of the Suit in breach of Rule 5(2)(b) and/or Rule 5(2)(e) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, [he is] guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).

Alternatively, [the Respondent is] charged that whilst acting for [Mr Lim] in the Suit, [he was] aware of information that would reasonably affect [Mr Lim's] interests in the Suit, which included:-

(1) The letter from ULA to J&C dated 17 August 2016;
(2) DC/SUM 2793/2016 dated 29 August 2016;
(3) DC/ORC 3529/2016 dated 4 October 2016;
(4) The letter from ULA to J&C dated 31 October 2016;
(5) DC/SUM 3586/2016 dated 8 November 2016;
(6) DC/ORC 94/2017 dated 13 December 2016; and/or
(7) That the Suit was struck out on 20 January 2017,

but failed to reasonably inform [Mr Lim] of such information and/or the progress of the Suit, such acts amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty 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).

Second Charge

[The Respondent is] charged that whilst acting for [Mr Lim] in DC Suit No. 2679 of 2015 ("the Suit"), [he] failed to:- (a) act with reasonable diligence and competence in the provision of legal services; (b) provide timely advice; and/or (c) use all legal means to advance [Mr Lim's] interests to the extent that [he] may reasonably be expected to do so in relation, but not limited to:-

(1) The letter from United Legal Alliance LLC ("ULA") to Judy Cheng & Co ("J&C") dated 15 June 2016;
(2) The letter from ULA to J&C dated 17 August 2016;

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deleting the 1st letter itemized as the letter from ULA to J&C dated 17 August 2016, see Transcript of oral closing submissions on 1 November 2021 ("**NE 1 Nov**") at pg. 1 (ln 14-27)

(3) DC/SUM 2793/2016 dated 29 August 2016;
(4) DC/ORC 3529/2016 dated 4 October 2016;
(5) The letter from ULA to J&C dated 31 October 2016;
(6) DC/SUM 3586/2016 dated 8 November 2016;
(7) DC/ORC 94/2017 dated 13 December 2016; and/or
(8) The striking out of the Suit on 20 January 2017,

in breach of Rule 5(2)(c), Rule 5(2)(h) and/or Rule 5(2)(j) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, he is guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).

Alternatively, [the Respondent is] charged that whilst acting for [Mr Lim] in the Suit, [he] failed to:- (a) act with reasonable diligence and competence in the provision of legal services; (b) provide timely advice; and/or (c) use all legal means to advance [Mr Lim's] interests to the extent that [he] may reasonably be expected to do so in relation, but not limited to:-

(1) The letter from ULA to J&C dated 15 June 2016;
(2) The letter from ULA to J&C dated 17 August 2016;
(3) DC/SUM 2793/2016 dated 29 August 2016;
(4) DC/ORC 3529/2016 dated 4 October 2016;
(5) The letter from ULA to J&C dated 31 October 2016;
(6) DC/SUM 3586/2016 dated 8 November 2016;
(7) DC/ORC 94/2017 dated 13 December 2016; and/or
(8) The striking out of the Suit on 20 January 2017,

such acts amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty 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).

Third Charge

[The Respondent is] charged that whilst acting for [Mr Lim] in DC Suit No. 2679 of 2015 ("the Suit"), [he] had failed to follow the lawful, proper and reasonable instructions that [Mr Lim] was competent to give, which included failing to follow [Mr Lim's] instructions in his email to [the Respondent] dated 30 June 2016 in breach of Rule 5(2)(i) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) and as such, you are guilty of improper conduct or practice as an advocate and solicitor within the meaning of section 83(2)(b)(i) of the Legal Profession Act (Chapter 161).

Alternatively, [the Respondent is] charged that whilst acting for [Mr Lim] in the Suit, [he] had failed to follow the lawful, proper and reasonable instructions that [Mr Lim] was competent to give, which included failing to follow [Mr Lim's] instructions in his email to [the Respondent] dated 30 June 2016, such act(s) amounting to conduct unbefitting an advocate and solicitor in the discharge of [his] professional duty 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).

Background facts

3. On 12 November 2012, Mr Lim was involved in an accident with one Mr Chong Chun Siong ("**Mr Chong**") who had collided into the rear of Mr Lim's taxi.[4] Mr Lim suffered some physical harm ranging from neck pain, chest discomfort, right ribs pain to whiplash.

4. On 9 September 2015, his then solicitor M/s Hin Tat Augustine & Partners commenced DC Suit 2679/2015 ("**the Suit**") against the defendant Mr Chong, who instructed United Legal Alliance LLC ("**ULA**") to defend.

5. On 30 September 2015, Mr Lim changed his solicitor to M/s Goh JP & Wong LLC.[5]

6. On 25 November 2015, Mr Lim obtained an interlocutory judgment against Mr Chong, by consent, with liability fixed at 100% in Mr Lim's favour, with damages to be assessed.[6]

7. On 12 January 2016, M/s Goh JP & Wong LLC obtained a hearing date of 5 February 2016 for an assessment of damages in the Suit.[7] By that point, Mr Lim had filed his affidavit of evidence-in-chief, list of documents and affidavit verifying list of documents in the Suit. However, the assessment of damages did not proceed on 5 February 2016 as ULA raised certain queries over Mr Lim's past accidents.

