IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

6/10/20
DATE

SIGNATURE

CASE NO: 80283/2019

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

LOUIS PETER BAARTMAN First Respondent
RIAAN JANSEN Second Respondent

JUDGMENT

D S FOURIE, J (MEYER J CONCURRING):

[1] This is an application in terms of section 44(1) of the Legal Practice Act, No 28 of 2014 ("LPA") that the name of the first respondent be struck from the Roll of Legal Practitioners (attorneys) as well as that of the second respondent (attorneys and conveyancers).

BACKGROUND

[2] The first respondent was admitted as an attorney on 29 April 1997 and was practising for his own account as a single practitioner until 31st March 2019 when he formally discontinued his practice. His practice was conducted from several offices, two in Centurion, one in Roodepoort, one in Kempton Park, one in Cape Town and a satellite office in Randburg. The application is opposed by the first respondent.

[3] The second respondent was admitted as an attorney and conveyancer on 5 September 2000 and 10 September 2007 respectively. He was in the first respondent's employ as a professional assistant from 1 November 2010 and left the firm on 7 January 2018 after having been dismissed in December 2017. A notice of intention to oppose was served by the second respondent, but no answering affidavit has been filed. There was also no appearance for the second respondent at the hearing of the application.

[4] The alleged facts and circumstances which prompted the applicant to bring this application are mainly the following:

(a) There is a trust deficit in the first respondent's bookkeeping of almost R24 million;

(b) The respondents have misappropriated trust funds;

(c) The respondents have delayed the payment of trust funds;

(d) The respondents effected irregular trust transfers between unrelated trust creditors;

(e) The first respondent failed to ensure that the total amount of money in his trust banking account, trust investment account and trust cash shall not be less than the total amount of his liability to his trust creditors;

(f) The first respondent failed to ensure the implementation of adequate internal controls to ensure compliance with the Rules and to ensure the safeguarding of trust funds;

(g) The Council has received several serious complaints against the respondents.

[5] On 27 July 2018 the first respondent, through his attorneys, addressed a letter to the erstwhile Law Society indicating, *inter alia*, that the firm believed that its trust accounting records reflect a trust shortage flowing from irregular trust transactions conducted by the second respondent, who was in control of the firm's conveyancing section.

[6] The Law Society also received several complaints against the firm regarding the delayed payment of trust funds and delayed transfers in conveyancing matters. As a result the Law Society instructed a chartered accountant and registered auditor, Mr De Leeuw Swart, to visit the first respondent and to conduct an inspection of his accounting records and practice affairs and investigate the complaints.

CASE PRESENTED BY THE APPLICANT

[7] Swart met with the first respondent during September and October 2018 and with the second respondent during January 2019. Swart executed his instruction and reported to the applicant on 28 February 2019.

ACCOUNTING RECORDS AND TRUST FUNDS

[8] Swart's investigation of the firm's trust position revealed, after accounting for debit balances in the first respondent's accounting records, that a deficit existed in the amount of R17,208,615.16. However, Swart could not place specific reliance on the first respondent's accounting records as they did not correspond with the trust banking statements.

[9] His investigation of the complaints revealed that the trust liabilities to these clients had been incorrectly removed and thereby inaccurately reducing the first respondent's trust liability in his accounting records. Swart's assessment of the trust deficit, after correction of the impermissible removal of trust liabilities, revealed a deficit in the amount of R23,984,857.65.

[10] Swart's investigation of the complaints against the firm confirmed, in some instances, that the second respondent had issued payment requests against the complainants' trust funds that resulted in the trust shortages. The crux of the allegations made in respect of the transactions involving the second respondent was that he misappropriated clients' trust funds and used them in conjunction with various companies (i.e. Baroville Trade, Galloptic Trade (Pty) Ltd, Valostar (Pty) Ltd, Westrand Property Giant and Remax Town and Country).

The shareholders and directors of these companies apparently utilised the firm's trust funds in these matters to purchase and sell properties.

