

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of [Area] Standards Committee [X]

**BETWEEN**

**PL**

Applicant

**AND**

**OH**

Respondent

**DECISION**

**The names and identifying details of the parties in this decision have been changed**

**Introduction**

[1] Mrs PL has applied for a review of the determination by [Area] Standards Committee [X] (the Committee) to take no further action in respect of her complaint about Ms OH.

**Background**

[2] Mrs PL is a director of PGB Ltd. The company presented the vendor of a development site in a subdivision in [City] with an offer to purchase. The completed Agreement was delivered to Ms OH who acted for the vendor.

[3] The note in the Agreement relating to Schedule 2 reads:

This schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be registered at settlement. Otherwise there is no need to complete it.

[4] The “yes/no” option as to the vendor’s GST status on the front page of the Agreement was not completed and the vendor’s details in Schedule 2 were also not completed. The purchaser had inserted its GST number.

[5] Ms OH advises that she understood her client was not registered for GST and the transaction was completed on that basis.

[6] Ms OH says that when she sent the statements following settlement to her client’s accountant “as per normal”, the accountant immediately advised her that her client was registered for GST and that a GST zero-rated invoice should be issued. The invoice was prepared by Ms OH and sent to Mrs PL’s lawyer.

[7] The effect of this was that the purchaser could not claim a refund of the GST portion of the price.

[8] More comprehensive details of the background to this complaint are set out in the Committee’s determination.

### **The complaint/Standards Committee determination**

[9] Mrs PL complained to the Lawyers Complaints Service that Ms OH had “acted incompetently in regard to the GST issue”.<sup>1</sup>

[10] The issue identified by the Committee to be answered was:<sup>2</sup>

The starting point for considering the complaint is the relevant standards by which lawyers are required to practise. In this regard, the Committee notes that Mrs PL is not Ms OH’s client. It is also noted that Mrs PL had her own representation throughout this transaction.

[11] The Committee answered that issue in the following way:<sup>3</sup>

The professional obligations of a lawyer are to promote and protect the interests of their clients. There is no general professional duty on a lawyer towards a third party who is not a client. There are rules which impose duties on lawyers in the way they engage with unrepresented parties, but that has no application here. The fundamental principle is that a lawyer has no duty to a person who is represented by their own lawyer.

[12] The Committee determined Ms OH had not “*breached any professional obligations to Mrs PL to whom she owes no duty of care*” and determined to take no further action on Mrs PL’s complaint.<sup>4</sup>

---

<sup>1</sup> Standards Committee determination, 29 March 2016 at [12].

<sup>2</sup> At [9].

<sup>3</sup> At [10].

<sup>4</sup> At [16].

## **Application for review**

[13] Mrs PL has applied to this Office for the determination of the Committee to be reviewed. She alleged:

if the tax invoice was valid, [Ms OH] was attempting to obtain an additional \$37,050 over the original purchase price for her client by issuing a document – being the settlement statement – knowing it to be incorrect.

[14] She did not consider her lawyer could have protected her “from something [she] had no knowledge of due to the serious misconduct and deception by Ms OH”.

[15] Mrs PL did not agree that Ms OH had no duty to her. She “believes Ms OH, as a member of the Law Society, has fundamental duties to [her]” and should “be held accountable for her actions”.

[16] Mrs PL alleges that Ms OH knew that her client was registered for GST and had acted deceitfully in proceeding to settle the transaction on the basis that he was not.

[17] The outcome sought by Mrs PL was:

1. For Ms OH to apologise and explain the circumstances behind the issue of the settlement statement she prepared and then the issue of an incorrect tax invoice sent at a later date.
2. For Ms OH to be censured and required to undertake further training in ethics and property transactions.
3. Compensation for the amount of stress incurred over the last 6 plus months, and disruption to my business and personal life.

## **Delegate**

[18] An applicant-only hearing took place in Auckland on 8 November 2018. The hearing was conducted by Mr Vaughan acting as a delegate duly appointed by the Legal Complaints Review Officer (LCRO) pursuant to cl 6 of sch 3 of the Lawyers and Conveyancers Act 2006 (the Act). Following the hearing, the audio was provided to Ms OH who provided some brief comments.

[19] The LCRO has delegated Mr Vaughan to report to me and the final determination of this review as set out in this decision is made following a full consideration of all matters by me.

## **Review**

### *Analysis*

[20] Whether or not the vendor was registered for GST at the time of supply is a legal/tax issue to be resolved elsewhere, but the consequences for the purchaser are significant.

[21] Mrs PL says she does not believe that Ms OH did not know the vendor was registered for GST at the time the Agreement was entered into and that she had a duty to ensure the form of the Agreement correctly reflected the vendor's GST status when it was returned to her lawyer after signature by the vendor.

[22] In this regard, it is important to note that the vendor's GST details in Schedule 2 of the agreement were to be inserted "if the vendor had stated on the front page that the vendor is registered under the GST Act".

[23] As noted above, the vendor had not deleted either yes or no on the front page of the Agreement in response to the statement that he was registered for GST.

[24] Mrs PL argues that Ms OH had a duty to her to ensure the Agreement was fully and properly completed when returned to her lawyer.

[25] Ms OH's duty of competence and diligence is owed to her client. Mrs PL was not Ms OH's client and the determination of the Committee proceeded on that basis.

[26] Mrs PL asserts that Ms OH was deceitful by not completing the vendor's GST details in the Agreement. Such conduct would fall within the overriding duties of a lawyer to act truthfully and professionally towards all parties.

[27] Ms OH has advised she did not become aware her client was registered for GST until advised by her client's accountant immediately following settlement.

[28] Mrs PL seems to have an expectation that this Office would conduct an investigation based on her assertions that she did not believe Ms OH, but there is absolutely no evidence to support her allegations.

[29] Mrs PL suggested that Ms OH may have somehow been beholden to her client to the extent that she would engage in deceitful and fraudulent conduct on his behalf. That is an allegation that has no substance and does not present any basis for this Office to pursue it.

[30] The determination of the Committee is correct. Ms OH had no duty to Mrs PL as a client and there had been opportunities for the Agreement to be properly completed prior to settlement. If questions had been asked concerning non-completion of the details on the front page and Schedule 2 of the Agreement, the issue would have been

resolved at that stage and if the contract had been incorrectly completed, Mrs PL would have had her remedies.

[31] The Committee is also correct when it notes that “Mrs PL may have other remedies available to her”.<sup>5</sup> Mrs PL needs to seek advice in this regard — her remedies do not lie with the disciplinary process.

### **Decision**

[32] Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the determination of the Committee to take no further action in respect of Mrs PL’s complaints is confirmed.

**DATED** this 29th day of November 2018

---

**D Thresher**  
**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mrs PL as the Applicant  
Ms OH as the Respondent  
[Area] Standards Committee [X]  
New Zealand Law Society

---

<sup>5</sup> Standards Committee determination, above n 1 at [20].