8. On 17 March 2016, Mr Chong through ULA served a list of interrogatories on Mr Lim seeking to discover, among other things, if Mr Lim was involved in any other road accidents

[4] 1PB at pp. 98-105

[5] 1PB at p. 106

[6] 1PB at p. 108

[7] 1PB at p. 209

apart from the accident on 12 November 2012.[8]

9. On 19 March 2016, Mr Lim changed his solicitor again when he signed a Warrant to Act engaging the Respondent's firm J&C.[9] The Respondent prepared this Warrant to Act himself. The Warrant to Act engaged the Respondent to act for Mr Lim in 2 Suits:

a) MC Suit No. 228 of 2014 ("**MC 228**"), which was filed by Mr Lim in relation to another accident he was involved in on 9 March 2012; and

b) The Suit (*i.e.* DC Suit No. 2679 of 2015) which was filed by Mr Lim in relation to the 12 November 2012 accident referred to above.

10. On 2 May 2016, the Respondent filed a Notice of Change of Solicitor to formally take over the Suit from the former solicitor M/s Goh JP & Wong LLC.[10]

Request for documents from Mr Lim

11. By letter dated 15 June 2016, Mr Chong through ULA requested the Respondent for the following documents from Mr Lim, namely (collectively referred to as the "**Discovery Request**"):[11]

a) "*Medical report of [Mr Lim] issued by Sata Comm Health dated 28 June 2012*";

b) "*Medical report of [Mr Lim] issued by Dr Benedict Peng of Island Orthopaedic*

[8] 1PB at pp. 211-214

[9] 2PB at pp. 577-578

[10] 1PB at pp. 215-216

[11] 2PB at pp. 598-601

Consultants Pte Ltd dated 29 August 2012";

c) "*Medical reports in relation to [Mr Lim's] accident on 29 July 2014*";

d) "*All relevant documents pertaining to any claim(s) and / or legal proceeding(s) commenced by [Mr Lim] in relation to the accident on 26 June 2013, if any*";

e) "*All relevant documents pertaining to any claim(s) and / or legal proceeding(s) commenced by [Mr Lim] in relation to the accident on 29 July 2014, if any*";

f) "*All relevant documents pertaining to MC Suit no. 21307 / 2010 including but not limited to the following: (i) Copies of the pleadings; (ii) Copies of all Affidavit(s) of Evidence-in-Chief, if any; (iii) Copies of the Interlocutory Judgement and Final Judgement, if any; and (iv) All other relevant documents in relation to the Suit"*;

g) Pertaining to MC 228, "*(a) Copies of the pleadings; (b) Copies of all Affidavit(s) of Evidence-in-Chief, if any; (c) Copies of the Interlocutory Judgement and Final Judgement, if any; (d) All other relevant documents in relation to the Suit; and (e) The particulars / information relating to the personal injury claim that your client intends to consolidate with DC Suit no. 2679 of 2015, ...*";

h) "*[Mr Lim's] CPF statements for the period from 1 January 2012 to present*";

i) "*[Mr Lim's] IRAS notice of assessment for the following assessment years (financial years): i. 2011 (2010); ii. 2012 (2011); iii. 2013 (2012); iv. 2014 (2013); v. 2015 (2014); and vi. 2016 (2015) — when the same is made available to [J&C]*";

j) "*Documents substantiating [Mr Lim's] claim for loss of future earnings / earning capacity at $15,000.00*";

k) "*Documents substantiating [Mr Lim's] claim for transport expenses at $ 800.00*"; and

l) "*Other documents in support of [Mr Lim's] claim.*"

12. In the same letter, ULA also requested Mr Lim to provide a signed clinical abstract form and a copy of his NRIC to allow ULA to write to all hospitals on Mr Lim's pre-existing injuries prior to the accident on 12 November 2012.

13. On the same day on 15 June 2016, Ms Cheng Su Yin Judy ("**Ms Cheng**"), who was assisting the Respondent with the Suit at J&C, sent the Discovery Request to Mr Lim by way of an email (copying the Respondent) stating "*[w]e will let you know if we cannot find the documents in our file and the documents we need from you*".[12] There were apparently documents handed over to the Respondent by Mr Lim's previous solicitors which would have been relevant to the Discovery Request.[13]

14. About 2 weeks later, on or around 27 June 2016, Mr Lim went to the Respondent's office and provided the Respondent with his CPF statements for January 2012 to May 2016, his IRAS notices of assessments for the financial years of 2010 to 2015 and the signed clinical abstract form, to enable the Respondent to reply, in part, to the Discovery Request.[14]

[12] 2PB at p. 602

[13] 2PB at p. 563, [15]

[14] AEIC of Mr Lim at [11]

15. On 30 June 2016, Mr Lim followed up with an email to the Respondent pertaining to the Discovery Request.[15] Mr Lim's email stated, *inter alia*:

> *…*
> *1) Kindly refer to the letter from m/s United Legal Alliance dated 15th June 2016.*
> *2) As a reminder, i have delivered the CPF Statements, IR8A and clinical abstract application form which has been signed by me and delivered over to yourself & Mr Ooi Oon Tat dated 27th June 2016.*
> *3) I will appreciate if you could cc me a copy of your reply letter to United Legal Alliance and also cc copy of the affidavit to consolidate DC Suit No. 2679 of 2015 and MC Suit No. 228 of 2014 for my reference.*
> *…*

16. Mr Lim ended his email by stating: "*I hereby appreciate if you* ***can kindly expedite my matters asap***" (emphasis added by the Tribunal).

