LCRO 122/2011

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the [North Island] Standards Committee
BETWEEN	**MRS CN** Applicant
AND	**MRS EE** Respondent

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

DECISION

Introduction

[1] The [North Island] Standards Committee declined to uphold complaints that had been made by Mrs CN against Mrs EE. The complaints related to Mrs EE's handling of the estate of Mrs CN's father who died in November 2008. His executors were Mrs CN and also his widow, who was the deceased's second wife.

[2] The complaints covered three matters in particular: the fees that were charged; the status of an [Bank] account; and finally the status of funds held in a shareholder current account in a company where the deceased was the sole shareholder, and other [Bank] accounts. Related complaints alleged failures by Mrs EE in her administration duties, in particular her failure to have acted on instructions from Mrs CN as to the scope of enquiry to be made into the assets.

[3] Mrs EE is a legal executive in the firm of [Law Firm], and was responsible for the estate file. A response to the complaint was forwarded on her behalf by Mr ED, a principal of the firm who initially perceived the complaints to have been made

"generically against the firm",[1] although later accepted that this was a complaint against Mrs EE. Mr ED's detailed response addressed the various elements of the complaint. He referred to differences between the executors which were not resolved, and submitted that Mrs CN's views about some assets were not supported by the evidence. He contended that the issue of the deceased's current account was not raised until December 2009. He referred to correspondence sent to Mrs CN, and further submitted that options had been raised, although not responded to. Mr ED perceived the complaint as being a case of Mrs CN complaining because she had not got her way.[2]

[4] The Standards Committee undertook further investigation, and Mr ED then sent further submissions for Mrs EE. He noted that the main issue of concern to the Committee appeared to be the lack of timely and competent advice in respect of transfer of the shares in the family company, a complaint that he noted was personal to Mrs EE.

[5] Mr ED described Mrs EE as an experienced Legal Executive (a copy of her CV was enclosed) undertaking legal work principally in the field of estates, but also conveyancing and administration of estates, under the general supervision of Mr EG (who, if I understood his correspondence correctly, has since left the firm) who might become involved if litigation was to arise. Mr ED acknowledged that Mrs EE had consulted him in relation to the estate file, the disagreement between the executors on the matter of the [Bank] account issue, and the company current account issue, *once they arose* (Mr ED's emphasis).[3]

[6] The remainder of Mr ED's letter addressed the matter of the company shares. He noted that one of the executors (the widow) had given express instructions to Mrs EE that all matters concerning the company would be dealt with by the company accountants, and that Mrs EE was not required to deal with the transfer of the company shares. He accepted that Mrs CN had added the words "transfer of company shares"[4] to the Letter of Engagement but that the other executor had not agreed that the scope of services to be provided included transfer of company shares or any matters concerning the company. He concluded that Mrs EE did not have instructions from both executors to transfer the shares in the company and he submitted that the scope of the retainer was limited to that extent, and did not include transfer of the company

[1] Letter from Mr ED to NZLS (9 July 2010).
[2] Above n1.
[3] Letter from Mr ED to NZLS (9 March 2011) at [8(e)].
[4] Above n3 at [10(c)(iii)].

shares. Mr ED had no information about how the shares could have been transferred to the widow without first being transferred via the executors.

[7] Mr ED's further submission was that it was reasonable for Mrs EE to have acted the way she did with regard to the transfer of the shares, having received express instructions from one executor to not to deal with them, and that she had advised both executors to take independent legal advice on several occasions which they did. He understood that Mrs CN had obtained legal advice from another lawyer "almost from the outset"[5] who had not contacted Mrs EE until late 2009.

Standards Committee decision

[8] The Standard Committee declined jurisdiction to consider the bill where the fee was $1,980. The Committee noted that a fee of less than $2,000 fell outside of its jurisdiction,[6] and the Committee did not believe any special circumstances existed to justify examining that bill.