[11] On 28 January 2019 Swart had a meeting with the second respondent. He explained to the second respondent that he had calculated that the firm's accounting records reflected major trust shortages and, that certain of these trust shortages were caused by trust payments which had been made against the incorrect trust creditors' accounts. He then suggested that the second respondent should consult with his attorney and prepare a written report on his knowledge of the trust transactions that caused the trust shortages.

[12] The second respondent delivered a written response but did not address Swart's enquiries regarding him. The second respondent, instead, addressed irregularities in the manner in which the first respondent had conducted himself, more particularly with regard to a complaint lodged by a certain Mr Grobler. It is therefore contended by the applicant that the second respondent does not contest the numerous allegations made against him, although he had been given the opportunity to do so. According to the first respondent he was not aware of this practice which caused the trust shortages in the firm's accounting records. The second respondent has repaid R355,000.00 of the misappropriated trust funds and the first respondent also paid an amount of R1,000,000.00 to reduce the losses.

[13] Swart was also of the view that the first respondent's alleged unawareness of the events unfolding in his practice is attributable to a dire absence of measures to ensure the accurate keeping of accounting records and

the absence of control measures. This gave the first respondent's staff free reign over the firm's clients' trust transactions which is demonstrated by the evidence of a candidate attorney who confirms her capturing the incoming and outgoing payments in the accounting records and her having access to the first respondent's trust bank account.

[14] It is pointed out by the applicant that the first respondent became aware of the second respondent's conduct during or about November 2017 as the second respondent was dismissed in December 2017. These facts lead to the applicant's conclusion that the first respondent failed to immediately report the debit balances in his accounting records. He did so only after a delay of approximately eight months.

[15] Furthermore, certain of the debit balances identified by Swart arose after the second respondent was dismissed. This is demonstrated by, *inter alia*, the debit balances in the trust ledger account of Horizon Educational Trust which arose from various payments and transfers between 8 December 2017 and 29 May 2018. That is long after the second respondent had already left the firm.

COMPLAINTS

[16] Several complaints were received against the firm regarding the delayed payment of trust funds, delayed transfers in conveyancing matters, trust funds not invested as instructed and the issuing of a guarantee when no funds were available to support the guarantee. It is not necessary to refer to each of these complaints as only two of them will be sufficient to illustrate the case presented by the applicant.

[17] On 16 May 2019 the applicant received a complaint against the first respondent's firm from a certain Me Hannelie Visagie. Visagie was the purchaser of an immovable property and on 22 May 2017 the firm was appointed to transfer the property to Visagie. On the same day she deposited an amount of R311,015.90 into the first respondent's trust account to effect the transfer.

[18] On 3 August 2017 Visagie instructed the firm to invest her funds in a trust savings account or other interest-bearing account in terms of section 78(2A) of the (now repealed) Attorneys Act. In terms of the complaint the firm failed to invest the funds as instructed. On 26 March 2019 the firm informed Visagie that her funds had, for an undisclosed period and for undisclosed reasons, been transferred to another firm of attorneys who were not party to the transaction.

[19] Transfer of the property to Visagie was only registered on 5 March 2019, some 22 months after receipt of Visagie's funds and instructions. Visagie then queried the transfer of her funds to the other firm of attorneys, but did not receive an explanation. On 16 May 2019 the applicant referred Visagie's complaint to the first respondent, requesting his explanation thereto on or before 21 June 2019. According to the applicant the first respondent has failed to reply to this letter.

[20] On 29 August 2018 a complaint was received against the first respondent by a certain Mr Douw Grobler. This complaint relates to allegations made by the second respondent in his engagement with Swart to the effect that the first respondent had utilised trust funds from trust creditors as a source of finance for the Baartman Family Trust.

[21] According to this complaint it appears that on 8 August 2014 the first respondent provided an undertaking on behalf of the Baartman Family Trust wherein payment of the amount of R2,5 million was guaranteed upon successful registration of certain transactions in the Deeds Office.