17. Mr Lim claimed that he did not receive any update from the Respondent in relation to the Discovery Request or any advice in relation to the progress of the Suit.[16] As he was dissatisfied with the dilatory manner in which the Respondent was handling the Suit, he went sometime in or around January 2017 to engage Mr Lee Cheong Hoh ("**Mr Lee**") from M/s Cheonghoh Law Corporation to take over conduct of the Suit. Mr Lee did a search on the Court's files and informed Mr Lim that his Suit had been struck out.[17] Mr Lim claimed he was shocked. Mr Lee also wrote 2 letters to the Respondent on 26 January 2017 and 8 February 2017 complaining that he found the files very poorly kept, the former in the following terms:[18]

> *…*
> *We are in receipt of your 2 bundles handed by your Mr Ooi personally at our office this morning We note that there is no schedule of documents listing out all the documents in the 2 bundles. We have perused the 2 bundles and we are unable to sort out which are the documents that belong to MC/MC 228/2014 and DC/DC 2679/2015 as they are not listed out in chronological order.*
> *…*
> *For the avoidance of doubt, our taking over conduct of these 2 matters will be*

[15] 2PB at p. 604

[16] AEIC of Mr Lim at [13]-[15]; Transcript of Evidential Hearing on 15 September 2021 ("**NE 15 Sep**"): at p. 58 (ln 15-22), p. 65 (ln 3-9), p. 148 (ln 8-30), p. 150 (ln 21-28), p. 151 (ln 31-32), p. 152 (ln 1 to 21), p. 160 (ln 3-18) and p. 163 (ln 13-29)

[17] NE 15 Sep at p. 160 (ln 11-14) and p. 161 (ln 6-11)

[18] 2PB at pp. 699-700

subject to the availability of the complete set of documents, i e. correspondence and cause papers as the suits are in the advance stage of the proceedings.
…

18. Eventually, Mr Lee did not take over conduct of the Suit as he was not comfortable with the organisation of the documents handed over by the Respondent to him.[19]

19. On 9 January 2019, M/s Andrew Goh Chambers filed a Notice of Change of Solicitors to take over conduct of the Suit from the Respondent's firm J&C. The Suit was never restored.

20. We note that Mr Lim's claim for personal injury if commenced in a fresh suit at the time it was struck out on 20 January 2017 would have potentially been time-barred.

21. On 22 March 2019, Mr Lim filed DC Suit No. 873/2019 ("**DC 873**") against the Respondent for professional negligence, suing the Respondent over the Respondent's negligent handling of the Suit leading to the Suit being struck out.[20]

22. On 9 January 2020, in Mr Lim's summary judgment application against the Respondent in DC 873, which the Respondent appeared in person to contest, interlocutory judgment was entered against the Respondent for damages and costs to be assessed, and judgment for certain liquidated sums.[21] The Respondent's appeal against this was dismissed on 3 March 2020.[22]

23. On 18 June 2020, before Mr Lim's damages were assessed, Mr Lim made his present complaint to the LSS against the Respondent.[23]

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[19] 2PB at p. 700

[20] 2PB at pp. 513-521

[21] 2PB at p. 753

[22] 2PB at p. 775

[23] 2PB at p. 818

24. On 14 September 2021, a day before the evidential hearing of this matter began, the District Court adjudged the Respondent as liable to pay Mr Lim damages of $72,879.03 with costs fixed at $15,000 and disbursements to be agreed or taxed.[24]

The charges

25. Essentially, the LSS's 3 charges against the Respondent relate to his failure to perform his professional duties to his client in respect of discovery requests and orders, which repeated failure ultimately led to the Suit being struck out. The First Charge was amended by consent on the day of the oral closing submissions on 1 November 2021 by deleting the first letter itemised twice, first as "*The letter from United Legal Alliance LLC ("ULA") to Judy Cheng & Co ("J&C") dated 17 August 2016"* and second as *"The letter from ULA to J&C dated 17 August 2016"*. Each of the 3 charges relate to one obligation or another in the professional conduct rules of informing a client timeously on the progress of their matters, advising the client, advancing the client's interest in these matters, and following the client's instructions.

26. We shall not repeat the details of the 3 charges as they have been reproduced in the Introduction above. Suffice to say that they all engage various sub-rules under Rule 5 of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("**PCR**"). We are guided by the following principles in Rule 5(1) in the interpretation of the rules which follow:

> *(a) The relationship between a legal practitioner and his or her client imports a duty to be honest in all dealings with the client.*
>
> *(b) A legal practitioner must have the requisite knowledge, skill and experience to provide competent advice and representation to his or her client.*
>
> *(c) A legal practitioner has a duty to be diligent in the advice and information*

[24] NE 15 Jan at p. 11 (ln 7-15); Transcript of Evidential Hearing on 16 September 2021 ("**NE 16 Sep**") at p. 173 (ln 8-16); 2PB at p. 960-965 (introduced as an exhibit during oral closing submissions on 1 November 2021)

given to his or her client, and in the manner the legal practitioner represents the client.