[9] The Standards Committee noted that a question had arisen as to whether an [Bank] account which held $165,000 should have been part of the deceased's estate. The Committee recorded that extensive and substantial correspondence had been exchanged in relation to that account, with the bank apparently changing its mind several times in the course of correspondence, but ultimately advising that the account was joint which meant that it became the property of the widow on the death of the deceased with whom it was jointly held. The Committee found no reason to blame Mrs EE or the firm solicitors as to the legal position regarding the joint account.

[10] The third issue concerned the shareholder account in the deceased's company. The Committee noted that there had been a dispute between the executors about the status of these funds, and while the legal issues to be considered were not of the solicitor's making, the Committee stated its belief that these issues should have been drawn to the attention of the executors who ultimately had the responsibility of making any decision and instructing the estate solicitors. On this matter, the Committee expressed the view:[7]

> ...that competent and timely consideration of the shareholder's account, and advice to the executors was not carried out and conveyed as might reasonably have been expected. This does not alter the legal position regarding the ownership of any

[5] Above n3 at [11(d)].
[6] Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008, Regulation 29.
[7] Standards Committee Determination (6 May 2011) at 2.

> interest in the shareholder's account but merely the timing of that and the decisions that needed to be made by the executors.

[11] The Committee considered that Mrs EE should bear some of the blame for omitting to bring this to the attention of the executors but concluded it did not amount to negligence or unsatisfactory conduct and therefore should be dismissed pursuant to s 152(2)(c) of the Lawyers and Conveyancers Act (the Act).

[12] Despite the above findings, the Committee considered the enquiry was justified, requiring intense investigation by the Committee and therefore a fine of $1,000 was imposed.

Review Application

[13] Mrs CN sought a review of the Committee's decision in regard to all matters. She submitted that special circumstances existed to justify a review of the fees, and that the ownership of the [Bank] account dispute was still being dealt with. She also contended that Mrs EE was repeatedly asked to look into the shareholder current account and that she (Mrs CN) was continually "brushed off".[8] She noted that Mrs EE knew that the widow was dealing with the company assets (which she noted were part of the estate assets) but that she (Mrs CN) was not informed of, and thus knew nothing of, these matters and had signed no documents to allow such dealings. The overall result was that the widow was empowered to take control over assets that were in dispute, but under the control of the company.

[14] A review hearing was held on 10 September 2013, attended by Mrs EE and her counsel Mr EF, and also with Mr ED. Mrs CN attended with a family member, Mrs CO, in support.

[15] At the review hearing there was discussion on all aspects of the complaints and all parties had the opportunity to outline their concerns and make submissions.

[16] At the end of the hearing I indicated to the parties that; (a) the Standards Committee appeared to have been correct to decline jurisdiction on the costs complaints; (b) that any omission of Mrs EE concerning the [Bank] appeared not to reach the requisite threshold for a disciplinary finding; and (c) that the conduct complaint concerning the deceased's current account was capable of reaching a threshold for a finding of unsatisfactory conduct, and that there was a proper basis for

[8] Application for Review from Mrs CN to LCRO.

such a finding to be made. Submissions were invited on these indications, and also in respect of possible orders should such a finding be made.

[17] Thereafter on behalf of Mrs EE, Mr EF provided written submissions, and Mrs CN had the opportunity to respond to them.

[18] I have considered all of the information concerning the complaints. This has included consideration of the file, the discussion in the course of the review hearing, and all submissions from the parties.

Discussion

[19] There are three main complaints. They concern the level of fees charged, the status of an [Bank] account, and the status of money held in the accounts of the company owned by the deceased.

[20] I note also at the outset that the issue of the disputed status of assets is currently before the High Court and that a declaratory judgment has been sought. The legal status of disputed assets is not something that Mrs EE could have resolved. The review issue concerns the question of whether Mrs EE discharged her duties, as estate administrator, in a manner that was satisfactory. Ultimately, the complaints concern the way that Mrs EE went about administering the estate file, which in Mrs CN's view had consequences for her and the other residuary beneficiaries under her father's will.