[22] According to the first respondent's trust ledger accounts, the first respondent did not hold sufficient funds on trust for the purposes of this transaction. The necessary funds were apparently sourced from a certain Mr Klinkenberg and trust transfers from Durranville Trade. According to the trust ledger accounts, the first respondent transferred the total amount of R1,992,238.97 on 5 January 2015 to the account of the Baartman Family Trust. Durranville was not a trust creditor related to the transaction. On 6 January 2015 only an amount of R568,243.25 was transferred back Durranville.

[23] The explanation given by the first respondent is that "*Klinkenberg made the money that was his in my trust account available to me for purposes of paying the purchase price of a house I had bought*" and *"he authorised me to utilise his money...(and) in that sense the trust destination was altered by the trust creditor."* Save for this explanation, no confirmatory affidavit or any confirmation was provided to support the allegation.

[24] According to the applicant the first respondent has failed to explain fully his issue of a guarantee when he did not have such funds available and, second, his use of Durranville's trust funds when there was a duty on him not to do so. The applicant points out that the first respondent has therefore issued a

misleading guarantee which had no financial backing and has also misappropriated trust funds to finance his own interests.

CONCLUSION

[25] Taking into account the evidence referred to above, the applicant concludes that the firm has contravened at least the following provisions of the former Attorneys Act and the Rules:

(a) Rule 35.13.9 in that the firm did not ensure that no account of any trust creditor is in debit;

(b) Section 78(1) of the former Attorneys Act read with Rule 35.13.8 in that the firm did not ensure that the total amount of money in its trust banking account, trust investment account and trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records;

(c) Rule 35.13.7 in that the firm did not ensure that adequate internal controls were implemented to ensure compliance with the Rules and to ensure that the trust funds of the firm are safeguarded;

(d) Rule 35.11 of the Rules in that the firm did not, within a reasonable time after the performance or earlier termination of

its mandate, account to its client in writing and retain a copy of each such account for not less than five years.

[26] It is also pointed out that the firm was practising from six different offices. For a single practitioner to manage six different offices and to still ensure that all the mandates and instructions received by those offices are efficiently attended to by the staff members and also to ensure that all trust transactions and balances are correct, require major internal control systems, controls and reports.

[27] Such internal controls were not operating within the firm. The main controls regarding trust funds would be to ensure that all trust funds received are correctly recorded in value and against the correct account, that trust payments are correctly made and debited against the correct account, and that the trust funds available in the trust account remain correct.

[28] Finally, the applicant points out that the actions as well as lack of actions by the first and second respondents caused a real risk of financial loss for both the trust creditors of the firm as well as the Legal Practitioners Fidelity Fund. In the result it is submitted that the names of both the first and second respondent should be struck from the Roll of Legal Practitioners as requested in the notice of motion.

CASE FOR THE FIRST RESPONDENT

[29] As already pointed out above, only the first respondent filed an answering affidavit. He points out that by the end of 2017 there were five offices

(later six) and ten professional assistants in the employ of his firm. The non-professional staff consisted of approximately 50 people whom the first respondent also had to supervise.

[30] According to the first respondent the growth that was experienced by his firm was partly the consequence of another attorney passing away and his work being handed to the first respondent. That included approximately 15 000 files that had to be taken care of. As a result thereof the first respondent maintains that he found himself *"running around like a mad person in order to administer the practice"* in 2017. He points out that he had to regularly visit every office which required an enormous amount of time. By then, he apparently had already stopped taking in clients altogether and had limited himself to the administration of the practice. According to him there *"was every reason for me to trust my personnel"*.

[31] The first respondent denies that he was dishonest or that he enriched himself from trust funds. According to him he did not:

(a) in any way misappropriate trust funds;

(b) delay the payment of trust funds in the ordinary course;

(c) effect irregular trust transfers.

[32] In his answering affidavit the first respondent accepts that he was responsible for all the financial transactions that took place *"under my watch"*. He also admits that he had failed to identify a series of irregular transactions in

the accounting books of his firm, but according to him he had been overtaken by events, as he was not *"as hands-on in respect of finances as I should have been"*.

