LCRO 134/2010

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 2
BETWEEN	**Mr AJ** of Auckland Applicant
AND	**Ms ZQ** of Australia Respondent

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

DECISION

Background

[1] At the beginning of July 2009, the Applicant was instructed by Mr VC to act for VC and his sister (the Respondent) in connection with the sale of a property in B, Auckland.

[2] The property was owned by the Respondent as to two-thirds, and VC as to one-third, as tenants in common. The background as to how the property came to be owned by them in this manner does have some relevance in explaining the differences between the Respondent and VC, but has no relevance to the complaint or this review.

[3] The Applicant practised in P between 1974 and 1986, and became acquainted with VC during that time. However, as described by the Applicant at the hearing, their acquaintance could not be termed a "friendship".

[4] The Applicant cannot recall whether he acted for VC during the time he was in P.

[5] He also disputes the statements attributed to him by the Respondent as to the extent of the friendship between VC and himself, that she says were made by him in the initial telephone conversation between them,

[6] Inasmuch as it is necessary to do so, I accept the Applicant's portrayal of this relationship. In any event, whatever the extent of the relationship between him and VC was, his obligation to act for both VC and the Respondent impartially did not change.

[7] The Applicant was alerted at some stage to the fact that VC claimed money which was owed to him by the Respondent, as well as the fact that VC had made payments to clear rates arrears on the property.

[8] The Respondent alleges that these sums were referred to in the initial telephone conversation that she had with the Applicant concerning the sale. She alleges that she made it clear at that time that she disputed that she owed anything at all to her brother. Whether or not the claim by VC, and the denial of liability by the Respondent, was known and referred to at those initial stages, remains in dispute.

[9] What is not in dispute, however, is that the Applicant sought instructions from both parties formally in writing on at least four occasions – 31 July, 18 August, 24 August, and 26 August. In each case, the Applicant referred to the disputed amount and sought instructions from both parties as to the disbursement of the sale proceeds.

[10] These requests were sent to the Respondent by email, as directed by her. The Respondent was only able to access these emails when she visited an internet cafe. She did not at any time respond in writing, whether by email or otherwise. However, the Respondent states that she contacted the Applicant by way of telephone on numerous occasions, and advised him that she disputed that she owed anything to VC. The Applicant disputes this assertion.

[11] By 10 September, the day before settlement, the Respondent had not returned the Authority and Instruction form (A & I) nor, as far as the Applicant was concerned, provided instructions to enable him to settle with the purchaser.

[12] The instructions from VC as understood by the Applicant, were that he was not to use the A & I unless sufficient funds to pay the disputed amount were retained by the Applicant in his firm's trust account.

[13] On the day of settlement, namely 11 September, the Applicant requested Ms W, a senior solicitor in his office, to communicate with the Respondent to endeavour to get instructions. There was some disagreement between the parties as to the sequence of

events, and who telephoned who, but as a result of a telephone conversation between Ms W and the Respondent, during which time the Applicant was in the room, Ms W and the Applicant formed the view that the Respondent had instructed them to settle knowing that they had instructions from VC to retain the disputed amounts.

[14] Settlement took place, as required, on 11 September 2009.

[15] The Applicant then prepared statements recording the various receipts and payments, and also recording the retentions to be made, and again sought instructions from the parties as to the disbursement of the funds.

[16] The Respondent objected to the retentions and asserted her right to be paid two-thirds of the net sale proceeds. This objection was formally provided in writing by her by letter dated 11 September. It is not clear how that letter was forwarded to the Applicant, but in subsequent correspondence he refers to receiving "her letter dated 11 September" by which I take it that it was forwarded by way of post.

The complaint

[17] On 11 November 2009, the Respondent complained to the New Zealand Law Society. In her letter of complaint, she advised that she considered that the Applicant had been influenced by his friendship with VC, and had retained funds from her share of the sale proceeds on instructions from him.

[18] There is also reference by her to the fees charged by the Applicant in connection with the sale, but her complaint essentially in this regard relates to the fact that he retained the sum of $5,000 against potential costs that may be incurred by his firm (WM) to subsequently resolve the matter.

[19] The Respondent also complained that the Applicant had charged for attendances in connection with the dispute, which she states should not be her cost.