27. Specific to each of the 3 charges, the following sub-rules under Rule 5 of the PCR are engaged in respect of what a legal practitioner is expected to do:

a) For the First Charge, Rules 5(2)(b) and 5(2)(e) of the PCR:

> *(b) when advising the client, inform the client of all information known to the legal practitioner that may reasonably affect the interests of the client in the matter, other than —*
> *(i) any information that the legal practitioner is precluded, by any overriding duty of confidentiality, from disclosing to the client; and*
> *(ii) any information that the client has agreed in writing need not be disclosed to the client;*
> *…*
>
> *(e) keep the client reasonably informed of the progress of the client's matter:*

b) For the Second Charge, Rules 5(2)(c), 5(2)(h) and 5(2)(j) of the PCR:

> *(c) act with reasonable diligence and competence in the provision of services to the client;*
> *…*
> *(h) provide timely advice to the client;*
> *…*
> *(j) use all legal means to advance the client's interests, to the extent that the legal practitioner may reasonably be expected to do so;*

c) For the Third Charge, Rule 5(2)(i) of the PCR:

> *(i) follow all lawful, proper and reasonable instructions that the client is competent to give;*

The Respondent's pre-hearing conduct

28. As the 3 charges relate primarily to a client's complaints over the Respondent's dilatory and lackadaisical conduct in attending to his professional duties, it was very surprising to the Tribunal that the Respondent failed and/or refused to file his defence, list of documents, and his affidavit of evidence-in-chief, despite several reminders and extensions given by the Tribunal.

29. By letter dated 17 May 2021, pursuant to Rules 8, 9 and 10 of the Legal Profession (Disciplinary Tribunal) Rules (Rev. Edition 2010) ("**DT Rules**"), the Respondent was directed to file his defence by 25 May 2021, and both parties were directed to file their list of documents by 8 June 2021, and witnesses' affidavits of evidence-in-chief ("**AEIC**") by 12 July 2021.

30. The Respondent failed to comply with the deadline for all 3 filings. In his email dated 1 June 2021 to the Secretariat, the Respondent requested more time as he claimed that his personal computer had crashed some time ago and he had difficulty retrieving documents. By email dated 8 June 2021 from the Secretariat to the Respondent, the Tribunal asked the Respondent to provide his proposed deadlines to meet all filing obligations before the Tribunal decided on whether to grant the appropriate extensions of time for the 3 filings.

31. By email dated 21 June 2021, the LSS requested the Respondent to reply to the Secretariat's email dated 8 June 2021 on the deadlines the Respondent would be proposing in complying with the filing obligations. It was a generous and conciliatory act on the part of the LSS in writing this email, and yet, the Respondent did not give any reply thereto, nor to the Secretariat's earlier email.

32. Then, by letter dated 28 June 2021, in exercise of the Tribunal's power under Rule 22 of the DT Rules for extensions of time, the Tribunal directed that the Respondent's defence be filed by 6 July 2021, the list of documents of parties be filed by 30 July 2021, and the AEICs, Bundle of Authorities ("**BA**") and Bundle of Documents ("**BD**") be filed by 10 September 2021. The Tribunal warned that if the Respondent's defence was not filed by 6 July 2021, the Tribunal would nonetheless advance the proceedings and might take into account the conduct of the Respondent for any defence filed late.

33. A pre-hearing conference took place on 13 July 2021. At that hearing, the Tribunal

expressed its displeasure to the Respondent for again failing to file his defence, and gave yet a further opportunity to the Respondent to file his defence, this time by 19 July 2021. The Tribunal also directed parties to file their list of documents by 30 July 2021, and AEICs, BA and BD by 20 August 2021, and fixed the evidential hearing on 15 and 16 September 2021. By letter dated 14 July 2021, the Tribunal also directed the opening statements of both parties to be filed by 8 September 2021.

34. Whilst the LSS duly fulfilled all its filing obligations in time, the Respondent did not at all. When the matter came up for the evidential hearing on 15 September 2021, the Tribunal again expressed its displeasure that the Respondent had failed and ignored his filing obligations of his defence, list of documents, AEIC and opening statement. The Tribunal sought an explanation. The Respondent apologised profusely saying: "*I really have no good excuse other than I just have difficulty getting the whole out"* (sic).[25] The Tribunal was unsure whether it was a case where the Respondent was mentally unable to conduct the defence of his own case or was simply not revealing his case to the LSS until the hearing. For whatever reason, the directions of the Tribunal were not complied with.

35. In its Closing Submissions dated 18 October 2021, the LSS pointed to an earlier prosecution against the Respondent in *The Law Society of Singapore v Ooi Oon Tat* [2018] SGDT,[26] in which he was charged with causing client's money of $138,148.11 to be deposited into the office account of J&C (of which he was the sole proprietor) instead of the client's account. There, he was held to be in breach of Rule 3(1) of the Legal Profession (Solicitors' Accounts) Rules. The Court of Three Judges suspended the Respondent from practice for 1 year with effect from 9 September 2019. However, that is not the reason why we have referred to that earlier prosecution against him.

