

1973  
Mar. 6

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IN THE  
MATTER  
OF Y. Z.  
AN ADVOCATE  
(No. 2)

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU,  
A. LOIZOU, MALACHTOS, JJ.]

IN THE MATTER OF SECTION 17 (5) OF THE  
ADVOCATES LAW, CAP. 2,

and

IN THE MATTER OF Y. Z., AN ADVOCATE, (NO. 2).

(Case No. 2/72).

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*Advocates—Conduct and etiquette—Advocate acting as legal adviser of a company—Friction between shareholders of the said company—Civil action instituted as a result of such friction—Respondent (now applicant) advocate consulted by plaintiffs in the said action prior to the institution thereof in his capacity as the company's and their own legal adviser—Advocate undertaking to act for the defendants in the said civil action—Found guilty, by the Advocates Disciplinary Board, of contravention of Rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966—And suspended from practising as an advocate for two months—Review proceedings before the Supreme Court taken on respondent's application under section 17 (5) of the Advocates Law, Cap. 2—Disciplinary conviction for the infringement of Rules 4 and 11 (supra) set aside—Conviction for contravention of Rule 7 upheld—But disciplinary punishment reduced as being rather severe viz. a fine in the sum of £100 substituted for the aforesaid suspension order.*

*Advocates—Conduct and etiquette—Rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966—Disciplinary punishment—Review proceedings before the Supreme Court under section 17 (5) of the Advocates Law, Cap. 2—See further supra.*

The applicant advocate was the legal adviser of a company in which there arose serious friction between the complainants shareholders of the company and another shareholder. At a certain stage, when it was obvious that litigation between them might have to be resorted to, the said complainants consulted the applicant in his capacity as the company's and their own legal adviser regarding matters relevant to the aforesaid friction concerning the management of the affairs of the company. Subsequently, as a result of such friction a civil action was instituted by the complainants, through

1973  
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other counsel, against the other shareholder of the company ; and the applicant undertook to act as advocate for the defence in that action. Upon a complaint having been made against the applicant by his two ex-clients, the Advocates Disciplinary Board found him guilty of infringements of Rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966, (*infra*) and suspended him from practising as an advocate for a period of two months. He now applies for a review by the Supreme Court, under section 17 (5) of the Advocates Law, Cap. 2, both as regards conviction and sentence. It is to be noted that Rule 4 provides that an advocate's conduct should always be characterized by honesty, straightforwardness and fairness ; the proviso to Rule 7 provides that an advocate should never undertake a case in which he can have no moral freedom to act ; and, lastly, Rule 11 provides, *inter alia*, that an advocate may not accept another case without his client's consent when it involves some matter concerning which he has received his client's confidence "ἀποκαλύψεις" in the course of professional services.

Quashing the disciplinary conviction in relation to Rules 4 and 11 hereabove and reducing the disciplinary punishment imposed by the Board by substituting therefor a fine in the sum of £100, the Supreme Court :—

*Held*, (Stavrinides, J. *dissenting*) :

(1) As regards the finding of the Board that the applicant contravened Rule 4 (*supra*), we do not think, bearing in mind the rather vague and general manner in which the Rule is drafted, that, in the particular circumstances of this case, the applicant could have safely been found guilty of having infringed it ; we, therefore, are not prepared to uphold the Board's decision in this respect.

(2) As regards the disciplinary conviction under Rule 11 (*supra*), we are of the view that it was not established before the Board, with the requisite certainty, that the applicant had received the complainant's confidence in relation to the specific matters which were involved in the civil proceedings in question in which he accepted to act as counsel for the opponent of the complainants.

(3) But, concerning the disciplinary conviction under Rule 7 (*supra*) we think that on the evidence it was open to the Board to hold that the applicant could have had no moral freedom to act as counsel in the aforesaid judicial

proceedings, in view especially of the fact that he had already been professionally consulted by the complainants as regards the state of affairs in the company in question.

(4) In relation to the disciplinary punishment imposed by the Board (*viz.*) suspension from practising as an advocate for two months), we are of opinion that it was rather severe and we have decided to set aside the suspension order and to substitute therefor a fine in the sum of £100.

*Order accordingly ; no order as to costs.*

### **Review proceedings.**

Review proceedings before the Supreme Court on the application of Y.Z. an advocate, under section 17 (5) of the Advocates Law, Cap. 2 (as amended), for the review of the decision of the Disciplinary Board established under section 12 of the Law, whereby the applicant-advocate was suspended from practising as an advocate for a period of two months for infringements of Rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966.

*G. Cacoyiannis*, for the applicant advocate.

