

CONCERNING

An application for review pursuant to Section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of the Auckland Standards Committee 1

BETWEEN

Mr AK

of Auckland

Applicant

AND

Mr ZP

of Auckland

Respondent

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

DECISION

Background

[1] The Respondent was assigned by the Legal Services Agency to represent the Applicant in respect of criminal charges.

[2] At the time of his appointment, the Applicant had pleaded guilty to the charges and been offered diversion.

[3] However, the Applicant declined to accept that he had committed the offences and accordingly the Respondent prepared an application to vacate the guilty plea.

[4] The complaint arose out of the conduct of this Application by the Respondent and the breakdown of the relationship between the parties.

The Complaint

[5] In his complaint, the Applicant alleged that:

- There was inadequate communication between himself and the Respondent, and that the Respondent failed to respond to emails and phone messages.
- The service provided was inadequate.
- He had concerns relating to decisions made as to witnesses.
- There were inappropriate comments made by the Respondent.

[6] In addition, the Applicant made a number of allegations concerning billing by the Respondent, describing it as over and double billing. He made a number of comments in conjunction with this relating to his perception of the Respondent's lifestyle.

[7] The outcome sought by the Applicant was that the Respondent should be required to repay all fees paid by the Legal Services Agency, and that compensation in the sum of \$50,000 should be paid to him for hardship, humiliation and time wasting.

The Standards Committee Decision

[8] The Standards Committee considered all of the material before it and formed the view that the complaint did not raise any professional standards issues.

[9] The material considered by the Committee included the complaint, the Practitioner's response and further comments by the Applicant.

[10] As a result of the Committee's view, it determined that no further action in respect of the complaint would be taken and resolved accordingly pursuant to s 138(2) of the Lawyers and Conveyancers Act 2006 ("the Act").

Application for Review

[11] In his application for review, the Applicant has in essence sought that the LCRO re-examine the complaint in full.

Review

[12] In conducting this review, I have considered the Standards Committee file and correspondence received by this office.

[13] The parties agreed that the review may be carried out on the basis of the information before me, and consented accordingly pursuant to s 206 (2) (b) of the Act.

Billing

[14] One of the main aspects of the complaint and the application for review relates to what the Applicant considers to be over and double billing, as well as pointing to various actions taken by the Respondent which he states was only designed to increase the fees chargeable by the Respondent.

[15] The Respondent was assigned this case by the Legal Services Agency ("LSA").

[16] Complaints concerning any aspect of representation by a solicitor assigned by the LSA should in the first instance be referred to that body.

[17] This was done by the Applicant, and attached to the complaint, is a letter from the LSA to the Applicant dated 2 February 2010. In that letter, the Grants Officer acknowledges that there had been a breakdown between the parties, but found no reason to doubt the work undertaken or invoiced by the Respondent.

[18] The Applicant was invited to apply for an examination of the invoices pursuant to s 38 of the Legal Services Act. There is no evidence as to whether or not the Applicant took this step.

[19] However, it is reasonable to assume that the LSA would have scrutinised the invoices tendered by the Respondent and queried any practices such as that alleged by the Applicant.

[20] The Respondent employs staff who are allocated various tasks as appropriate on files within the office and this would no doubt create greater efficiencies than if the Respondent had carried out all the tasks himself.

[21] In the circumstances, I agree with the Standards Committee's decision to take this particular aspect no further.

Witnesses

[22] The Applicant has complained about the conduct of the Respondent with regard to various witnesses or potential witnesses.

[23] As a general comment, I would observe that the starting point in respect of any complaint concerning decisions taken by a Practitioner as to the suitability or otherwise of witnesses, is that such decisions should not be upset or criticised without good reason. The Practitioner is the person who has the direct contact with the witness, and is the person who can primarily assess the usefulness or otherwise of any witness.

[24] In addition, the way in which a witness is briefed, is a matter that should be left to the Practitioner. The Practitioner is the person who has the responsibility of putting the evidence before the Court and he or she needs to be sure that such evidence is going to advance the client's case. The Practitioner therefore needs to be sure as to the reliability of the witness.

[25] The criticism of the Respondent therefore needs to be considered in this context.

[26] There were two witnesses whom the Applicant considered would support his defence.

[27] The first of these was a work colleague. The Respondent interviewed this witness and formed the view that this witness would be a hostile witness and would therefore be counter-productive to the Applicant's position. The Applicant however, was sure that the witness was not telling the truth to the Respondent and that he would support the Applicant's version of events in Court. The Respondent was not unnaturally unwilling to call a witness without being sure as to what the evidence was going to be. In the end, he acted in accordance with the directions of the Applicant. Whatever the outcome, he cannot in any way be criticised for the decision taken with regard to this particular witness.

[28] The second witness was the Applicant's son. The Applicant complained that the Respondent interviewed his son alone, with the result that the son became upset. There are differing reasons given for this upset, but again, there can be no criticism levelled at the Respondent for interviewing the son alone. It is important to know what evidence a witness is going to give, and the son may very well have been reluctant to say anything that was not going to support his father while the father was present. However, in the face of cross-examination under oath, the son's evidence may very well have differed from that recounted by him in his father's presence.

[29] A third witness was a dentist whom the Applicant considered had provided untrue evidence. The Applicant takes this further, and alleges that the Respondent colluded with this witness and the Police, in effect to ensure that the charge against the Applicant was disposed of with a minimum of fuss.

[30] The Respondent formed the view that the dentist was not at all helpful to the Applicant's case and advises that the Applicant agreed to this witness not being called.

[31] Overall, I agree with the decision of the Standards Committee in declining to consider these matters further.

Other Matters

[32] The application proceeded on the 14 and 16 October 2009, and was adjourned part heard.

[33] The Applicant complained that the Respondent was late on one of the days of the hearing and also, that his progress of the case during the hearing was slow.

[34] Any valid criticism in that regard would no doubt have emanated from either the Judge or the LSA. Neither has seen fit to raise any concerns in this regard.

[35] The Applicant has raised various other matters, of which, the failure to respond to correspondence, and the nature of discussions between the parties, are relevant to a consideration of proper professional standards.

[36] In his complaint, the Applicant referred to a failure on the part of the Respondent to reply to emails and phone messages for two months. In his response to the Respondent's reply, the Applicant has downplayed this aspect of the complaint, noting that he had sent only a couple of emails and two phone calls. Presumably, he was anxious to know when the hearing would continue.

[37] The Respondent refers to this contact with his office as "constant calls and emails" which invariably included reference to the Applicant's negative view of the Respondent's abilities.

[38] Support for this statement is the fact that in December 2009, the Respondent categorically told the Applicant that he did not wish to continue to receive calls or communication from the Applicant in that vein. The upshot of this is that there was a heated discussion between the parties which culminated in the Respondent seeking to be discharged from the assignment.

[39] It may be that behaviour of the Respondent in this regard could have been investigated further, but there does not seem to be any doubt, that the Applicant himself contributed in no small way to this exchange, and to the ultimate breakdown of the relationship.

[40] Having considered all of the material, I have formed the view that the decision of the Standards Committee is the appropriate decision to be made in the circumstances.

Decision

[41] Pursuant to section 211(1) (a) of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is confirmed.

DATED this 10th day of February 2010

Owen Vaughan
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:

Mr AK as the Applicant
Mr ZP as the Respondent
The Auckland Standards Committee 1
The New Zealand Law Society