[25] NE 15 Sep at p. 3 (ln 1-2)

36. What is relevant to this Tribunal is that the earlier Tribunal had similarly expressed displeasure that the Respondent "*did not comply with any of the timelines and failed to file any defence, provide any documents or evidence*" (at [4]) and that he had "*chosen not to comply with the procedures prescribed in the rules which govern disciplinary proceedings or accept the latitude the DT has offered him to properly defend himself given the serious nature of these proceedings*" (at [34]). The Tribunal in that case adjourned the proceedings on dates fixed for hearing and gave further directions for the Respondent to file his defence and AEIC by an extended date. And again, the Respondent chose to ignore those directions and the hearing proceeded without the proper filing. Thus, it was disturbing to this Tribunal that in these proceedings, the Respondent likewise ignored the Tribunal's several directions to file his defence, list of documents, AEICs and opening statement. The Respondent also did not file any written closing submissions by 18 October 2021 as directed by the Tribunal at the close of the evidential hearing, saying during oral closing submissions: "*I have no real excuse*".[27]

Evidential hearing on 15 and 16 September 2021 and the Tribunal's findings

37. On the first day of the evidential hearing on 15 September 2021, the Respondent tendered a bundle of documents ("**RB**") which he had apparently produced earlier before the Inquiry Committee. The Tribunal asked why those documents could not have been tendered timeously as the documents before the Inquiry Committee would not be before this Tribunal. No sensible explanation was given. The documents comprised WhatsApp and SMS messages from the Respondent's handphone, and emails from his personal computer which had allegedly crashed.

38. As the Respondent did not file his defence nor his AEIC, the counsel of the LSS rightly

[27] NE 1 Nov at p. 6 (ln 17-19)

objected to the manner in which the Respondent started to make various allegations in the course of cross-examining Mr Lim. The Respondent's failure to give any prior notice of his case also obliged the Tribunal to take greater effort to understand the Respondent's defences to the charges. Be that as it may, the Tribunal proceeded to hear the evidence.

39. Mr Lim provided an AEIC dated 27 August 2021. The Respondent cross-examined Mr Lim at length on issues, the relevance of which was at times difficult to understand and, at other times, clearly irrelevant to the charges against the Respondent.

40. In essence, the Respondent claimed that he had orally informed Mr Lim of the progress of the Suit and the orders made against him.[28] Mr Lim denied that strenuously. The only relevant admission Mr Lim made was that he might have been informed of ULA's letter to J&C of 17 August 2016, which admission led to the LSS's amendment of the First Charge by deleting reference to this letter (see [25] above). The Respondent also sought to prove that Mr Lim and he had reached an agreement on the reinstatement of the Suit at a meeting sometime in February 2017. In that regard, he cast blame on Mr Lim for having a bad case in the Suit on the basis that the injuries Mr Lim suffered in the November 2012 accident were similar to the injuries he suffered in the March 2012 accident and Mr Lim had provided very poor testimony in relation to the same in MC 228. He had given Mr Lim written advice on this after the Suit was struck out and claimed that Mr Lim had agreed with him to reinstate the Suit only after more progress was made in the assessment of damages in MC 228.[29]

41. We however do not see how this is relevant to the charges of the Respondent's failure to inform and advise his client Mr Lim timeously of the Discovery Request and subsequent orders made in relation thereto.

[28] NE 16 Sep at p. 89 (ln 17-32) and p. 125 (ln 1-9)

[29] NE 1 Nov at p. 9 (ln 17-19)

42. What instead is clear to the Tribunal is that Mr Lim as the client was very keen to make sure that the Suit was prosecuted properly and expeditiously. This is shown by his visit to the Respondent's office on 27 June 2016 when he handed over to the Respondent his IRAS notices of assessment, CPF statements and signed clinical abstract form. This was followed by Mr Lim's reminder email on 30 June 2016 that the Respondent expedite matters and reply to ULA and copy him in the process. This evidence is undisputed, and the Respondent admitted he had received those documents and Mr Lim's email reminder. Whilst the Tribunal gave the Respondent ample opportunity to explain why he did not send out those documents to ULA to fulfil the Discovery Request, he had no real answer.[30]

43. It is undisputed that the Respondent's failure to provide ULA with any of the documents in ULA's Discovery Request led to a discovery application in DC/SUM 2793/2016 on 29 August 2016,[31] which in turn led to an order for discovery against Mr Lim in DC/ORC 3529/2016 on 4 October 2016 ("**Discovery Order**").[32] The Respondent admitted to having attended the hearing and receiving the Discovery Order on 4 October 2016.[33] Yet, he appeared to have done nothing about it.

44. In oral closing submissions and in his evidence, the Respondent admitted that he had most if not all of the documents requested by ULA and ordered by the court.[34] This admission made it more incomprehensible as to why the Respondent did not comply with the Discovery Request and later the Discovery Order. When probed on this, the Respondent said he could

[30] NE 16 Sep at p. 70 (ln 9-32), p. 71 (ln 1-18), p. 72 (ln 22-32), p. 73 (ln 1-2), p. 83 (ln 7-30), p. 84 (ln 31-32) and p. 85 (ln 1-30)

[31] 2PB at p. 609

[32] 2PB at pp. 640-642

[33] NE 16 Sep at p. 89 (ln 15-21)

[34] NE 16 Sep at p. 70 (ln 9-32), p. 71 (ln 1-18), p. 72 (ln 22-32), p. 73 (ln 1-2) and p. 83 (ln 7-30); NE 1 Nov at p. 40 (ln 18-32) and p. 41 (ln 5-16)

not think of any reason and that he "*suppose[d] you could say it's negligence overlooked*" (sic).[35] He also chose to ignore ULA's letter of reminder dated 31 October 2016 which then led to an application for an unless order against Mr Lim in DC/SUM 3586/2016 filed on 8 November 2016.[36] The unless order was made on 13 December 2016 in DC/ORC 94/2017 ("**Unless Order**").[37] The Respondent attended that critical hearing.

