[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

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

and

IN THE MATTER OF C.D. AN ADVOCATE.

(*No.* 1/69).

Advocates—Conduct and etiquette—Unprofessional conduct—Advocate engaging himself in a business—Rule 15 *of the Advocates (Practice and Etiquette) Rules* 1966*—Disciplinary Board—Advocates Law, Cap.* 2 *(as amended) section* 17*—Decision of the Board reprimanding respondent advocate—Review of such decision by the Supreme Court of its own motion—Section* 17(5) *of the said Law—Sanction of reprimand set aside—Substituted by a fine in the sum of* £75.

Advocates—Discipline—Advocates deemed to be officers of the Court—Section 15 *of the Advocates Law, Cap.* 2*—Necessity for discipline in their ranks.*

Supreme Court—Powers of the Supreme Court under section 17(5) *of the Law* (supra) *when sitting as a Court of Review under section* 17 *thereof—Admissions made by respondent advocate before the Supreme Court.*

Supreme Court—Advocates—Discipline—Ultimate responsibility therefor lies with the Supreme Court.

Administration of Justice—Rule of law—Meaning, importance and value of.

Discipline of Advocates—See above.

Etiquette—Advocates—See above.

Legal profession—Rules, ethics and etiquette of—See above.

Per curiam: A practising advocate should not engage himself in activities commonly described as "business". And this not because such activities are in any way improper or otherwise objectionable; but because they stand on a different footing, inconsistent with that of an advocate. What may be permissible in managing a business and in negotiating a business

deal, may not be permissible by the dignified etiquette and strict ethics of the legal profession. Why this is so is a matter of professional history and tradition.

The facts sufficiently appear in the judgments of the Supreme Court whereby reviewing a disciplinary sanction of reprimand imposed upon the respondent advocate by the Disciplinary Board, set it aside and substituted therefor a sanction of a fine in the sum of £75. The disciplinary offence involved in this case is that respondent advocate engaged himself in a business contrary to rule 15 of the Advocates (Practice and Etiquette) Rules, 1966.

Review proceedings.

Review proceedings before the Supreme Court initiated of its motion, 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 a disciplinary sanction of reprimand was imposed on the respondent advocate for unprofessional conduct contrary to the provisions of rule 15 of the Advocates (Practice and Etiquette) Rules, 1966.

Respondent – Advocate appearing in person.

G. Ladas, for the Disciplinary Board, as *amicus curiae*.

The following judgments were delivered:

VASSILIADES, P.: The respondent advocate was admitted to practice, under the Advocates Law (Cap. 2) and signed the Roll of Advocates on December 5, 1956. He has more than twelve years professional standing; and has a professional address not far from the District Court of Famagusta, at 36, Marias Synglitikis Street.

In June, 1968, the Registrar of Companies informed the Attorney-General in his capacity as President of the Bar Council, that the respondent advocate was registered as the proprietor of a business under the name of "Ombrellino", the general nature of which, according to the register, was: coffee-shop, bar and restaurant at Hippocrates Street, Famagusta.

In February, 1969, the Attorney-General as President of the Disciplinary Board of the Bar Council, wrote to the respondent soliciting his comments on the Registrar's letter (of which he attached a copy) which presented the respondent advocate as engaged in a business, contrary to the provisions of rule 15 of the Advocates (Practice and Etiquette) Rules, 1966.

The Rule reads:—

"Ὁ δικηγόρος ὀφείλει νὰ μὴ συμμετέχῃ ἐνεργῶς εἰς τὴν διεξαγωγὴν οἱασδήποτε ἐμπορικῆς ἢ ἄλλης οἰκονομικῆς ἐπιχειρήσεως ἢ νὰ εἶναι ἐνεργὸν μέλος οἱασδήποτε ἐμπορικῆς ἢ ἄλλης οἰκονομικῆς ἐπιχειρήσεως:—

Νοεῖται ὅτι ἡ διαχείρισις τῆς ἰδιοκτησίας ἢ περιουσίας αὐτοῦ ἢ τῆς οἰκογενείας του δὲν θεωρεῖται ἐνεργὸς συμμετοχὴ εἰς οἱανδήποτε ἐμπορικὴν ἢ ἄλλην οἰκονομικὴν ἐπιχείρησιν:

Νοεῖται περαιτέρω ὅτι δικηγόρος δύναται νὰ εἶναι μέλος διοικητικοῦ συμβουλίου ἢ γραμματεὺς (οὐχὶ ὅμως ὑπάλληλος) οἴκου ἢ ἑταιρείας ἀλλ' οὐχὶ ὁ Διευθύνων Σύμβουλος τούτου".