Fees

[21] One complaint concerned the fees charged by the firm. The Standards Committee declined to consider the fees because they fell below the $2,000 threshold.

[22] The Standards Committee was correct to have identified the application of Regulation 29.[9] The exception to consider a bill below $2,000 arises only if the Committee is of the view that "special circumstances" arise.[10]

[23] Mrs CN questioned the timing of the invoice, noting it had been sent while under the $2,000 threshold. Given that further fees were still accruing, she submitted that the only explanation for the invoice having been rendered at the time was to avoid being subjected to a fees assessment.

[24] Mrs EE denied this was the case, and explained that the invoice covered the completion of certain work.

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[9] Above n6.
[10] Above n6.

[25] Having considered the information about the work done, I find no basis for concluding that the invoice was calculated to be sent at a time that it fell just below $2,000, and I accept Mrs EE's explanation that the fee covered certain specific work that she had completed in relation to the estate. However, Mr ED informed me that the fees had in any event been cancelled. This made it unnecessary to consider the matter further.

[Bank] Account

[26] The essential role and responsibility of the estate lawyer is to bring into account all of the assets and liabilities of the deceased, and distribute the net balance to the beneficiaries. Generally this will include prompt contact with any bank where accounts are held, to inform the bank of the death (and thereby protect any dealings with the account), to obtain information about all assets of the estate (including bank balances) and to prepare an account of assets and liabilities for the executors.

[27] It appears that on the date of the deceased's death there was money ($165,000) in an [Bank] account that was shown to be in the name of her father, the deceased. By the time that Mrs EE engaged with the [Bank] the account was shown to be a joint account. This raised some confusion about whether the account was the personal property of the deceased (and thus falling into the residuary estate) or whether it was an account jointly held by the deceased's wife (thus becoming the property of the wife by operation of law). The position eventually taken by the [Bank] was that this was a joint account. (This matter is now before the High Court.)

[28] Mrs CN argued that this account formed part of the deceased's personal assets at the time of death and should, and would, have become part of the estate (and available to the residuary beneficiaries) had Mrs EE acted immediately to have the balance transferred to the firm's trust account. She explained that the [Bank] complaint was not about the ownership of the account, but that Mrs EE had never investigated the ownership when she was asked to do so right at the beginning.

[29] Mrs CN argued that had Mrs EE acted promptly the money would have been safely transferred to, and retained in, the firm's trust account pending the determination of status of the account. She added that at the time of the first meeting between Mrs EE and the two executors (Mrs CN and the widow) there had been discussion about the [Bank] account being personal to the deceased and which would provide the source of legal fees for the administration.

[30] Mrs EE accepted that she had not made any immediate enquiry of the bank about ownership at the outset, apparently having accepted the list of assets provided by the widow (in November 2008) which had described the [Bank] account as a "joint account". The confusion as to the status of the account was not known to Mrs EE until some months later.

[31] I understood Mrs CN's point to be that had Mrs EE investigated with the [Bank] at that time she was asked to, when the bank's records showed the account to be solely in the name of her father, the consequences of that would have been that the $165,000 would have fallen into the estate, and not to the widow.

[32] While an estate administrator should act promptly with regard to the bank accounts of a deceased, I do not agree that any delay in this case prejudiced the residuary beneficiaries to that money. A claim by the residuary beneficiaries would very likely have been contested by the widow, and it is difficult to see how the bank could have resisted specific instructions from the widow in respect of this account given the information held by the bank in relation to the account. This is a reasonable conclusion despite the widow later acknowledging that the deceased had intended this to be for his children (it appears that the widow later offered this to the residuary beneficiaries as a means of settling all estate disputes). Mrs EE could not have anticipated that the [Bank] would have vacillated over the legal ownership of that account.

