

1979 April 6

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

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

*and*

IN THE MATTER OF X.W., AN ADVOCATE,

(Disciplinary Case No. 1/74).

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*Advocates—Conduct and -etiquette—Unprofessional conduct—Review proceedings—Section 17(5) of the Advocates Law, Cap. 2 (as amended)—Very high degree of certainty required in cases of this nature.*

5       The applicant, a practising advocate, was found guilty of unprofessional conduct by the Advocates' Disciplinary Board and was ordered to pay a fine of C£100 plus C£10 costs.

10       The Disciplinary Board found that the applicant not only failed to file, as instructed by the complainant, an appeal against the judgment given in action No. 1510/67 in the District Court of Famagusta, and, also, delayed unjustifiably the filing of an application for extension of the time within which to file such appeal, but he, moreover, incorrectly assured the complainant that his appeal has been duly filed and would be heard by the  
15       Supreme Court.

20       Upon an application for a review of the above decision, under section 17(5) of the Advocates Law, Cap. 2 (as amended) counsel for the applicant challenged, in particular, the finding that the applicant misled the complainant intentionally as regard the filing of his appeal and stressed that, as this was a disciplinary matter, a very high degree of certainty was required so that the applicant could be found guilty of having intentionally misled the complainant as regards the filing of the appeal.

Before the Board there was, *inter alia*, evidence that the appli-

cation for extension of time was accompanied by an affidavit sworn by the complainant himself from which it appeared clearly that he knew that no appeal had been filed within time and that an order of the Supreme Court was being sought extending the time within which to file it. 5

*Held*, that it was not really safe for the Disciplinary Board to have placed much reliance on the statement made before it by the complainant that, when he swore the said affidavit, he did not know what he had attested to because nobody had read it out to him and, therefore, he did not know its contents; that, therefore, the finding that the applicant advocate has intentionally misled the complainant into believing that his appeal had been duly filed could not have been safely made with the high degree of certainty required in a case of this nature; that the applicant could not have been found guilty of unprofessional conduct had the Disciplinary Board not reached the unsafe conclusion that he had intentionally misled the complainant; that, consequently, notwithstanding his lack of diligence in relation to both the filing of the appeal within time and the filing of the application for extension of time, this is not a proper case in which to uphold the finding that the applicant has been guilty of unprofessional conduct; and, that accordingly, the disciplinary conviction of the applicant, as well as the punishment imposed on him by way of fine and costs must be set aside. 10 15 20

*Order accordingly.* 25

### Review proceedings.

Review proceedings before the Supreme Court by X.W. 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 he was found guilty of unprofessional conduct and ordered to pay a fine of C£100.—plus £10.—costs. 30

*K. Talarides*, for the applicant advocate.

*G. Ladas*, as amicus curiae, on behalf of the Advocates' Disciplinary Board. 35

*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment of the Court. In this case an advocate has applied to the Supreme Court, under section 17(5) of the Advocates Law, Cap. 2, as amended, in

particular, by section 5 of the Advocates (Amendment) Law, 1961 (Law 42/61) and by section 8 of the Advocates (Amendment) Law, 1975 (Law 40/75), for review of a decision reached by the Advocates' Disciplinary Board. By this decision he was  
5 found guilty of unprofessional conduct and ordered to pay a fine of C£100, plus £10 costs.

As it appears from the decision of the Disciplinary Board, it was found that the applicant not only failed to file, as instructed by the complainant, an appeal against the judgment given in  
10 action No. 1510/67 in the District Court of Famagusta, and, also, delayed unjustifiably the filing of an application—Civil Application No. 8/70—for extension of the time within which to file such appeal, but, moreover, he incorrectly assured the complainant that his appeal had been duly filed and would be heard by  
15 the Supreme Court.

Counsel who appeared as *amicus curiae* in these proceedings on behalf of the Disciplinary Board has very fairly stated that if it was only a case of negligent conduct on the part of the applicant advocate then the Board might not have intervened  
20 and would have informed the complainant that he could proceed against the applicant by way of a civil action; what has, however, made the Board take a serious view of this case was the fact that the applicant misled the complainant into believing that his appeal had been duly filed. Thus, in effect, the unprofessional  
25 conduct of which he was found guilty by the Disciplinary Board was a combination of his negligence and of misleading statements which he had made to the complainant.