The Standards Committee's decision

[20] The Standards Committee issued its decision on 23 June 2010.

[21] The Committee found that the Applicant's conduct constituted unsatisfactory conduct as defined in Section 12(a) of the Lawyers and Conveyancers Act 2006 ("the Act").

[22] Following that finding, the Standards Committee made the following orders:-

1. That [the Applicant] rectify his errors pursuant to Section 156(1)(h) of the Act by:

    (a) Refunding [the Respondent] the sum of $32,248.56 currently held in his Trust Account;

    (b) Releasing the $5,000 retained on account of future costs to the parties in accordance with their respective shares in the property.

2. That [the Applicant] cancel all fees charged by WM after the date of settlement pursuant to Section 156(1)(f) of the Act;

3. That [the Applicant] pay costs of $750 to the New Zealand Law Society pursuant to Section 156(1)(n) of the Act.

The application for review

[23] The Applicant has applied for a review of the Standards Committee decision.

[24] He submits that the decision is incorrect for the following reasons:-

1. The Committee has erred in viewing the sale process as if it was two separate transactions producing separate sums of money available for independent distribution.
2. The Committee has erred in its finding that [he] accepted VC's instructions.
3. The Committee has erred in its assumption that he knew the disputed amount did not relate to the property at the time he received VC's instructions.
4. The Committee has had no regard to the evidence before it relating to the changed instructions given to him by the Respondent on 11 September 2009.
5. The Committee has erred in failing to have regard to the commercial factors that influenced the Respondent in her decisions.
6. The Committee has erred in ignoring the importance of the delay in the Respondent communicating her concerns to him.

[25] In addition, in a subsequent letter of 7 October 2010, the Applicant raises the issue of the standard of proof. He notes that the determination of the complaint required the Committee to decide whether it preferred the evidence of the Respondent, or his evidence in relation to the interests of the decisions made.

[26] He notes that the Committee is bound by the provisions of the Lawyers and Conveyancers Act 2006 which requires the Committee to apply the rules of natural justice (section 142), and the conventional rules of the Court (section 151).

The standard of proof

[27] The Applicant submits that the Committee should require factual matters to be proven to a standard higher than the balance of probabilities, approaching that of "beyond all reasonable doubt".

[28] The standard of proof required in disciplinary proceedings was considered by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55. In that decision, the Court determined at paragraph 112 that "there is accordingly a single civil standard, the balance of probabilities, which is applied flexibly according to the seriousness of the matters to be proved and the consequences of proving them." It was considered that the flexible application of the civil standard of proof would provide all due protection to persons facing such proceedings (paragraph 116). Consequently, it is that standard of proof that is to be applied by the Standards Committee and the LCRO in their respective jurisdictions.

Review

[29] I have reviewed the Standards Committee File and considered the correspondence between this office and the parties, as well as the submissions made by both parties.

[30] In addition, a hearing was held on 27 January 2011 attended in person by the Applicant, and the Respondent by telephone.

[31] The Respondent's main complaint, as indicated in her letter to the New Zealand Law Society dated 9 December 2009, is that she considers any monies owed by her to VC, and vice versa, unrelated to the property, should be a totally separate issue, and have no bearing on the disbursement of the funds from the sale of the property.

[32] Her view is that the Applicant was acting on the instructions of VC in withholding the funds, to her obvious prejudice.

[33] This view was largely accepted by the Standards Committee which made the following observations in its decision:-

- The Applicant had erred in accepting conditional instructions from VC to settle on the basis that the $32,248.56 of the Respondent's funds were to be retained. As those funds belonged to the Respondent, the Committee considered that the Applicant was obliged to deal with those funds strictly in accordance with her instructions pursuant to section 110(1)(b) of the Act. That

section states that: "a practitioner who, in the course of his practice, receives money for, or on behalf of any person … must hold the money or ensure that the money is held exclusively for that person, to be paid to that person or as that person directs."

- As a two-thirds share of the proceeds belonged to the Respondent, VC had no authority to direct the Applicant to deal with those funds in any way at all. The Committee was of the view that the Applicant had no ability to accept conditional instructions to settle from VC and should have advised VC accordingly on receipt of those instructions. The Committee was of the view that the Applicant had breached section 110(1)(b) of the Act by failing to hold the money exclusively for the Respondent and comply with her directions as to payment of her funds.