[33] Mrs EE may be criticised for failing to have observed that the legal fees were to be paid from the [Bank] account but ultimately the status of the bank account was not a matter that could have been resolved by her. While there was an absence of reasonably prompt attention by Mrs EE in this case, in all of the circumstances I agree with the Standards Committee that no part of this complaint could support a disciplinary finding.

Shareholder Current Account and Other [Bank] Accounts

[34] The Standards Committee made no disciplinary finding against Mrs EE, despite concluding that Mrs EE's conduct fell below a degree of competence that could reasonably have been be expected in relation to her enquiry into the shareholder account. The Committee felt that:[11]

[11] Above n6.

> This does not alter the legal position regarding ownership of any interest in the shareholders account but merely the timing of that and the decisions that needed to be made by the executors.

The Committee considered there was "an element of blame to be laid on Mrs [EE]"[12] but which did not reach the threshold for a finding of unsatisfactory conduct. The Committee nevertheless found the enquiry to have been justified and imposed costs of $1,000.

[35] Mrs CN's view is that the conduct was negligent and unsatisfactory. She referred to the costs incurred by the beneficiaries in having to engage their own lawyer to ensure Mrs EE did her job thoroughly. The review issue is whether the Committee was right in making no adverse finding.

[36] The Conduct and Client Care Rules[13] set out professional standards expected of lawyers, which also cover legal executives. Those contained in Chapter 3 impose a duty to act competently, in a timely manner consistent with the terms of the retainer and the duty to take reasonable care. "Unsatisfactory conduct" is defined in s 12 of the Act, and is conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, or conduct that would be regarded by lawyers of good standing as being unacceptable.

[37] Having considered the evidence, information and additional submissions on this aspect of the conduct, it is my view that the failing was sufficiently serious to warrant a disciplinary finding. The main reason is that ultimately Mrs EE did not obtain the joint instructions of both executors in the administration of the estate, and knowingly acted on the instruction of only one of the executors who directed that all company related matters would be handled by the company accountant.

[38] I should add that it was not altogether clear that from the Letter of Engagement that the retainer was limited in scope as asserted by Mrs EE, and in my view Mr ED's submission about a limited retainer is too simplistic. While the Letter of Engagement included description of some specific tasks (with no mention of the transfer of company shares), the scope of the retainer was stated to include "...all other matters requiring attention to complete administration of the estate."[14] It may be that mention of the share transfer was omitted due to the widow's instruction, but Mrs EE had received the Letter of Engagement back from Mrs CN which contained her specific instruction to

[12] Above n6.
[13] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[14] Letter from Mrs EE to Mrs CN and the widow (6 November 2008) at 1.

include the shares transfer. Clearly Mrs EE knew that Mrs CN did not share the view reflected in the instruction of the co-executor, and she ought to have declined to act further until this matter was resolved between the executors. At no time did Mrs EE make it clear to Mrs CN that her administration of the estate would not cover all of the estate assets.

[39] It was no answer that Mrs EE relied on the terms of the Will which gifted the deceased's "share or interest in [Company] and associated business investments"[15] to the widow. This would have entitled the widow to those assets but did not absolve the administrator from calling those assets into the estate in the first instance.

[40] Moreover, Mrs EE ought to have been alert to the possibility that the monies in the shareholder current account might be the personal property of the deceased. The 2008 company accounts came into her possession at an early stage, and Mrs CN had questioned whether the shareholder account was a company asset. However, Mrs EE formed the view that this was an "associated business investments" which was included in the gift to the widow under Clause 6.

[41] Mrs EE also relied on a letter that she had sent to the beneficiaries (one of whom was Mrs CN) on 23 January 2009, which she considered had clearly informed them of how the estate would be distributed. In the closing paragraph of that letter Mrs EE had written:[16]

> We are now at a stage where we propose to cost this administration work and we should be grateful if you could indicate in writing your acceptance of the position by letting us have a signed copy of this letter in the stamped addressed envelope.