45. The Unless Order gave Mr Lim up to 10 January 2017 to comply with the Discovery Order failing which his claim in the Suit would be struck out. But nothing seemed to have been done by the Respondent to comply with the strict terms of the Unless Order, let alone inform Mr Lim of the same.

46. On 20 January 2017, the Suit was struck out.[38] Mr Lim's claim for personal injury if commenced in a fresh suit at that time would have potentially been time-barred.[39]

47. Thus, a *prima facie* case of breaches of professional obligations was made out by the LSS on all 3 charges against the Respondent.

48. The LSS drew our attention to the case of *Vijayalakshmi Sivaprakasapillai v Mrinalini Ponnambalam* [2009] SGHC 183, a case in which the respondent was then practising in M/s Salem & Ibrahim & Partners as counsel for the plaintiff. There, the respondent's client had failed to comply with an unless order. The High Court held that in order for the action to be restored, the plaintiff must give a proper explanation to establish good reasons for failure to

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[35] NE 1 Nov at p. 41 (ln 9-16)

[36] 2PB at p. 644-645

[37] 2PB at p. 655

38 2PB at p. 658-659

39 Under Section 24A(2) of the Limitation Act (Cap. 163), an action for damages in respect of personal injuries cannot be brought after the later of 3 years from the date the cause of action accrued or 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury.

comply with a peremptory order and that no further breach of a court order would occur again. The LSS drew our attention to this case to show that the Respondent ought to have known the seriousness of any unless order.

49. Whilst that case is instructive, even without it, it must be obvious to every advocate and solicitor that he must help a client to comply with discovery orders, even more so where there is an unless order against the client, as failing to comply with it carries very serious consequences for the client. And it did in Mr Lim's case. Certainly for a lawyer of the Respondent's standing with some 27 years' experience at the material time, his failure to comply with the Discovery Order and Unless Order was incomprehensible to the Tribunal, particularly when considered in the light of his admission that he had the documents in his office all the while and could have complied to avert the consequence of the Unless Order.[40]

50. In *Law Society of Singapore vs Mahtani Bhagwandas* [2021] SGHC 170, the Court of Three Judges clarified that whilst the LSS bears the burden to proof the elements of a charge beyond a reasonable doubt throughout, that is described as a "*legal burden*" (at [79(a)]). Where the LSS has proven a *prima facie* case that the Respondent has failed in his duties to his client based on the facts, the "*evidential burden*" shifts to the Respondent to prove otherwise. Thus, in this case, the LSS has indeed proven a *prima facie* case that the various letters, applications and court orders had not been advised to Mr Lim timeously and properly, and that the Respondent had not properly advised and assisted Mr Lim in complying with the Orders of Court. The evidential burden therefore shifts to the Respondent. He has to satisfy the Tribunal that he has given notice of these documents to his client and advised his client on the progress of the Suit, additionally advising and assisting his client to meet the Discovery Order and related Unless Order, among other things.

[40] NE 1 Nov at p. 42 (ln 11-21)

The Respondent's defence

51. The LSS rightly complained that given the Respondent's failure to file a defence, list of documents and AEIC, he should not be permitted to assert a positive case against Mr Lim's complaint forming the crux of the charges. However, the Tribunal gave the Respondent much leeway given that these proceedings were very serious in nature such that, if the LSS could not proceed, we would consider whether giving the LSS an adjournment of the proceedings at the cost of the Respondent would be appropriate. The LSS was however able to deal with all the evidence, arguments and assertions put forward by the Respondent in his defence and did not seek any adjournment. This defence (which was never tendered) is based on what the Tribunal could deduce from (i) the Respondent's cross-examination of Mr Lim, (ii) the evidence given by the Respondent when he was cross-examined, (iii) and his oral closing submissions, which is as follows:

a) He had orally advised Mr Lim on the letters, applications and orders of court;[41]

b) He claimed that there were no attendance notes to verify this because at times, he did not record a note, and on other occasions, when he did, he had lost them when allegedly his personal computer crashed in around July 2018;[42]

c) He believed that there might have been written advice to his client through emails but they were lost in the computer crash.[43] He claimed that he did not have back-up copies of the emails in his server; and

[41] NE 16 Sep at p. 89 (ln 17-32), p. 125 (ln 1-9); NE 1 Nov at p. 30 (ln 1-10)

[42] NE 15 Sep at p. 83 (ln 25-30); NE 16 Sep at p. 11 (ln 2-14); NE 1 Nov at p. 30 (ln 11-30)

[43] NE 16 Sep at p. 69 (ln 13-24), p. 77 (ln 26-32) and p. 90 (ln 1-28); NE 1 Nov at p. 31 (ln 1-7)

d) As for the hard copy documents, he had destroyed the correspondence file in 2018 (though the file was less than 6 years old).[44] Yet, he claimed that he kept the cause papers and documents files of the Suit[45]. He further claimed that despite knowing Mr Lim was going to commence a civil claim against him, he nevertheless proceeded to destroy the correspondence file.[46]

52. We did not find the Respondent's defences in the form of the above explanations credible at all. We much preferred the clean and consistent evidence of Mr Lim that he had received no updates or advice despite his email reminder on 30 June 2016, up to the time he found out about the Suit being struck out when he instructed another lawyer (Mr Lee) to take over the file from J&C in around January 2017.