[33] Finally, the first respondent admits that there was a substantial trust deficit in the firm's bookkeeping, that the ledger accounts of trust creditors reflected debit balances and that he failed to ensure that the total amount of money on trust was not less than the total amount of the firm's liability to its trust creditors. According to him he did not at that stage realise there was a trust deficit as he relied on the Lexpro Bookkeeping System and did not know that this system *"was corrupted by Mr Jansen (the second respondent)"*.

[34] In conclusion, he suggests that the following order should be granted against him:

(a) He should be suspended from practising as an attorney for a period of three years;

(b) After the three year period, he should be entitled to again practice, but not for his own account;

(c) He should be ordered to pay the costs of this application on the attorney and client scale.

DISCUSSION

[35] Professional conduct and the establishment of disciplinary bodies are dealt with in Chapter 4 of the LPA. Section 44(1) provides that the provisions of

this Act do not derogate in any way from the power of the High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner. Applications of this nature constitute a disciplinary enquiry by the Court into the conduct of the practitioner concerned. The question whether a legal practitioner is no longer a fit and proper person to practise lies in the discretion of the Court. The Court's discretion is not exclusively derived from the LPA, but is inherent in nature, over and above the statutory provisions of legislation such as the former Attorneys Act or the LPA (*cf.* *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 851E-F).

[36] In exercising its discretion, the Court is faced with a three-stage enquiry. The Court first decides as a matter of fact whether the alleged offending conduct has been established. If the answer is yes, a value judgment is required to decide whether the person concerned is a fit and proper person to continue to practise. If the answer is again in the affirmative, the Court must then decide in the exercise of its discretion whether, in all the circumstances of the case, the person in question is to be removed from the roll or merely suspended from practice (*Law Society of the Cape of Good Hope v Budricks* 2003 (2) SA 11 (SCA) at 13J-14A). The facts upon which the Court's discretion is based, should be considered in their totality, and the Court must not consider each issue in isolation (*Beyers v Pretoria Balieraad* 1966 (2) SA 593 (A) at 606B).

[37] In deciding on whichever course to follow, the Court is not first and foremost imposing a penalty. The main consideration is the protection of the public (*Malan v The Law Society of the Northern Provinces* [2009] 1 All SA 133 (SCA) par 7). If the Court, however, has grounds to assume that after a period

of suspension the legal practitioner will be fit to practise as an attorney in the ordinary course of events it would not remove the legal practitioner from the roll but order an appropriate suspension. Where a Court finds the legal practitioner guilty of unprofessional conduct, where such conduct does not make him/her unfit to continue to practise, the Court may discipline the legal practitioner by suspending him/her from practice with or without conditions or by reprimanding the legal practitioner in an appropriate case (*Malan v The Law Society of the Northern Provinces, supra*, at 219-220).

[38] An attorney is a member of a learned, respected and honourable profession and, by entering it, pledges himself with total and unquestionable integrity to the society at large, to the Court and to the profession. The law expects from an attorney the highest possible degree of good faith in his dealings with his client, the public and the Court. This implies that an attorney's conduct, submissions and representations must at all times be accurate, honest and frank.

[39] Taking into account these principles, the first question now to be considered is whether the alleged offending conduct has been established? This relates to the manner in which the firm's trust account and its trust creditors had been dealt with by the respondents. It is not in dispute that at some stage there was a trust deficit in the first respondent's accounting records of almost R24 million. No doubt, this state of affairs came about as a result of the first respondent's failure to take responsibility for his firm's trust account as well as the absence of measures to ensure the accurate keeping of accounting records and also the failure to implement the necessary control measures.

[40] It is also not in dispute that the ledger accounts of trust creditors reflected debit balances. According to the evidence the second respondent effected irregular trust transfers between unrelated trust creditors. It appears to be common cause that there were various transactions involving the second respondent when he misappropriated clients' trust funds to facilitate the buying and selling of property.

[41] With regard to the Grobler complaint, the first respondent has denied that he issued a misleading guarantee and misappropriated trust funds to finance his own interests. It is important to bear in mind that the Grobler complaint has to a certain extent been corroborated by the second respondent's explanation which he submitted to Swart.