[42] The residuary beneficiaries took no steps to respond to that letter. Mrs EE submitted that if there was any disagreement, then no-one had voiced it. In Mrs CN's view, the fact that she and other beneficiaries had not responded to the closing paragraph of that letter ought to have alerted Mrs EE to their non-acceptance of the position as outlined in Mrs EE's letter.

[43] The letter relied on by Mrs EE was one addressed to the beneficiaries (not the executors), describing how the estate was to be divided (but with little detail about the assets), and informing the beneficiaries that the widow was entitled to the deceased's share or interest in [Company] and associated business investments. What these

[15] Will of Mr Hall (17 February 2004) at Cl 6.
[16] Letter from Mrs EE to beneficiaries (23 January 2009).

company assets specifically included was not set out. In my view Mrs EE took a risk in assuming the agreement of the beneficiaries regarding distribution of the assets without having received any response from them.

[44] I also noted that the January letter mentioned that residual funds were to be shared among the beneficiaries, but it ought then to have been evident to Mrs EE that without the [Bank] account (perceived to be a joint account), or proceeds from any other bank account, there was no fund for the residual beneficiaries at all.

[45] This is not a letter that sufficiently addresses Mrs EE's responsibilities vis-á-vis the executors. Materially, none of the above absolves Mrs EE from proceeding only on the instruction of the widow. I noted that Mr ED had, in his original submissions to the Standards Committee, correctly stated:[17]

> In the absence of agreement between the Executors as to steps to be taken in administration of the Estate, then [Law Firm] cannot unilaterally step in and act anyway. The Executors need to agree and give us jointly agreed instructions on which we can act. In the absence of the Executors agreeing, an impasse will continue.

[46] The evidence shows that Mrs EE acted on the instruction of one executor, knowing that the instruction was inconsistent with that of the other, and taking no steps to ensure that both executors were in agreement. I was particularly surprised and concerned to have noted that Mrs EE generally corresponded separately with Mrs CN and with the widow, although both were executors of the Will.

[47] Furthermore, it seems that Mrs EE subsequently accepted that the deceased's shareholder account was the personal property of the deceased when, in December 2009, she wrote to the widow's lawyer:[18]

> It is noted that the shareholder's current account as at the date of death stood as $147,124.00. These are monies correctly due and payable by the company to the late [deceased].
>
> These are funds which in accordance with the Will are, we believe payable directly to the residuary beneficiaries which are the children of the deceased.
>
> We request that you also let us have the sum of $147,124.00 payable into our trust account.

[17] Above n1 at [18].
[18] Letter from Mrs EE to Widow (23 December 2009).

[48] Mrs EE's actions were not wholly without consequence because, through her actions, all assets controlled by the company came under the control of the widow after Mrs EE sent the probate to the company accountants who then transferred the shares to the widow (how this was achieved without the co-signature of Mrs CN is not explained). Mrs EE ought to have ensured that any disputed monies were held in the firm's trust account.

[49] I reject submissions by Mr EF that a shareholder's current account is a shareholder's "interest in the company"[19] and a shareholder's "investment...in the company",[20] such as to have passed to the widow through the Will. In any event, this does not answer the omission on Mrs EE's part in properly dealing with the scope of the retainer, insofar as it concerned the company and assets under the control of the company.

[50] I now turn to two other [Bank] accounts claimed by Mrs CN to be her father's personal property, both in the name of "[the deceased]". Mrs CN had provided information about these accounts to Mrs EE at the outset, which had been opened about two months prior to the death of the deceased. Mrs CN said that her father had told her this was money for the children (i.e. the residuary beneficiaries). Her evidence was that her father had arranged that the statements for these particular accounts would be sent to her personally (no other company bank account statements were dealt with in that way) and that the source of the funds in the accounts were not traceable to any company accounts. The complaint was that Mrs EE took no steps to ascertain ownership of these accounts.