53. We now deal with the RB which the Respondent tendered at the opening day of the evidential hearing on 15 September 2021. It comprised SMS messages between the Respondent and Mr Lim in 2 periods, between August 2016 to March 2017 and between June 2017 to April 2018; emails between them in 2 periods, between November 2016 to December 2016 and September 2017 to April 2018; and finally WhatsApp messages between them from April 2017 to September 2019.

54. A perusal of the SMS messages, since they cover the relevant period of August 2016 to January 2017, shows that there were various messages from Mr Lim asking the Respondent for updates on his case. But the Respondent's broad answer is that the entire RB relates more to MC 228 with only passing reference to the subject Suit, and it does not speak to the Suit and the charges.[47]

[44] NE 16 Sep at p. 16 (ln 1-18) and p. 22 (ln 20-24)

[45] NE 16 Sep at p. 151 (ln 17-20)

[46] NE 16 Sep at p. 23 (ln 1-4)

[47] NE 15 Sep at p. 4 (ln 20-32)

55. We think otherwise. It in fact throws more light on how Mr Lim continued to press the Respondent for updates on the progress of his Suit and that there was written advice on occasions from the Respondent on other matters, except that they do not support the Respondent's case that he had notified and properly advised his client in relation to compliance with the discovery related matters.

56. In one such SMS dated 13 September 2016 where Mr Lim asked: "*Hi Mr Ooi this is Lim See Ming..can you update me the hearing today to consolidate tq*" (sic), the answer from the Respondent was: "*Later follow up. Adjourned*" (sic). Another was on 7 November 2016 when Mr Lim asked: "*Hi mr.Ooi this peter can I call you to tele to discuss the AFFIDAVIT from defendant now?*" (sic), to which the Respondent replied: "*Busy. Later in the afternoon*" (sic). Neither party referred to this in much detail at the evidential hearing and we will not presume what happened.

57. In an email dated 16 December 2016 from Mr Lim to the Respondent, there was further evidence of Mr Lim's pursuit of the Respondent to attend to his case. This email was sent 3 days after the Respondent attended the hearing where the Unless Order was made against Mr Lim, and is helpful to reproduce:

> *Dear Mr Ooi,*
> 1. *I have sent you 2 text message on 15th Dec 2016. I wonder if you have receive.*
> 2. *I would like to hold a meeting with you with regards to my 2 cases.*
> 3. *Kindly update me of the latest developments to my 2 cases.*
> 4. *As I have been discharged from hospital, I would like to send you the bills of my accident claim to be sent to the defendant.*
>
> *Thank you.*

58. The Respondent provided no document to evidence how the concerns of Mr Lim were met and whether his requests for a meeting were acceded to. There was also no document showing that the Respondent informed Mr Lim of any Unless Order. No attendance notes exist of any meeting. There was written advice from the Respondent on the issue of consolidation of MC 228 and the Suit in an email on 7 December 2016, but the issue of advice on

consolidation does not speak to the present 3 charges.

59. The WhatsApp messages pertained to a later period of April 2017 to September 2019. Again, a perusal of those messages suggests a recurring theme of Mr Lim chasing the Respondent for a meeting to discuss his matters. On 31 July 2017, we see one such message where Mr Lim states: "*Hi Mr. Ooi can I know when can we meet to discuss about the matter of two cases? Please reply thank you*" (sic).

60. In the course of the evidential hearing, the Respondent produced a further document (marked "RB85"), containing an undated exchange of messages apparently between a computer technician and the Respondent over the crash of his personal computer which he claimed happened and resulted in the loss of most if not all of his relevant documents. But a plain reading of the messages does not suggest that. For instance, in the message at 1:34 pm (undated), the person (unidentified) wrote: "*Those which r kept on mail server is there. If not wrong, last time ur system was using POP3, so technically, all emails are on that hard disk*" (sic). The Tribunal asked why the Respondent did not call the relevant technician to testify on the crash and loss of documents. He had no good answer. The Respondent's explanations as to why records which would have exculpated him could not be found elsewhere, for example on a server, physical files or carbon copied to Ms Cheng, are also difficult to believe and were riddled with inconsistencies. For instance, the Respondent admitted that there could have been copies of such documents on Ms Cheng's old computer but Ms Cheng had sold off the computer despite the Respondent offering to purchase the computer from Ms Cheng. It is also to be noted that the alleged sale of the computer by Ms Cheng took place well after the Respondent alleged he lost information due to his computer crash.

61. The Respondent also sought to suggest, without basis, that the LSS might not have obtained all relevant evidence from Mr Lim. The LSS strenuously objected to the casting of aspersion on the LSS of improper conduct. This objection was rightly made by the LSS.