A practising advocate should not engage himself in activities commonly described as "business". And this, not because such activities are in any way improper or otherwise objectionable; but because they stand on a different footing, inconsistent with that of an advocate. What may be permissible in managing a business and in negotiating a business deal, may not be permissible by the dignified etiquette and strict ethics of the legal profession. Why this is so, is a matter of professional history and tradition; we do not have to deal with it in this judgment. We must take it as a well established position.

By his reply of February 19, 1969, the respondent advocate contended that the registration of a "business name" as described in the Registrar's letter, does not amount to violation of rule 15, in that —

(a) such registration falls within the activity of administering his immovable property upon which the business would eventually be carried out; and

(b) he never actively associated himself in the carrying on of the business which in substance was never actually in operation.

A copy of respondent's letter is on the record before us.

The Disciplinary Board, apparently, did not agree with respondent's view of the matter, as they required him to appear before the Board on March 7, 1969, to answer a disciplinary charge of acting in contravention of rule 15.

A copy of the minutes of the proceedings before the Board, supplied in due course by its President, is on the record before us; and the minutes speak for themselves. The respondent advocate presenting personally his own case, stated to the Board that as proprietor of a small plot of land near the 'Alasia' on the Famagusta beach, with a small hut at the inner end of the plot, he had the yard paved with cement and placing nine umbrellas at different spots for shade, with a bigger one near the road (hence the name of 'Ombrellino'), intended to lease out the business to a tenant; an intention which, however, never materialised, the respondent said, because of certain large-scale building operations on the land adjacent to his plot, which seemed to disturb the customers of the business.

The respondent's submission to the Board was that such conduct did not amount to violation of rule 15 of the Advocates (Practice and Etiquette) Rules. But in any case, respondent further submitted, Article 25 of the Constitution of Cyprus, protected and guaranteed the free exercise of all professions and trades. Finally, however, he (the respondent) expressed his willingness to withdraw the registration of the business name in question, if the Board desired him so to do.

The Disciplinary Board (according to the minutes of their proceedings) found that the respondent advocate had acted in contravention of the rule under which he was charged; but as he had agreed to withdraw immediately the registration in question; and as, according to the statement, he had never actually been engaged in the carrying on of such business, the Board confined itself to reprimanding him; thus imposing the lightest sanction for unprofessional conduct, provided in section 17(1) of the Advocates Law. The matter was then referred in due course, to the Supreme Court, under sub-section (3)(b) of section 17; and the Supreme Court directed review proceedings under sub-section (5) of the same section of the statute.

In the countries where the administration of justice is entrusted by the law of the land to independent courts, the

legal profession is a most vital and important part of the State machinery, whose function is to administer justice by declaring and applying the law in force. It is not necessary for me to deal in this judgment with the meaning of the Rule of Law; nor to stress its importance to the people of a country where it is established. Cyprus, or at least most of it at present, still has the good fortune to form part of the world where the rule of law is accepted and respected. A simple look around is sufficient for anyone to see in neighbouring, as well as in not so neighbouring countries, what happens to the people when man stands above the law; and rules by the forces at his command, making the law one of the tools to serve him. One is then able to appreciate better the value of the rule of law in a country; and why so many people dedicated themselves and sacrificed their lives to the cause of replacing the rule of man by the rule of law, so that their children and the generations to come, would be able to enjoy fully their rights to life, liberty, property and their civil rights in the Government of their country; a most valuable heritage, cherished by those who are still able to enjoy it.

Now the rule of law can only exist where law is declared and applied by independent Courts. And independent Courts can only exist where they are manned by Judges recruited from an honourable and dignified legal profession, standing fast and proud on its tradition; and on the principles which it generated in the course of time.