[51] Mr EF submitted for Mrs EE that these accounts had the same base number as that of the company bank accounts, and were likewise an investment by the deceased in the company. Whether or not the funds were the property of the company or the deceased is not a matter that Mrs EE could have resolved, but materially she failed to act on information she received from Mrs CN about the status of these accounts. The advice provided by Mrs CN, plus the fact that the accounts were set up in a way that contained only Mrs CN's contact details, and that the funds represented monies that had never appeared on the company balance sheets (before or after the date of the deceased's death) ought to have alerted Mrs EE to the possibility that further enquiry was needed.

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[19] Submissions from Mr EF to LCRO (23 September 2013) at [2.2].
[20] Above n19 at [4.3].

[52] Mrs CN's complaint was that Mrs EE had done nothing to investigate the status of these accounts, having assumed that they formed part of the company interests and which were dealt with as instructed by the widow. At the review hearing Mrs EE accepted that she had not undertaken any investigation of the accounts, having formed a view that any monies held in the accounts fell under the "associated business investments" of Clause 6 of the Will.

[53] This is a further example of a failure by Mrs EE to carefully attend to the information she was given, and in particular a failure to have dealt professionally with the situation that clearly indicated a dispute between the two executors over the status of certain assets, and acting on the instruction of only one executor. I conclude that the level of professional attention by Mrs EE fell below a standard that could reasonably be expected.

[54] I note that Mrs EE did not at any time prepare a full statement of estate assets and liabilities for sign-off by both of the executors, even though she had been asked several times by Mrs CN for these details. This is most obviously evidenced by Mrs CN's letter of 25 March 2009 to Mrs EE, referring to their discussion that day and asking for a list of all assets and liabilities of her father's estate, and a list of all the company's associated investments and why these were deemed to be "associated investments". In reply Mrs EE confirmed that the assets and liabilities in the estate that she was aware of as per her letter of 23 January 2009, making reference to specific (undisputed) assets, and in a separate paragraph, stating, "[w]e are not privy to the associated investments, but understand all funds were held in either the company name or joint accounts".[21] This response is surprising given that the 23 January 2009 letter had not listed the company assets or liabilities, and was in any event addressed to the beneficiaries.

[55] Mrs EE did not refute the evidence of Mrs CN who claimed to have been told (by Mrs EE) that the information concerning the company was of no concern to her and that she was not entitled to it. Mrs EE's explanation that she perceived all funds held within a company to be company funds or that of associated business interests is no answer to the omission to have obtained the instruction of both executors.

[56] I have considered all of these matters with reference to the definition of "unsatisfactory conduct" and the professional duties owed to clients. I also take into account Mrs EE's evidence that she found herself in an impossible situation with two

[21] Letter from Mrs EE to Mrs CN (16 April 2009).

executives who could not agree. There is no doubt that situations of this kind place estate lawyers in a difficult, and at times an impossible position. However, a lawyer must act on the joint instructions of the executors, and cannot act on the instructions of one and ignore that of the other. The proper action would have been to do nothing further until the dispute was resolved.

[57] Mrs EE also explained that she works under supervision, but no evidence was given that she had brought her dilemma to the attention of the supervising partner of the law firm at the outset, given that the disagreement between the executors was evident almost from the outset. When she did refer matters to a senior partner it appears to have been at a much later stage. There is no evidence that Mrs CN instructed her own lawyer from the outset (Mr ED's submission) but in any event the administration of the estate fell under Mrs EE's responsibility and any steps that may have been taken by one of the executors, or the beneficiaries, could not lessen that duty. What is clear from the file is that Mrs EE preferred and acted on the instructions given by the widow and accepted without question the widow's views of matters, while disregarding the information and instructions provided by Mrs CN who was the co-executor.

[58] Having considered all of these matters, I am of the clear view that Mrs EE failed in her duty to have obtained the joint instructions of both executors in the administration of the estate, and failed to take "reasonable care" in administration of the estate under her responsibility. In this I concur with the view taken by the Standards Committee. However, I part company with the Committee in concluding that the failures on Mrs EE's part are sufficiently serious to justify a disciplinary finding. In my view there is a proper basis for an unsatisfactory conduct finding to be made under s 12 of the Act.