62. Lastly, the Respondent's failure to file any defence, list of documents or AEIC despite ample opportunities to do so, coupled with his convenient assertion that he was unable to produce any exculpatory documents as he lost them to a computer crash (although still being able to produce certain emails in his RB), leads us to draw an adverse inference against the Respondent pursuant to Rule 20 of the DT Rules, specifically that he has no real defence to the 3 charges, whereas the *prima facie* evidence is wholly against him.

The decision of the Tribunal

63. Under Section 93(1) of the Legal Profession Act (Cap. 161) ("**LPA**"), the Tribunal shall record its findings in relation to the facts of the case and according to those facts shall determine that:

a) There is no cause of sufficient gravity for disciplinary action under Section 83 of the LPA;

b) While no cause of sufficient gravity for disciplinary action exists under Section 83 of the LPA, the legal practitioner should be: (i) ordered to pay a penalty that is sufficient and appropriate; (ii) reprimanded; or (iii) ordered to comply with one or more remedial measures. The Tribunal may administer the sanction in (iii) in addition to the sanctions in (i) or (ii); or

c) There is cause of sufficient gravity for disciplinary action under Section 83 of the LPA.

64. The Tribunal is guided by the LSS' submission that in the case of *The Law Society of Singapore v Ezekiel Peter Latimer* [2019] SGDT 4, where there was a failure to attend a single

hearing which resulted in the client's claim being dismissed, it constituted an occasion of being a cause of sufficient gravity for disciplinary action. The Tribunal's decision was upheld by the Court of Three Judges in *Law Society of Singapore v Ezekiel Peter Latimer* [2020] 4 SLR 1173 which sentenced that lawyer to a 2 years' suspension ([6]).

65. In a less serious case of *The Law Society of Singapore v Udeh Kumar S/O Sethuraju* [2012] SGDT 4, the lawyer's failure to take instructions from his client and to keep the client informed was also a cause of sufficient gravity for disciplinary action which led the Court of Three Judges to sentence the lawyer to a 3 months' suspension.

66. In this case, quite clearly, the Respondent's contumelious and repeated failure to reasonably inform Mr Lim of his discovery obligations which ultimately led to the Suit being struck out, seemed far worse than the above 2 precedents. In our view, all 3 charges have been made out on the evidence.

67. The Respondent's inaction and lackadaisical conduct is seen over a prolonged period between August 2016 to January 2017, when there were several occasions the Discovery Request, Discovery Order and finally the Unless Order could have been complied with. The Respondent's conduct regrettably brings dishonour to the profession and falls far below the conduct expected of an advocate and solicitor.

68. In our view, all 3 main charges of improper conduct in the discharge of the Respondent's professional duty amounting to improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(b)(i) of the LPA have been proven against the Respondent beyond all reasonable doubt. There appeared to be no mitigating factor, and there were aggravating factors in this case.

69. The Tribunal also finds in the alternative that the alternative framing of the 3 charges,

as amounting to misconduct unbefitting an advocate and solicitor in the discharge of his professional duty 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 LPA, has also been made out. The Respondent's conduct between August 2016 to January 2017 was egregious for the reasons stated above and it would no doubt constitute misconduct that is unbefitting. We would sound strong disapprobation of such conduct. It bears repeating the disturbing fact that the Respondent could have complied with the Discovery Request and several orders but simply failed to, eventually causing the client's Suit to be struck out – all this while leaving the client in the dark.

70. The Tribunal is aware that where a Respondent pleads guilty to charges, it is good practice that alternative charges be withdrawn. In *Law Society of Singapore v Chan Chun Hwee Allan* [2018] 4 SLR 859, the Honourable Judith Prakash JA observed at [25] that "*the result of the Respondent's guilty plea to the four primary charges was that the four alternative charges fell away as a matter of course*". She went further to state that "*the practice of withdrawing alternative charges based on the same conduct as those to which a solicitor-respondent has pleaded guilty, is to be encouraged*". However, as this is not a case of a plea of guilt, the Tribunal also finds that the alternative charges as framed are made out.

71. The Tribunal thus determines, pursuant to Section 93(1)(c) of the LPA, that that there are obvious causes of sufficient gravity for disciplinary action under Section 83 of the LPA on all 3 main and alternative charges.

Costs

72. Under section 93(2) of the LPA, the Tribunal has the power to make an order for the payment of costs where it finds cause of sufficient gravity for disciplinary action:

Where a Disciplinary Tribunal makes a determination under subsection (1)(b)(i),

(ii) or (iv) or (c), the Disciplinary Tribunal may make an order for payment by any party of costs, and may, in such order, specify the amount of those costs or direct that the amount be taxed by the Registrar.

73. The LSS sought a sum of S$8,000 inclusive of disbursements which the Tribunal thinks is fair and reasonable. The Respondent did not challenge the sum but asked the Tribunal to be lenient. The Tribunal does not think the sum is in any way unfair to Respondent. The matter involved a 2 days' evidential hearing and a half day of oral closing submissions. Further regard is also had to the Respondent's contumelious disregard of the Tribunal's filing orders which resulted in a greater task for the LSS to discern the Respondent's defences to the charges.

Dated this 20th day of December 2021

Mr Jimmy Yim Wing Kuen, *SC*	Mr Andrew Chan Chee Yin
(President)	(Member)