[42] It has been pointed out in the replying affidavit that the first respondent's response to these allegations essentially constitutes a bare denial. His explanation is curt, lacks detail and it is insufficient. I agree with this submission. When an attorney is accused of having misappropriated trust funds one would expect that person to give a proper explanation supported by the necessary documents. There is no confirmatory affidavit or other confirmation in support of this scanty explanation.

[43] Furthermore, the first respondent does not explain his issue of a guarantee when he did not have such funds available; he does not account for his use of Durranville's funds; and he provides no supporting evidence for his allegation that he was authorised by a trust creditor to use his trust funds. Our Courts have in the past pointed out that where allegations are presented against

an attorney, they cannot be met with mere denials and where underlying documents (i.e. journals attached to the letter of complaint) are provided which form the basis of the allegations, they cannot simply be brushed aside. However, this issue has finally been dealt with during argument when the first respondent's counsel conceded (rightly so in my view) that his conduct regarding the issuing of the guarantee and the transfer of trust funds for the benefit of the Baartman Family Trust, constitute a form of dishonesty.

[44] Taking into account the evidence referred to above as well as the undisputed facts regarding the complaint of Visagie, I am satisfied that it has been proven on a balance of probabilities that:

(a) there was a trust deficit in the first respondent's bookkeeping of almost R24 million;

(b) both the respondents have misappropriated trust funds;

(c) the second respondent effected irregular trust transfers between unrelated trust creditors by providing finance to facilitate the buying and selling of property;

(d) the first respondent failed to ensure that the total amount of money in his trust banking account, trust investment account and trust cash would not be less than the total amount of his liability to his trust creditors;

(e) the first respondent failed to ensure the implementation of adequate internal controls to ensure the safeguarding of trust funds.

[45] I now have to consider whether the respondents are not fit and proper persons to continue to practise as an attorney and conveyancer. As pointed out above, a value judgment is required taking into account all the proven facts and relevant circumstances. Looking at them holistically, the following should be pointed out:

(a) the first respondent's alleged unawareness of the events unfolding in his practice is attributable to a dire absence of measures to ensure the accurate keeping of accounting records and to prevent the misuse of trust funds. Taking into account the consequences caused by this failure, the first respondent's conduct should be regarded as a serious deviation from what is expected of an attorney;

(b) both the respondents misappropriated trust funds and conducted themselves in a dishonest manner;

(c) this conduct had the potential to severely prejudice clients and to put the Fidelity Fund of the applicant at risk;

(d) this conduct indicates, generally speaking, that the respondents failed to maintain a professional standard with regard to their practice and their duty towards clients as well as the applicant.

[46] As already pointed out above, an attorney is a member of a learned, respected and honourable profession. The law expects from an attorney the highest possible degree of good faith in his dealings with his clients, the public and the Court. If I compare this requirement with the conduct of the respondents, I am of the view that they are not fit and proper persons to continue to practise as an attorney and conveyancer.

[47] That brings me finally to the question whether, in all the circumstances of this case, the respondents are to be removed from the roll or merely suspended from practice. To exercise my discretion properly, and as a starting point, I take into account the following facts and circumstances:

(a) the trust deficit of almost R24 million;

(b) certain of the debit balances identified by Swart in the accounting records of the first respondent, also arose after the second respondent's dismissal, which is a further indication of the first respondent's failure to timeously take control of his trust account and to implement measures to prevent a further misuse of trust funds;

(c) the dishonesty of both the respondents.

[48] When considering the question whether or not the first respondent's dishonesty should be regarded as a character defect, I take into account that in his answering affidavit the first respondent has denied any wrongdoing in this regard. This is an indication of him not realising the seriousness of his conduct. I

also take into account that his failure to ensure proper accounting measures regarding his trust account, took place over a period of time. This is an indication that he disregarded his responsibility towards his trust clients as he shifted that duty to his employees. I am therefore not convinced that his dishonesty and failure to take responsibility for his trust account should be regarded as a lapse or an isolated incident, and that a suspension would be sufficient to bring home the seriousness of his conduct.