- The Committee was further of the view that the Applicant was not entitled to retain any of her funds for alleged debts owed by her to VC. The Committee considered this to be an issue unrelated to the property itself and that the Applicant should have advised VC of this fact on receipt of his conditional instructions. The Committee considered that the Applicant should have advised VC that he was unable to accept instructions from VC that related to another client's funds, and that if VC was unwilling to amend his instructions, or instructed him not to settle, then the Applicant was conflicted to the extent that he may have been required to terminate his retainer with both clients.

- The Committee considered that the fees charged by the Applicant up to and including settlement were fair and reasonable, but that he had no instructions or authority to retain the sum of $5,000 on account of future costs.

- As a result of forming the views recorded above, the Committee considered that the Applicant's conduct fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, and fell within the definition of unsatisfactory conduct as set out in section 12(a) of the Act.

[34] I do not agree with the Committee's decision in that regard.

[35] There was, and continued to be, no conflict between VC and the Respondent with regard to the sale of the property. They had both entered into the agreement for

the sale of the property, and regardless of who acted for them, they were obliged to settle pursuant to that agreement.

[36] On receiving instructions to act for VC and the Respondent in connection with the sale of the property, the Applicant created a file for the sale.

[37] When a file is created, it is also necessary to establish a trust account ledger for that file, against which is recorded not only receipts and payments, but also time spent on it by the author.

[38] The Applicant established a joint trust account ledger in the names of VC and the Respondent.

[39] As part of the review I wrote to the New Zealand Law Society Inspectorate, the body responsible for ensuring that legal firms comply with the Trust Account Regulations. A copy of that letter was supplied to the parties. The purpose of the letter was to confirm that the steps taken by the Applicant were correct, and that he was not required to open a separate trust account ledger for each of the Respondent and VC.

Regulation 12 of the Lawyers and Conveyancers Act (Trust Account Regulations 2008), provides as follows:-

12(1) "Every receipt, payment, transfer, and balance of trust money must be recorded in a trust account ledger with a separate ledger account for each client …"

12(2) "For the purposes of sub-clause (1), a joint client must be treated as a single client."

[40] The intent of my letter was to ensure that in opening a single trust account ledger for the Respondent and VC together, when they owned the property as tenants in common, the Applicant had acted correctly.

[41] The Inspectorate did not respond in writing, but I received a telephone call from Mr M, one of the inspectors, in response to my letter. Mr M confirmed that the use of the term "joint client" in Regulation 12(2) was not applied by the Inspectorate in its technical sense where there are tenants in common. He confirmed that the procedure adopted by the Applicant in opening a single trust account ledger in the joint names of the Respondent and VC was correct and an acceptable practice to the Inspectorate. This accords with standard practice in the profession.

[42] Any funds received from the sale of the property, were therefore to be paid into that joint trust account ledger.

[43] The provisions of section 110(1)(b) of the Act apply to any monies held in that account.

[44] Consequently, any payment out of that account had to be approved by both the Respondent and VC. The Applicant would therefore have been in breach of section 110(1)(b) of the Act if he had paid out the Respondent contrary to the instructions of VC.

[45] The issue therefore arises as to whether or not the Applicant should have proceeded to settle the transaction at all (although the balance of the deposit had been credited to that account at that stage anyway).

[46] VC provided the A & I to the Applicant on the basis that an amount equivalent to the extent of the amount claimed by him was to be protected, and that he was not to settle unless that was the case.

[47] The Respondent provided her A & I on the basis that she was to be paid out in full.

[48] As at the settlement date therefore, the Applicant had conflicting instructions. VC was adamant that he did not want the funds to be paid out in full as he considered the share of the sale proceeds payable to the Respondent as the only source from which he would be able to recover amounts he alleged were owed him.

[49] The Applicant advises that he instructed Ms W of his firm to contact the Respondent on the settlement date to discuss the situation. It does seem a little odd that this crucial matter should have been referred to another solicitor at that time. However, relations between the Applicant and the Respondent appeared to have become somewhat strained by that stage. This followed the events which had taken place on 3 August, when the Applicant had encountered difficulties with the Respondent's daughter when visiting the property for the purposes of resolving issues with regard to a Code Compliance Certificate.

