

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA STATEMENT – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 22 March 2007
Status: Immediate

J VAN DER BERG v THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

* * *

The Supreme Court of Appeal (SCA) today dismissed an appeal against a decision of the Cape High Court striking the name of an advocate from the roll of advocates. The complaints against the advocate concerned, Mr Johan van der Berg SC, arose from his relationship with a certain Mr Jurgen Harksen, who was alleged to have defrauded various people.

The SCA held that in the course of the relationship Mr van den Berg acted in conflict with the duties of an advocate in various respects. It held that he failed to disclose facts to a court that were known to him and that were material to the truth of evidence that he permitted to be placed before the court; that he received fees other than through an attorney, which was a consequence of acting without proper instructions; that he associated himself with a mandate relating to a fraudulent scheme that was detrimental to the reputation of the profession; and that in

executing the mandate he made false statements that had the potential to facilitate the perpetration of fraud.

The SCA held that when exercising its disciplinary powers a court is not concerned with what constitutes an appropriate punishment for a past transgression but rather with what is required for the protection of the public in the future. The court accepted that Mr van den Berg was not a knowing party to the fraudulent scheme and that he had no fraudulent intent when he made the false statements. But it held that the various transgressions, when viewed together, painted a picture of an advocate who was indifferent to the demands of his profession, and that he was not fit to continue in practise.