In this young Republic of ours, the structure of the State is based on the principle of separation of powers; the executive, the legislative and the judicial. Parts IX and X of the Constitution deal with the exercise of the judicial power. The Courts of Justice Law, 1960 (Law 14 of 1960) and the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33 of 1964) provide for the establishment of the Courts in the Republic, entrusted with the duties and responsibilities arising from the exercise of the judicial power in the administration of Justice according to law. The functioning of these Courts, so vital and important for all people found in the country, rests on their principal officers: the judges and the advocates. They all come from the legal profession which, both in fact and appearance, *must be a most honourable society of dedicated and dignified men of the law.* Their practices and their general conduct must strictly conform to the rules and the etiquette of an honourable profession, enshrined in the dignity of a noble tradition.

Discipline in their ranks must be strictly maintained at all times, to prevent inroads into the reputation of the profession as a whole; to dissociate by action (not mere nice words) in the eyes of the general public, the profession from any disgraceful or unprofessional conduct; and to keep misfits under control and, if necessary, to keep them away. With a profession where the roll runs only to scores (and not to hundreds or thousands as elsewhere) discipline in both branches of the profession – judges and advocates – was entrusted by law, for many years, to the Supreme Court. Not only because the ultimate responsibility for the functioning of the Courts rested with its judges, but also because the judges of the Supreme Court were detached by their office from the judges of the lower Courts and from the practising lawyers.

Since 1955, it has been considered desirable that the discipline of advocates should be placed in the first instance, in the Disciplinary Board of the profession. But the ultimate responsibility was, wisely and properly, left where it must necessarily rest. Every advocate is expressly deemed by the statute (The Advocates Law – as now amended – section 15) "to be an officer of the Supreme Court"; and in fact he is a most important officer, on whom the Court must be able to rely absolutely; and whom the general public must be able to trust and respect. An officer on whose integrity, ability and work, the administration of justice partly depends. Who else is better qualified to have the ultimate responsibility for the good discipline of its officers, than the Supreme Court itself? The Court entrusted with the exercise and control of the judicial power in the State; and with the responsibility of maintaining at all times and in all circumstances, the independence of its justice.

Having placed the matter in its perspective, I can now return to the case under review. The respondent advocate again chose to conduct in person his own case before us. This is an unusual and rather unfortunate course to adopt. Did he disregard the disadvantages of his doing so? Or did the respondent fail to appreciate them? Be that as it may, it was his right to do so. But the consequences very soon followed. Answering questions as to how far did the "Ombrellino" business go, the respondent advocate had the frankness to state that one of his prospective "tenants" used the advocate's name (with his authority and consent) for the purchase of ice-cream on credit, of the value

of £60 – part of which the "tenant" sold without "accounting" to the advocate, who ultimately reported the "tenant" to the police for misappropriating the proceeds of the retail sales.

Mr. Ladas, a member of the Disciplinary Board appearing in this proceeding as *amicus curiae*, stated that this was not the picture of the case before the Board. The matter was now different. I need not go into further description of the advocate's part in the "Ombrellino" business; nor need I describe his interest in the retail sale of the ice-cream in question. Suffice it to say that in my judgment, the Disciplinary Board were perfectly right in taking the view that the advocate's conduct was unprofessional; and that it amounted to a contravention of rule 15 of the Advocates (Practice and Etiquette) Rules, 1966.

This point presents no difficulty. Where we found difficulties, was whether in view of the facts now before us (which were not disclosed to the Board) we should deal with the case or we should send it back to the Board? And then, whether this was a case for a reprimand?

The majority of the Court were of the opinion that we should proceed to deal with the case on the material now before us. I share this view. Where we met with still greater difficulty, was the question of what should, in the circumstances, be the appropriate sanction. Taking full account of all mitigating circumstances, as well as of the very lenient view of the matter taken by the Disciplinary Board (whose opinion carries considerable weight with me) I still found it very difficult to agree that this was a case for a fine; and still more difficult to bow to the view that in this first case of its kind, the fine should be only £75. To this I eventually agreed, coupling, however, the fine with the warning that in my opinion, the best interests of the profession and the proper functioning of the Courts, require that in such cases, severity should run parallel to the degree of public respect for this honourable profession; and parallel to its dignity.