[49] When considering the dishonesty of the second respondent one should take into account that he was involved in various transactions with different entities when he misappropriated clients' trust funds to facilitate the buying and selling of properties unrelated to these clients. This is, in my view, a clear indication that unauthorised transfers from the trust account had been done deliberately over a period of time. The evidence in this regard gives one the impression that his character is so inherently flawed that he should not be allowed to practice.

[50] Taking into account all the facts and circumstances of this case as well as the seriousness of the conduct of both the respondents, it does not appear to me that their conduct and dishonesty can be regarded as an exception to the rule or that exceptional circumstances exist justifying an order that they should be suspended from practice. In my view the opposite is true. The facts and circumstances indicate that the first and second respondents' contraventions are of a very serious nature and they have both damaged and impaired the prestige, status and dignity of the legal profession. Therefore, in my view, the name of the

first and that of the second respondent should be struck from the Roll of Legal Practitioners.

ORDER

In the result it is ordered that:

1. Louis Peter Baartman (first respondent) be struck from the Roll of Legal Practitioners (Attorneys).

2. Riaan Jansen (second respondent) be struck from the Roll of Legal Practitioners (Attorneys and Conveyancers).

3. The draft order attached hereto and marked **"X"** be made an order of Court in addition to the order granted in paragraphs 1 and 2 above.

D S FOURIE
JUDGE OF THE HIGH COURT
PRETORIA 6/10/20

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

6/10/20

Case number: 80283/2019

PRETORIA ON THIS DAY OF OCTOBER 2020

BEFORE THE HONOURABLE JUSTICE MEYER
BEFORE THE HONOURABLE JUSTICE FOURIE

In the matter between:

SOUTH AFRICAN LEGAL PRACTICE COUNCIL Applicant

and

LOUIS PETER BAARTMAN 1st Respondent

RIAAN JANSEN 2nd Respondent

DRAFT ORDER

Having perused the papers filed of record and the heads of argument filed by counsel for the applicant and the first respondent:

IT IS ALSO ORDERED THAT

1. That the first and second respondents hand and deliver their certificates of enrolment as attorneys (and also the second respondent's certificate of enrolment as conveyancer) to the Registrar of this Honourable Court.

2. That in the event of the first and second respondents failing to comply with the terms of this order detailed in the previous paragraph within two (2) weeks from the date of this order, the sheriff of the district in which the certificate is, be authorised and directed to take possession of the certificates and to hand it to the Registrar of this Honourable Court.

3. That the first respondent be prohibited from handling or operating on his trust account(s) as detailed in paragraph 6 hereof.

4. That Johan van Staden, the Head: Risk Compliance of applicant or any person nominated by him, be appointed as curator *bonis* (curator) to administer and control the trust account(s) of the first respondent, including accounts relating to insolvent and deceased estates and any deceased estate and any estate under curatorship connected with first respondent's practice as an attorney and including, also, the separate banking accounts opened and kept by the first respondent at a bank in the Republic of South Africa in terms of section 86(1) of the Legal Practice Act ("LPA") and/or any separate savings or interest-bearing accounts as contemplated by sections 86(3) and 86(4) of the LPA, in which monies from such trust banking accounts have been invested by

virtue of the provisions of the said sub-sections or in which monies in any manner have been deposited or credited (the said accounts being hereafter referred to as the trust accounts), with the following powers and duties:

4.1 immediately to take possession of the first respondent's accounting records, records, files and documents as referred to in paragraph 7 and subject to the approval of the board of control of the Legal Practitioners' Fidelity Fund (hereinafter referred to as the fund) to sign all forms and generally to operate upon the trust account(s), but only to such extent and for such purpose as may be necessary to bring to completion current transactions in which the first respondent was acting at the date of this order;