*L. Clerides*, for the Advocates' Disciplinary Board.

The following judgments were delivered :—

TRIANTAFYLIDES, P.: The judgment which I am about to deliver is that of all of us except Mr. Justice Stavrinides who will deliver a separate judgment.

The applicant advocate, on a complaint having been made against him by two ex-clients of his, has been found guilty by the Advocates' Disciplinary Board of infringements of Rules 4, 7 and 11 of the Advocates (Practice and Etiquette) Rules, 1966, which were made under section 24 of the Advocates Law, Cap. 2 ; as a result he was suspended from practising as an advocate for a period of two months. He has applied for a review by this Court, under section 17 (5) of Cap. 2, both as regards the findings of guilt and the suspension.

The facts of this case are, briefly, as follows : The applicant was the legal adviser of a company in which there arose serious friction between the complainants to the

Board, as shareholders of the company, and another shareholder. At a certain stage, when it was obvious that litigation between them might have to be resorted to, the complainants consulted the applicant in his capacity as the company's and their own legal adviser. It has not been disputed by the applicant that what transpired was relevant to the friction concerning the management of the affairs of the company. Subsequently, as a result of such friction a civil action was instituted by the complainants, through other counsel, against the other shareholder of the company and the applicant undertook to act as advocate for the defence in such action. The action was, eventually, settled.

As regards the Disciplinary Board's finding that the applicant contravened Rule 4, which provides that an advocate's conduct should always be characterized by honesty, straightforwardness and fairness, we do not think, bearing in mind the rather vague and general manner in which such rule is drafted, that, in the particular circumstances of this case, the applicant could have safely been found guilty of having infringed it ; we, therefore, are not prepared to uphold the Board's decision in this respect.

Concerning the disciplinary conviction of the applicant under the proviso to Rule 7, which provides that an advocate should never undertake a case in which he can have no moral freedom to act, we think that, on the basis of the material before the Disciplinary Board, it was reasonably open to the Board to find that the applicant would have had no moral freedom to act as counsel in the aforementioned civil proceedings, in view especially of the fact that he had already been professionally consulted by the complainants as regards the state of affairs in the company in question.

As regards, next, the applicant's disciplinary conviction under Rule 11, which provides, *inter alia*, that an advocate may not accept another case without his client's consent when it involves some matter concerning which he has received his client's confidence "ἀποκαλύψεις" in the course of professional services, we are of the view that it was not established before the Board, with the requisite certainty, that he had received the complainants' confidence in relation to the specific matters which were involved in the civil proceedings in question, in which, as stated above, he accepted to act as counsel for the opponent of the complainants ; we, therefore, think that the better course is not to uphold the applicant's conviction under Rule 11.

In our opinion an advocate may, as in the present instance, be guilty of a contravention of Rule 7 without inevitably

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being also guilty, on the basis of the same facts, of a contravention of Rule 11, because an advocate may be professionally consulted to the extent of being deprived of the moral freedom to act subsequently in a particular proceeding, without, however, having received, in the course of being consulted, his client's confidence in respect of a specific matter.

In relation to the disciplinary punishment which was imposed on the applicant it has been fairly conceded that it was rather severe ; and bearing in mind that the Board's decision regarding the applicant's guilt has been upheld in so far only as it relates to Rule 7, we have decided to set aside the suspension order and to substitute in its place a fine of £100.

We do not propose to make any order as to the costs of these proceedings before us.

STAVRINIDES, J.: I am unable to agree fully with the judgment just delivered.

The advocate concerned was found guilty of breaches of rr. 4, 7 and 11 of the Advocates (Etiquette) Rules, 1966. In my view none of the alleged breaches has been established.

Regarding the charge based on r. 4, I would go a little further than my brethren and say that in my view nothing has been disclosed in the evidence to cast any reflection on the advocate concerned.

With respect to the charge for a breach of r. 11, in my view the word "disclosures" implies the imparting of secret or confidential information, and on such construction there was no evidence to support the Board's decision.

It remains to deal with the charge for a breach of r. 7. In my judgment this rule refers, not to cases where an advocate is hampered in his "moral freedom of action" by any prior disclosure to him, but to cases where such a result has been produced by consideration such as his loyalty to a third person or a body of persons.

For the above reasons I would set aside the Board's decision in its entirety.

TRIANTAFYLLIDES, P.: In the result, the disciplinary convictions of the applicant under Rules 4 and 11 are set aside, his conviction under Rule 7 is upheld by majority, and, also, the punishment imposed on him is reduced to a fine of £100.

*Order accordingly.*