TRIANTAFYLLIDES, J.: With deep regret, and great respect too, I find myself unable to share the view taken by the learned President of the Court in this matter.

My reasons for taking such a stand are as follows:—

This is a disciplinary matter, concerning an advocate, which

this Court, of its own motion, has fixed before it for review, under section 17(5) of the Advocates Law (Cap. 2), as amended by the Advocates (Amendment) Law, 1961 (Law 42/61); sub-section (5) of section 17 reads:—

> "The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit".

During the hearing before us today, it transpired that there was much more involved than the mere registration of a business name which had never been followed up by actual business operations – as the matter was viewed, on the basis of the material before it, by the Disciplinary Board, which dealt with this case in the first instance. There appears to have existed, and to have been actually put into operation, some sort of a common business venture between the advocate concerned and another person, regarding the sale of ice-cream.

These two things, *viz.* the registration of the business name (coupled with the description of the business to which it refers) and the fact of the said common venture, are, in my opinion, things which are not severable; they form part and parcel of one and the same situation.

Once this is so I have reached the conclusion that the proper order to be made under section 17(5) of Cap. 2 would be to refer the matter back to the Disciplinary Board so that it may deal with it on its true basis.

The relevant legislation entrusts the primary responsibility for disciplinary proceedings against advocates to the Disciplinary Board, which has been set up thereunder. This Court has only reviewing powers. Of course, it does not follow that on every occasion when some element, which was not before the Disciplinary Board, comes to light, before us on review, then we should invariably refer the case back to the Board. It all depends on the circumstances of each particular case. In the present instance, as the substance of the matter was never placed before the Disciplinary Board I formed the view that this Court should not proceed to decide the case itself, in the course of the exercise of its powers to review, but that it should send it back for decision by the Disciplinary Board.

One more reason for which I think that this case ought to be sent back to the Disciplinary Board, to be investigated fully by it, is that we, at this stage, do not, in my opinion, have before us all essential facts: We do not know on how many occasions ice-cream was bought and disposed of in the course of the common venture, in which there was involved the advocate whose conduct is under enquiry. We do not know the exact nature of the agreement between him and the other person concerning the common venture. We do not have before us a statement which such advocate has, apparently, made to the police, stating that he did not receive, eventually, any of the proceeds of the sale of ice-cream. I am not prepared to presume anything, either for or against this advocate. I think he is entitled to be tried by his peers, as the law has provided, and we can only review their decision after they, themselves, have decided the matter with full knowledge of the whole of its substance.

For these reasons I cannot agree that this Court should deal with the merits of the matter today in the exercise of its powers under section 17(5) of Cap. 2.

JOSEPHIDES, J.: I respectfully agree with the learned President of this Court and I would like to add a few words.

The respondent advocate on the 20th June, 1968, registered a business name "Ombrellino", with the Registrar under the provisions of the Partnership Law, Cap. 116, section 52. The general nature of that business was described as "cafe, bar and restaurant." Respondent advocate was called before the Disciplinary Board and charged with acting in contravention of rule 15 of the Advocates (Practice and Etiquette) Rules, 1966. Before the Board he admitted that, in addition to registering the business name for the purposes aforesaid, he also installed nine big umbrellas, (today he said eight umbrellas, but it makes no difference). The Board, after giving him full opportunity of being heard, came to the conclusion that he was guilty of a breach of rule 15. Having given the matter my best consideration I have no hesitation whatsoever in holding that the Board rightly came to that conclusion on the facts of this case.

With regard to the powers of this Court, under the provisions of section 17(5) of the Advocates Law, Cap. 2 (as amended), we are sitting as Court of Review and not as a Court of Appeal and I hold the view that as a Court of Review under section

17, we can review the whole case and we have wider powers than an ordinary Court of Appeal. Consequently, we are entitled to take into account the admissions made today by the respondent advocate before us to the effect, *inter alia*, that he actually took part in the purchase of ice-cream; and the sale by retail of ice-cream in that particular property which he had registered as a business name.

Taking everything into consideration I am of the view that the punishment imposed by the Disciplinary Board, that is to say, that of reprimand, is manifestly inadequate in the circumstances of this case, and I would agree with the learned President in imposing a fine of £75.