4.2 subject to the approval and control of the board of control of the fund and where monies had been paid incorrectly and unlawfully from the undermentioned trust account(s), to recover and receive and, if necessary in the interests of persons having lawful claims upon the trust account(s) and/or against the first respondent in respect of monies held, received and/or invested by the first respondent in terms of sections 86(3) and 86(4) of the LPA (hereinafter referred to as trust monies), to take any legal proceedings which may be necessary for the recovery of money which may be due to such persons in respect of incomplete

transactions, if any, in which the first respondent was and may still have been concerned and to receive such monies and to pay the same to the credit of the trust account(s);

4.3 to ascertain from the first respondent's accounting records the names of all persons on whose account the first respondent appears to hold or to have received trust monies (hereinafter referred to as trust creditors) and to call upon first respondent to furnish him, within 30 (thirty) days of the date of service of this order or such further period as he may agree to in writing, with the names, addresses and amounts due to all trust creditors;

4.4 to call upon such trust creditors to furnish such proof, information and/or affidavits as he may require to enable him, acting in consultation with, and subject to the requirements of, the board of control of the fund, to determine whether any such trust creditor has a claim in respect of monies in the trust account(s) of the first respondent and, if so, the amount of such claim;

4.5 to admit or reject, in whole or in part, subject to the approval of the board of control of the fund, the claims of any such trust creditor or creditors, without prejudice to such trust creditor's or creditors' right of access to the civil courts;

4.6 having determined the amounts which he considers are lawfully due to trust creditors, to pay such claims in full but subject always to the approval of the board of control of the fund;

4.7 in the event of there being any surplus in the trust account(s) of the first respondent after payment of the admitted claims of all trust creditors in full, to utilise such surplus to settle or reduce (as the case may be), firstly, any claim of the fund in terms of section 86(5) of the LPA in respect of any interest therein referred to and, secondly, without prejudice to the rights of the creditors of the first respondent, the costs, fees and expenses referred to in paragraph 13 of this order, or such portion thereof as has not already been separately paid by the first respondent to the applicant, and, if there is any balance left after payment in full of all such claims, costs, fees and expenses, to pay such balance, subject to the approval of the board of control of the fund, to the first respondent, if he is solvent, or, if the first respondent is insolvent, to the trustee(s) of the first respondent's insolvent estate;

4.8 in the event of there being insufficient trust monies in the trust banking account(s) of the first respondent, in accordance with the available documentation and information, to pay in full the claims of trust creditors who have lodged claims for repayment and whose claims have been approved, to distribute the credit balance(s) which

may be available in the trust banking account(s) amongst the trust creditors alternatively to pay the balance to the fund;

4.9 subject to the approval of the chairman of the board of control of the fund, to appoint nominees or representatives and/or consult with and/or engage the services of attorneys, counsel, accountants and/or any other persons, where considered necessary, to assist him in carrying out his duties as curator; and

4.10 to render from time to time, as curator, returns to the board of control of the fund showing how the trust account(s) of the first respondent has or have been dealt with, until such time as the board notifies him that he may regard his duties as curator as terminated.

5. That the first respondent immediately deliver his accounting records, records, files and documents containing particulars and information relating to:

5.1 any monies received, held or paid by the first respondent for or on account of any person while practising as an attorney;

5.2 any monies invested by the first respondent in terms of sections 86(3) and 86(4) of the LPA;

5.3 any interest on monies so invested which was paid over or credited to the first respondent;

5.4 any estate of a deceased person or an insolvent estate or an estate under curatorship administered by the first respondent, whether as executor or trustee or curator or on behalf of the executor, trustee or curator;

5.5 any insolvent estate administered by the first respondent as trustee or on behalf of the trustee in terms of the Insolvency Act, No 24 of 1936;

5.6 any trust administered by the first respondent as trustee or on behalf of the trustee in terms of the Trust Properties Control Act, No 57 of 1988;

5.7 any company liquidated in terms of the Companies Act, No 61 of 1973, administered by the first respondent as or on behalf of the liquidator;

5.8 any close corporation liquidated in terms of the Close Corporations Act, 69 of 1984, administered by the first respondent as or on behalf of the liquidator; and

5.9 the first respondent's practice as attorneys of this Honourable Court, to the curator appointed in terms of paragraph 6 hereof, provided that, as far as such accounting records, records, files and documents are concerned, the first respondent shall be entitled to have reasonable access to them but always subject to the supervision of such curator or his nominee.

