

CONCERNING

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

AND

CONCERNING

a determination of the Canterbury-Westland Standards Committee 1

BETWEEN

FD

Of Auckland
Applicant

AND

VG

of Christchurch
Respondent

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

DECISION

Application for review

[1] In December 2009, Mr FD (the Applicant) complained to the New Zealand Law Society about VG (the Practitioner), who was one of three trustees of a family trust. This was a discretionary trust, and the Applicant, together with his brother and sister, were among the named beneficiaries.

[2] There were two main complaints. One was that the Practitioner had not provided financial statements for the year-ended March 2009, or had not done so within an acceptable time-frame. The other was that the Practitioner had not responded adequately and in a timely manner to requests for information from his lawyer.

[3] The Standards Committee did not uphold the complaints. The Committee's decision traversed the background of the matter with reference to the detailed response that had been provided by the Practitioner. Reference was made to a dispute between the Applicant and his brother concerning dealings with some Trust assets, a dispute that had been determined in the High Court in February 2009. Final

accounts were not produced until December 2009, and the Applicant's complaint concerned the length of time it had taken to receive it.

[4] The Standards Committee referred to the Practitioner's detailed response outlining the background and reasons for the delay in the final accounts being produced. The Committee noted the Practitioner's advice that there had been disagreements between the Applicant and his brother in connection with the administration of the Trust and in particular issues surrounding the issue of payment of interest, and that these disputes had delayed finalisation of the accounts. The Committee also noted that there had been a difference of opinion between the lawyer acting for the Applicant and the lawyer acting for his brother. The view of the Standards Committee was that the delays were not caused by the Practitioner who was considered to have acted reasonably and professionally.

[5] With regard to the complaint alleging unreasonable delay on the part of the Practitioner in responding to requests for information, the Committee noted that the Practitioner had acknowledged that there had been some delay in providing information or responses to correspondence, and that he had apologised, but other than frustration, the Standards Committee did not consider that the delay had caused any damage to any party.

[6] The Standards Committee concluded that the Practitioner's conduct had breached none of the professional standards, but did, however, note that it would have been appropriate for the Practitioner to have simply advised all parties by a regular report, say, monthly, about what stage matters had reached, particularly relating to the preparation of the documents and obtaining Trust approval of them.

Review application

[7] The Applicant sought a review of the Standards Committee decision. He considered the Committee had not addressed at all the manner in which the Practitioner failed to respond for nearly a year to reasonable requests he had made for specific information. This concerned steps being taken to answer a series of enquiries about the preparation of the accounts after the High Court decision.

[8] The second aspect of the review application concerned what the Applicant considered was "*quite unacceptable correspondence*" written by the Practitioner in which he claimed having been told to accept what had been presented without question, and that his further enquiries had led to a series of "*insulting correspondences whilst ignoring the manner I had been previously treated.*"

[9] In reply to the review application, the Practitioner submitted that the Committee's conclusions were correct. He also noted, in relation to the second ground of review, he had never indicated to the Applicant or his lawyer that he should accept anything presented without question. Nor had he sent any insulting correspondence.

[10] This letter was forwarded to the Applicant and further comment was invited. Some days later the Applicant contacted our office and the Case Manager's file note records that he expressed some confusion about the Practitioner's response, and that she referred him to his original complaints.

[11] Thereafter the consent of the parties was sought for the review to be conducted on the papers in accordance with section 206 of the Lawyers and Conveyancers Act 2006, also being informed of their right to be heard in person.

[12] The Practitioner consented to the review being conducted on the papers. When no response was received from the Applicant the Case Manager made attempts to contact him, eventually leaving a message on his telephone on 6 September 2010. The Applicant subsequently contacted our office on 17 September to say he wished to be personally heard. He was asked to confirm that in writing which he agreed to do, but nothing further was heard from the Applicant until December 2010 when our office inquired as to when we were likely to hear from him. The Applicant said that he had sent through the request to be heard in person, and although this had not been received by the office, his wish was noted and recorded in our file. He was informed that he would be notified of the hearing date in due course.

[13] Steps were then taken by the Case Manager to arrange for a hearing, one of the issues being where that hearing would take place, given that the parties lived in different towns. The Applicant could not be contacted and a letter was sent to him on 3 February 2011 referring to the telephone messages to which had not been responded to. The next day the Applicant called our office. He was then advised that he would receive an update by letter, and on that same day the Case Manager wrote to inform him that there would be a Directions Conference to discuss where the hearing would be held.