[50] There is disagreement between the parties as to who contacted who, and at what stage of the process.

[51] The Respondent states that she telephoned Ms W at which time the settlement had already taken place. This is unlikely as the Applicant had no instructions with regard to settlement, and it was necessary to contact the Respondent to obtain instructions before settlement could be effected.

[52] The Respondent's recall is uncertain, and this is not assisted by the fact that she would (not unnaturally) have had some difficulty in comprehending the issues being presented by Ms W.

[53] Both Ms W and the Applicant have provided affidavits to the effect that they are satisfied that they were instructed by the Respondent to proceed with the settlement, knowing that this would result in the disputed funds being retained. The Applicant also advises that the Respondent advised them at that time that settlement had to proceed, because she had a commitment to pay for surgery that her daughter was about to undertake.

[54] The Respondent advised at the hearing that there was no commitment in that regard at 11 September 2009, as her daughter's surgery was scheduled at short notice and took place on 16 September 2009.

[55] There can be no doubt however, that the Respondent was aware of the need for her to provide instructions as to the disbursement of the funds. She had been advised of this at least four times formally by the Applicant.

[56] The Respondent had not responded formally to record her opposition to any funds being retained, although she would have had the opportunity to do so, either by email (even allowing for the problem in using an internet cafe) or by post. I note in this regard that a letter dated 11 September 2009 was acknowledged as being received by the Applicant. From this, it is apparent that the Respondent did have the means of providing written instructions had she wished to.

[57] The uncertainties of telephone instructions are borne out by the events which unfolded.

[58] I accept that the Applicant and Ms W genuinely believed that the Respondent had instructed them to settle.

[59] I also acknowledge that the Respondent may have been unclear as to what was being asked of her by Ms W. It is unfortunate that she had not taken the opportunity to communicate with the Applicant prior to 11 September following receipt of his correspondence. Consequently these discussions ultimately took place under pressure of a settlement deadline.

[60] At the end of the day he acted in accordance with the only clear instructions that he had received from both clients, and that was to settle the sale, and place the funds on deposit.

[61] In reality, the only other option available to the Respondent if she did not wish the disputed funds to be retained, was to decline to settle. There is no evidence that this option was discussed with her.

[62] Consequently, the Applicant proceeded to settle. The purchase funds were paid into the trust account of WM and credited to the trust account ledger of the Respondent and VC. From that stage on, the Applicant had no option. Disbursement from this trust account ledger could only be made from that account with the approval of both the Respondent and VC. The instructions of VC were that the disputed amounts were not to be paid out and the Applicant could not make payment to the Respondent contrary to those instructions.

[63] The Standards Committee has viewed the Applicant's conduct as accepting conditional instructions and that he had erred in doing so. I do not agree with this view. In effect, what Mr VC was instructing the Applicant to do, was to settle the sale, but declining to provide the authority for the Applicant to pay the Respondent two thirds of the sale price.

[64] I do not consider that the Applicant was in a position to refuse to complete settlement. In addition, he had formed the genuinely held view, that the Respondent had instructed him to settle the sale on the basis that the funds would be retained. He was therefore in a position, that had he declined to complete settlement, he would have laid himself open to a charge of causing the vendors to default in their contractual obligations to the purchasers.

[65] Both clients had a contractual obligation to settle the sale. Consequently, there was no conflict between them in this regard. By settling the sale, therefore, the Applicant was not acting otherwise than in accordance with the instructions of both the Respondent and VC.

[66] Where the conflict arose was in how the money should be disbursed.

[67] Immediately following settlement the Applicant prepared a statement showing the various amounts, including the amount to be held pending resolution of the dispute between the Respondent and VC. He did not attempt to persuade the Respondent that she was obliged to pay VC, and indeed, was at pains to encourage them both to take separate advice to sort the matter out so that payments could be finalised.

[68] As noted in paragraph 74 following, he took the view, that by then he was acting as a stakeholder, who could only make payment at the directions of both parties or by order of the Court.

[69] Even if I am not correct in my views expressed above, I do not consider that his conduct can be categorised as unsatisfactory pursuant to section 12(a).