6. That should the first respondent fail to comply with the provisions of the preceding paragraph of this order on service thereof upon him or after a return by the person entrusted with the service thereof that he has been unable to effect service thereof on the first respondent, the sheriff for the district in which such accounting records, records, files and documents are, be empowered and directed to search for and to take possession thereof wherever they may be and to deliver them to such curator.

7. That the first and second respondents be and are hereby removed from office as –

7.1 executor of any estate of which first and/or second respondents have been appointed in terms of section 54(1)(a)(v) of the Administration of Estates Act, No 66 of 1965 or the estate of any other person referred to in section 72(1);

7.2 curator or guardian of any minor or other person's property in terms of section 72(1) read with section 54(1)(a)(v) and section 85 of the Administration of Estates Act, No 66 of 1965;

7.3 trustee of any insolvent estate in terms of section 59 of the Insolvency Act, No 24 of 1936;

7.4 liquidator of any company in terms of section 379(2) read with 379(e) of the Companies Act, No 61 of 1973;

7.5 trustee of any trust in terms of section 20(1) of the Trust Property Control Act, No 57 of 1988;

7.6 liquidator of any close corporation appointed in terms of section 74 of the Close Corporation Act, No 69 of 1984;

7.7 administrator appointed in terms of Section 74 of the Magistrates' Court Act, 32 of 1944.

8. That the curator shall be entitled to:

8.1 hand over to the persons entitled thereto all such records, files and documents provided that a satisfactory written undertaking has been received from such persons to pay any amount, either

determined on taxation or by agreement, in respect of fees and disbursements due to the firm;

8.2 require from the persons referred to in paragraph 10.1 to provide any such documentation or information which he may consider relevant in respect of a claim or possible or anticipated claim, against him and/or first respondent and/or first respondent's clients and/or fund in respect of money and/or other property entrusted to the first respondent provided that any person entitled thereto shall be granted reasonable access thereto and shall be permitted to make copies thereof;

8.3 publish this order or an abridged version thereof in any newspaper he considers appropriate; and

8.4 wind-up of the first respondent's practices.

9. That, if there are any trust funds available the first respondent shall within 6 (six) months after having been requested to do so by the curator, or within such longer period as the curator may agree to in writing, satisfy the curator, by means of the submission of taxed bills of costs or otherwise, of the amount of the fees and disbursements due to the first respondent in respect of his former practice/s, and should he fail to do so, he shall not be entitled to recover such fees and disbursements

from the curator without prejudice, however, to such rights (if any) as they may have against the trust creditor(s) concerned for payment or recovery thereof.

10 That a certificate issued by a director of the fund shall constitute *prima facie* proof of the curator's costs.

11. That the first and second respondents be and are hereby directed:

11.1 to pay, in terms of section 87(2) of the LPA, the reasonable costs of the inspection of the accounting records of the first and second respondents;

11.2 to pay the reasonable fees and expenses of the curator;

11.3 to pay the reasonable fees and expenses of any person(s) consulted and/or engaged by the curator as aforesaid;

11.4 to pay the expenses relating to the publication of this order or an abbreviated version thereof; and

11.5 to pay the costs of this application jointly and severally on an attorney-and-client scale.

DS FOURIE
JUDGE OF THE HIGH COURT PRETORIA
6/10/20

ATTORNEYS FOR THE APPLICANT: RW Attorneys Inc.
COUNSEL FOR THE APPLICANT: Mr L Groome (079 346 7203)

ATTORNEYS FOR THE FIRST RESPONDENT: Bernard van der Hoven Attorneys
COUNSEL FOR THE FIRST RESPONDENT: Adv Q Pelser SC

ATTORNEYS FOR THE SECOND RESPONDENT: No appearance
COUNSEL FOR THE SECOND RESPONDENT: No appearance

Mr Bloem/rd/MAT33564