[14] Details of the Directions Conference were sent to both parties but the Applicant was not able to be contacted at that time and therefore did not participate in the Directions Conference despite numerous attempts to contact him. In the event I spoke only with the Practitioner, and it was decided that a hearing would take place in Wellington. The Applicant was accordingly informed, and also advised that if he was

unable to travel, arrangements could be made via this office for him to participate in the hearing by telephone link. A copy of the Directions Telephone Conference Minute was enclosed.

[15] Both parties were informed about the hearing date which was scheduled for 10 August 2011. Efforts were made to contact the Applicant in advance to discuss how he wished to participate, but the Case Manager was unable to contact him.

[16] In the event the Applicant did not attend the Review Hearing, nor did he contact our office, and all efforts made to contact him have been unsuccessful. The Practitioner appeared at the review hearing accompanied by his counsel.

[17] No further contact could be made with the Applicant and in the circumstances the hearing took place without his attendance. This is obviously regrettable. However, the LCRO is obliged to conduct a review with as little formality and technicality, and as much expedition as is permitted by a proper consideration of the review and the rules of natural justice (Section 200).

[18] It was my view that that the nature of the complaint was sufficiently clearly set out for me to proceed to review the matter in the absence of the Applicant.

Considerations

[19] A review by this Office will usually start with a consideration of the way that the Standards Committee dealt with the entire complaint. In this case I agreed with submissions made by the Practitioner at the review hearing that the Applicant's original complaints to the New Zealand Law Society did not include any allegation concerning insulting letter or letters being sent by the Practitioner. These were not matters that had been put before the Standards Committee and had not been considered by the Committee. Moreover, I was also unable to find any evidence showing that the Practitioner had told the Applicant that he was obliged to accept what he had been presented with, or that the Practitioner had sent insulting communications.

[20] Having reviewed all of the information that was made available, in relation to the delays in providing the Trust accounts, I agree with the Standards Committee's view that the delays in providing the information was not caused by the Practitioner, but rather by a series of matters (involving difference between the beneficiaries) which could not be readily resolved.

[21] There was one matter that needed further clarification, since it was not clear how the Standards Committee specifically dealt with the matter of delays in relation to

correspondence. This complaint concerned a letter that had been written by the Applicant's lawyer on 6 September 2009, and sent to the Practitioner, requesting certain documents, and also seeking reasons for certain decisions that had been made by the Trustees.

[22] Despite several subsequent exchanges of correspondence between the Practitioner and the Applicant's lawyer, in which the Practitioner was repeatedly asked for the answers to specific questions, these were not addressed by the Practitioner in his later communications to the lawyer. It appears that at no time did the Practitioner either provide the documents or the explanations that had been sought in that 6 September letter, despite repeated requests.

[23] This was not a case where the Practitioner had ignored correspondence sent by a fellow lawyer, but a case where he simply had not addressed certain matters that he had been asked to address. The Practitioner's explanation to the Standards Committee was that the Trustees had not wanted to provide reasons for its decisions, and were not legally obliged to do so.

[24] At the review hearing I covered with the Practitioner the matter of his collegial obligation to respond to letters written by a lawyer. The Practitioner enlarged on his earlier explanation by referring to considerable tensions between the two brothers and his concern that the documents that had been requested would add to, or further exacerbate, their difficult relationship. He also reiterated that the trustees had no obligation to provide reasons for their decisions.

[25] I put it to the Practitioner that if he had reasons for declining to provide the information that had been sought, this might have been conveyed in his response to that lawyer's repeated requests. There was some discussion concerning the professional obligations of lawyers, with particular reference to Rule 10 of the Conduct and Client Care Rules. This requires lawyers to promote and maintain proper standards of professionalism in the lawyer's dealings, and to treat other lawyers with respect and courtesy. The Practitioner accepted that this could have been done, and ought to have been done.

[26] I have considered all of the matters arising in this review. In this case the Standards Committee exercised its discretion to take no further action on the complaint. Notwithstanding that I expressed my concerns to the Practitioner that he had not answered the letter sent to him by a colleague, I am satisfied that he understands the nature of his obligations and will reflect on this matter further, and for

this reason and in the overall circumstances, I consider it appropriate to confirm the Standards Committee's decision.

Decision

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

DATED this 2nd day of September 2011

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:

FD as the Applicant
VG as the Respondent
The Canterbury-Westland Standards Committee 1
The New Zealand Law Society