

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 3983/2008

In the case between:

THE LAW SOCIETY OF THE FREE STATE

Applicant

and

ADéLE JOHANNA MYNHARDT (née MOSTERT)

Respondent

CORAM:

HANCKE, J *et* RAMPAL, J

JUDGMENT:

HANCKE, J

HEARD ON:

14 AUGUST 2008

DELIVERED ON:

14 AUGUST 2008

- [1] This is an application wherein applicant seeks an order that respondent's name be struck off the roll of attorneys, alternatively that she be suspended from practice for such period and on such conditions as this Court may deem fit, together with the customary ancillary relief. The application is not opposed by the respondent.

[2] It is the applicant's case that the respondent is not a fit and proper person to practice as an attorney for the following reasons:

- 2.1 She failed to file an unqualified audit report in accordance with the provisions of rule 16 of the applicant's rules, which report was due on 31 Augustus 2006;
- 2.2 She failed to adhere to the provisions pertaining to winding down of her practice in terms of rule 3B of the applicant's rules;
- 2.3 She failed to keep proper books of account as is required by applicant's rules and the Act;
- 2.4 She misappropriated trust moneys in an amount of at least R435 000,00 (four hundred and thirty five thousand rand).

[3] An attorney may be struck from the roll or suspended from practice if the person "in the discretion of the Court, is not a fit and proper person to continue to practise as an attorney." Section 22(1)(d) of the Attorney's Act, 53 of 1979.

- [4] As far as the duties of the courts are concerned, Hefer AP stated the following in **LAW SOCIETY OF THE CAPE OF GOOD HOPE v BUDRICKS**, 2003 (2) SA 11 (SCA) at 16B – F:

“the Courts exercise supervisory powers over the conduct of attorneys, not only in order to discipline and punish errant practitioners, but also, and more importantly (particularly in cases like the present one where trust money was misappropriated) in order to protect the public.”

- [5] As far as trust money is concerned, the following is stated in **LAW SOCIETY TRANSVAAL v MATTHEWS** 1989 (4) SA 389 (T) at 394:

“An attorney’s duty in regard to the preservation of trust money is a fundamental, positive and unqualified duty.”

- [6] It is evident from the papers that the respondent is not a fit and proper person to practice as an attorney. On her own admissions as well as supporting documents she misappropriated a huge amount of trust money, she did not keep proper accounting records and as a consequence of her dishonesty and failure to comply with the applicant’s

rules and the Act, I am satisfied that the applicant has made out a case that the respondent be struck off the roll of attorneys of this court.

[6] Accordingly the following order is made:

- (a) The respondent is struck off the roll of attorneys of the High Court of South Africa (Free State Provincial Division);
- (b) A further order is granted in terms of prayers 2.1 – 11 of the Notice of Motion.

I agree.

S. P. B. HANCKE, J

On behalf of the applicant:

Adv. J. P. Daffue
Instructed by:
Bezuidenhout Inc.
BLOEMFONTEIN