



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

REPORTABLE

CASE NO: 6915/2021

In the matter between:

THE LEGAL PRACTICE COUNCIL

Applicant

and

BRIAN ALBERTUS BAUMANN

Respondent

Bench: P.A.L.Gamble, J and N. Nyati, A.J.

Heard: 27 August 2021

Delivered: 6 September 2021

This judgment was handed down electronically by circulation to the parties' representatives via email and release to SAFLII. The date and time for hand-down is deemed to be 12h00 on Monday 6 September 2021.

JUDGMENT

GAMBLE, J:

1. The respondent, Brian Albertus Baumann, is a 53-year-old attorney who was admitted to practice as such in this Court in 2010. He practiced for his own account in Bellville under the name and style of “Baumann Attorneys”, specializing in personal injury claims. In October 2020, the respondent was interdicted from practicing after a number of former clients had laid complaints with the applicant (“the LPC”) regarding the disappearance of trust funds due to them by the respondent.

2. The LPC applies now for the name of the respondent to be struck off the roll of attorneys on the basis that he is no longer a fit and proper person to practice. The application is not opposed.

3. When the Court considers an application of this kind, it follows a three-stage enquiry (Jasat v Natal Law Society 2000 (3) SA 44 (SCA) at [10]).

3.1 Firstly, the Court has to decide whether the alleged offending conduct has been established on a preponderance of probabilities.

3.2 Secondly, the enquiry is whether the person concerned is, in the discretion of the Court, not a fit and proper person to continue to practice. This requires the Court to exercise a discretion that involves a weighing up of the conduct complained of against the conduct expected of a legal practitioner and in this regard, the Court exercises a value judgment.

3.3 Thirdly the Court enquires whether in all the circumstances of the matter the person in question ought to be removed from the roll of practitioners or

whether an order of suspension from practice for a specified period might suffice. This too entails an enquiry in which the Court exercises a discretion as to whether the ultimate penalty is warranted in the circumstances.

4. All three of those stages can be dealt with simultaneously if regard be had to the returns of service of the sheriff in this matter which reflect that the application itself and the notice of set down were served on the respondent at the Goodwood Correctional Facility, Cape Town where he is currently incarcerated.

5. In that regard, the affidavit filed on behalf of the LPC shows that the respondent appeared before the Specialized Commercial Crime Court, Bellville on 30 November 2020 on 16 counts of fraud. On that day, the respondent concluded a plea and sentence agreement in terms of Section 105A of the Criminal Procedure Act, 51 of 1977. He pleaded guilty to, and was duly convicted on, 16 counts of fraud and sentenced to 12 years direct imprisonment.

6. The substance of the charges against the appellant was that he settled matters for clients who had lodged claims for compensation with the Road Accident Fund ("the RAF") in an amount totaling R24 438 554,66. However, the respondent misled his clients as to the extent of their respective settlements, telling them that they were only entitled to an aggregate of R6 659 666,31. The balance was retained by the respondent. The charge sheet reflects that the actual prejudice suffered by the 16 clients duped by the respondent was R14 760 341,19. I presume that the difference between the latter amount and the balance after payment to the clients (R3 018 547,16) accounts for fees and disbursements.

7. For an officer of the court to become embroiled in such a swindle is scandalous, to say the least. But what aggravates the situation is the fact that the clients were poor people who had personally suffered injuries (or were the dependents of injured persons) and desperately needed the money paid out to them by the RAF to survive. This state of affairs is explained in detail in various annexures to the founding affidavit which reflect the respondent's lies and deceit and the helplessness experienced by his clients.

8. The individual amounts involved are staggering. For example, the claim one of the complainants to the LPC, Mr. D.Leukes, was settled in the amount of R2.468m but only R500 000.00 was paid out by the respondent, who pocketed R1,968m. There are in fact 7 instances where the amount retained by the respondent exceeded R1m and 5 instances where the amount retained exceeded R500 000,00.

9. Through his conduct, the respondent has brought the legal profession into disrepute and there is no doubt that he is no longer a fit and proper person to practice in a profession in which honesty and integrity are the bedrock. His name will therefore be removed from the roll. As is customary in matters of this nature, the respondent will be ordered to bear the costs of the application on the scale as between attorney and client. The purpose of the costs being ordered on a punitive scale is in order that the LPC, which acts in the public interest in matters of this sort, is not out of pocket.

10. During argument, Mr. H. von Lieres for the LPC confirmed to the court that persons who suffered losses as a consequence of the respondent's conduct might enjoy claims against the Fidelity Fund. Mr. von Lieres had no objection to the

Court making an order that the LPC, to the extent that it was able to do so, be directed to contact the persons defrauded by the respondent and inform them of their respective rights to lodge a claim with the Fidelity Fund. Such an order will thus be made.

IN THE RESULT, THE FOLLOWING ORDER IS MADE:

- A. The name of the respondent, Brian Albertus Baumann, is struck off the roll of attorneys;
- B. The respondent is directed to surrender and deliver to the Registrar of this Court, his certificate of enrolment as an attorney of this Court within 1 month of service of this order upon him;
- C. In the event that the respondent does not so deliver the certificate as aforesaid, the Sheriff for the district in which the certificate may be, is empowered and directed to take possession of, and deliver, same to the Registrar of this Court;
- D. The respondent is directed to pay the costs of this application on the scale as between attorney and client;
- E. The Legal Practice Council is directed to inform in writing such victims of the respondent's fraud, which forms the basis of this application, as it may be able to locate, of their right to lodge claims with the Fidelity Fund in respect of the losses suffered by them.

GAMBLE, J

NYATI, AJ:

I agree

NYATI, AJ

APPEARANCES

Applicant: Mr. von Lieres
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71 Loop Street
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Respondent: No appearance