Penalties

[59] I received and considered submissions on penalty from Mrs EE's counsel, and also from Mrs CN.

[60] Mrs CN had sought, as an outcome for her review, that the fees be cancelled (Mrs EE's law firm fees) which, as noted previously, were in fact cancelled voluntarily by the law firm and I do not need to consider this further.

[61] The second outcome that Mrs CN sought was reimbursement for the legal fees she and her siblings incurred by engaging another lawyer whose assistance, she says, was pivotal in Mrs EE taking further steps to make enquiries into the estate assets.

[62] Mrs EE was also invited to make submissions on the issue of compensation in the event that an adverse finding was made. For Mrs EE, Mr EF submitted that there was no proper basis for a compensatory order, as there was no causal link between Mrs EE's conduct and the legal fees incurred by the beneficiaries to protect their interests. He added that there is an opportunity for Mrs CN to obtain costs through the current High Court action.

[63] I take into account that the second lawyer did come to represent the interests of the beneficiaries primarily, and that Mrs EE did not have any obligations with regard to the interests of the beneficiaries. However, I also take into account that the main reason for Mrs CN instructing a lawyer in the first instance resulted from her concerns about the way that the estate was being administered. Mrs CN sought assistance in obtaining information from Mrs EE that had not been forthcoming at her request in her role as executor. It is highly unlikely that the lawyer would have been retained at that time had these concerns not existed. Having concluded that these concerns were properly founded, I consider it appropriate that Mrs EE contributes to the legal costs incurred.

[64] I also record that Mr ED, a partner in the firm who was present at the review hearing, was aware that I would consider a compensatory order in the event of an unsatisfactory conduct finding, and submissions were invited on the possibility of such an order. It is reasonable to assume that the law firm rests on the submissions made by Mr EF.

[65] Given my finding, I consider that it is appropriate for a compensatory order to be made. The position taken by Mrs EE, both as to liability and compensation, means that it is left in my hands to decide what that contribution should be.

[66] Mrs CN provided copies of several invoices rendered by her lawyer between 1 December 2009 and 30 March 2010 which total about $8,000. The first of these covers services rendered from 1 October 2009, and appears to deal specifically with matters involving [Bank] and the company accountants, and the lawyer's correspondence with Mrs EE. This invoice is for $3,108.75, and also records attendances involving the beneficiaries. A compensatory payment would not therefore cover the whole of the early fees incurred, but may properly reflect the fact that Mrs CN was obliged to obtain legal services to ensure that Mrs EE carried out her duties in administration of the estate. Mrs CN's view is that Mrs EE's failure also impacted on the interests of the beneficiaries, but I take into account that the beneficiaries have the opportunity to seek costs in the event they are successful in their proceedings.

[67] I accept that the lawyer was consulted initially in relation to the concerns, specifically arising from Mrs CN, about the way that Mrs EE was administering the estate. I consider the fees were properly incurred, and it is therefore appropriate that Mrs EE contributes to the costs. This cannot be accurately fixed but I have assessed a fair contribution to be $1,900.00 which substantially covers the first invoice rendered. An order will be made for Mrs EE to compensate Mrs CN in the sum of $1,900.00 (inclusive of all outgoing).

Outcome

1. Pursuant to s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the determination of the Standards Committee is reversed. Mrs EE is found to be guilty of unsatisfactory conduct.

2. Pursuant to s 156(1)(d) of the Act Mrs EE is ordered to pay to Mrs CN the sum of $1,900.00 towards legal fees incurred by Mrs CN. This payment should be made no later than six weeks following the date of this decision.

DATED this 22nd day of October 2013

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Hanneke Bouchier
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 CN as the Applicant
Mrs EE as the Respondent
Mr EF as the Representative of the Respondent
Mr ED as a related person or entity
The [North Island] Standards Committee
The New Zealand Law Society