Having perused the decision of the Disciplinary Board we are inclined to agree with the above statement of counsel; and we  
30 have, therefore, formed the view that, though the Disciplinary Board has correctly found that the applicant did not act with all due diligence, especially in so far as the delay in applying for an extension of time within which to appeal was concerned, it would not have proceeded to find him guilty of unprofessional  
35 conduct had it not, also, found that the applicant had misinformed the complainant that his appeal had been duly filed.

Counsel appearing for the applicant has challenged, in particular, the finding that the applicant misled the complainant intentionally as regards the filing of his appeal and stressed that,

as this is a disciplinary matter, a very high degree of certainty was required so that the applicant could be found guilty of having intentionally misled the complainant as regards the filing of the appeal.

As has already been stated the applicant failed, through lack of diligence, coupled with certain unfortunate developments beyond his control, to file the appeal in question within time, and then, due to, as he stated at the hearing before the Disciplinary Board, pressure of other work, he did not file an application for extension of time within which to appeal until after about two months had elapsed. 5 10

The said application (No. 8/70) was not, in fact, dismissed on the ground of delay to file it, but on the ground that it ought, first, to have been made, in view of rule 19 of Order 35 of the Civil Procedure Rules, to the trial Court. 15

Having weighed all that has been stated before us in this case, and having perused carefully the record of the proceedings of the Disciplinary Board, we have reached the conclusion—not without some difficulty, indeed—that, though the conduct of the applicant as an advocate, in the present instance, left much to be desired, it was not safe for the Disciplinary Board to hold that he intentionally misled the complainant into believing that his appeal had been duly filed in time. 20

It is correct that, initially, before the time within which the appeal could have been filed had expired, the applicant received towards his costs C£20 and issued a receipt to the effect that this sum was received towards the costs of the appeal against the judgment in action No. 1510/67 in the District Court of Famagusta; and that when informing, later on, the complainant about the hearing of the application for leave to extend the time within which to appeal he used the expression that his “appeal” had been fixed for hearing before the Supreme Court. 25 30

But, prior to that, and well after the expiry of the time within which the appeal could have been filed, the complainant received a letter from counsel of his opponent informing him that he had to pay the costs of the trial inasmuch as no appeal had been filed in respect of the judgment against him. Also, on two occasions subsequently, when he paid C£5 and C£10 respectively to the applicant, the complainant was given by him receipts to the 35

effect that these amounts were paid towards the costs of application No. 8/70 before the Supreme Court.

5 Moreover, the application for extension of time, No. 8/70, was accompanied by an affidavit sworn by the complainant himself from which it appears clearly that he knew that no appeal had been filed within time and that an order of the Supreme Court was being sought extending the time within which to file it.

10 In view of all the foregoing we do not think that it was really safe for the Disciplinary Board to have placed much reliance on the statement made before it by the complainant that, when he swore the said affidavit, he did not know what he had attested to because nobody had read it out to him and, therefore, he did not know its contents.

15 We have, consequently, reached the conclusion, in reviewing the decision of the Disciplinary Board, that the finding that the applicant advocate has intentionally misled the complainant into believing that his appeal had been duly filed could not have been safely made with the high degree of certainty required in a case of this nature.

20 In the light of the contents of the decision of the Disciplinary Board, when it is read as a whole, as well as of the statement made by counsel appearing on its behalf before us, to which we have already referred earlier on in this judgment, we think that the applicant could not have been found guilty of unprofessional conduct had the Disciplinary Board not reached the unsafe conclusion that he had intentionally misled the complainant. Consequently, notwithstanding his lack of diligence in relation to both the filing of the appeal within time and the filing of the application for extension of time, we do not consider that this is a proper case in which to uphold the finding that the applicant has been guilty of unprofessional conduct.

30 In the exercise, therefore, of our relevant powers under section 17(5) of Cap. 2, we have decided, in reviewing the decision of the Disciplinary Board, to set aside the disciplinary conviction of the applicant, as well as the punishment imposed on him by way of fine and costs in relation thereto.

35 We make no order as to the costs of the present proceedings before us.

*Order accordingly.*