STAVRINIDES, J.: In my judgment what the advocate concerned in these proceedings said in reply to the Court about sales of ice-cream on his property and the terms on which it had been purchased – facts which had not been brought to the notice of the Disciplinary Board – gives a new complexion to the case, necessitating its remission to the Board for reconsideration after such inquiry by the appropriate authority as may be necessary.

In view of the foregoing I need not express any opinion as to whether the facts stated before the Board of themselves disclose a breach of reg. 15 of the Professional Etiquette of Advocates Regulations, 1966.

For these reasons I would remit the case to the Board.

LOIZOU, J.: I agree with the judgments just delivered by the learned President of this Court and my brother Josephides, J.

I am clearly of opinion that, on the facts before them, the Disciplinary Board rightly reached the conclusion that the case falls within the provisions of rule 15 of the Advocates (Practice and Etiquette) Rules 1966, upon which the charge was based; and the facts as admitted by the respondent advocate in this Court to-day make the case even clearer and at the same time more serious. I am in complete agreement that the punishment imposed by the Disciplinary Board is inadequate and that it should be substituted with a fine of £75.

HADJIANASTASSIOU, J.: I am also in agreement with the judgment of the learned President of this Court, but I would like to add a few words of my own.

The respondent advocate was called before the Disciplinary Board of the Advocates and was charged with acting in contravention of rule 15 of the Advocates (Practice and Etiquette) Rules, 1966. In answer to the charge, he admitted that, in addition to registering the business name for the purpose of carrying out the business of "cafe, bar and restaurant", he also installed nine big umbrellas.

As it appears from the proceedings before me, the Board after hearing the respondent advocate, came to the conclusion that his conduct was contrary to the Rules of the profession, and, therefore, he was found guilty.

The respondent advocate, today before us, has tried to convince us that the decision of the Disciplinary Board was wrong. Having listened to the argument of counsel, and taking into consideration that if a man joins a profession he is bound by the rules of professional conduct, and that it is to the benefit of this honourable profession to observe those rules, I have reached the conclusion that the Board rightly came to the conclusion that the respondent advocate was guilty of breach of the Advocates (Practice and Etiquette) Rules 1966.

The powers of the Supreme Court, in reviewing the whole case of the Disciplinary Board are to be found in s. 17(5) of the Advocates Law, Cap. 2 (as amended), which is in these terms:—

> "The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit."

In my view, the most important question in this case, is to determine the powers of this Court, which is sitting as a Court of Review.

Having given the matter my best consideration, I have reached the conclusion that s. 17(5) confers on this Court, a wider power in reviewing the whole case, than any other case before the Court of Appeal. It is further to be observed that the Supreme Court has power to review both the conviction and the sentence, because such jurisdiction of the Court is for the purpose of

establishing the status of and disciplining a member of a profession in the qualification for which, and the integrity of which, the public have a vital interest, and the Judges have an overriding supervisory jurisdiction by law over the decision of the Disciplinary Board.

Having reached this view, I am of the opinion that today, this Courts is entitled to take into consideration the fresh admissions made by the respondent advocate, *viz.* that he actually took part in the purchase of ice-cream, and the sale by retail of ice-cream on the premises of the particular property which he had registered as a business name.

I would like to reiterate that because of s. 17(5) of our law, we are not bound to return the case to the Disciplinary Board, because of the fresh admissions made today before us by the respondent advocate, but to proceed to decide the issue, avoiding further unnecessary litigation.

In the light of this decision, I would, therefore, confirm the decision of the Disciplinary Board.

Furthermore, I would like to state, that in view of the facts before us, I am of the opinion that the punishment imposed by the Disciplinary Board, under the provisions of s. 17(1) of our law, *viz.* to reprimand the advocate, was manifestly inadequate, and I would agree to impose a fine of £75, which meets the justice of this case.

VASSILIADES, P.: In the result, the Court upholds the Disciplinary Board's decision that the respondent advocate is guilty of unprofessional conduct by violating rule 15 of the Advocates (Practice and Etiquette) Rules 1966. And reviewing the Board's decision to reprimand the respondent, decides by majority of four to two to impose a fine of £75, payable in 14 days. With no order for costs as none have been claimed.

Order accordingly.