[70] The Applicant was in a difficult situation. The parties had a contractual obligation to settle. They did not agree how the proceeds of sale were to be disbursed. The result of the steps taken by the Applicant were that the obligation to settle was fulfilled.

[71] Following settlement, the sale proceeds were paid into the trust account ledger established by the Applicant in accordance with approved practice. He could not then disburse the money without agreement between the parties. To do otherwise would have caused him to breach the provisions of section 110(1)(b) of the Act.

[72] Throughout the whole process, the Applicant has consulted and discussed the matter with his partners and acted in accordance with their collective views.

[73] In summary therefore, I have formed the view that in all of the circumstances, the conduct of the Applicant was not such as could be categorised as falling short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

There will therefore be an order reversing the decision of the Standards Committee in this regard**.**

Retention of funds

[74] The Applicant's position is that following settlement, he then held the funds as a stakeholder and advised both parties that they needed to obtain independent advice. The Respondent did consult another lawyer, a Mr D. Correspondence ensued between Mr D and the Applicant.

[75] The correspondence from Mr D is ambivalent, but in the main, supports the position adopted by the Applicant.

[76] In his letter of 30 September 2009, Mr D states …"we have indicated to [the Respondent] that your firm would only be able to hold those monies as a stakeholder for the parties". That is the position adopted by the Applicant.

[77] Mr D then goes on to say …"with respect, no monies should be deducted from the funds, as that is a matter between [the Respondent] and VC, and nothing to do with the settlement of the sale". No monies have been deducted in the sense of having been paid out to VC – the funds remain in the Trust Account of WM.

[78] Mr D then concludes by saying: "No further funds should be released and your firm has a conflict of interest in acting on the sale for the parties and now becoming embroiled in a possible argument between them as to those funds." The Applicant did not have a conflict of interest in acting on the sale – he acted for both VC and the Respondent – and their instructions coincided. The Applicant does, however, have a conflict in acting for either party in the dispute between them as to the disbursement of the funds, and that conflict was identified by the Applicant several times.

[79] In his letter of 14 September 2009 to the Respondent, he states: "We agree that a conflict of interest has arisen and that it is no longer appropriate for us to act for either party. You therefore should each obtain independent legal advice and take such action as you consider appropriate."

[80] Again, in his letter of 17 September 2009, he states: "We are clear in our view that there is a conflict of interest that prevents us from now acting for either of you and places us in a position of independent stakeholder …. [The Respondent] has instructed us to pay out the disputed amount and VC has instructed us not to pay out the disputed amount. We cannot fulfil the requirements of you both."

[81] As a stakeholder, therefore, the Applicant must continue to hold the funds until there is either a Court order directing how the funds are to be disbursed, or alternatively, the parties agree how the funds are to be disbursed and instruct the Applicant accordingly. The stakeholder should take no part in negotiations between the parties.

[82] VC has instructed a firm in Hamilton to issue proceedings in respect of the funds and I was advised by the Respondent that there is a hearing scheduled for June. The Respondent has not instructed anyone to act on her behalf.

[83] In addition, the Court has issued a preservation order directing the firm of WM, that it is not to dispose of, deal with, or diminish the value of the sum of $32,248.56, being the amount in dispute.

[84] As a result of my finding, I have reversed the order of the Standards Committee requiring the Applicant to repay the sum of $32,248.56 to the Respondent.

[85] This order is largely redundant, however, given the fact that the preservation order has been issued by the Court.

Costs retention

[86] The Applicant has also retained the sum of $5,000 against costs that may be incurred by WM resulting from the position in which it finds itself, namely that of a stakeholder. The Applicant advised that his firm had concluded that it may be required to apply for a declaratory judgment, to enable it to disburse the funds.

[87] It is my view that this would not be a proper step for a stakeholder to take.

[88] The Applicant had no instructions from either party to take that step and neither should he have sought the same.

[89] Consequently, the Applicant has no authority from either the Respondent or VC to retain any funds to be offset against future costs.

[90] Section 110(1)(b) of the Act applies equally to these funds and I concur with the Standards Committee in this regard, namely, that the Applicant has no authority to retain these funds.

[91] Section 12(c) of the Act provides a further definition of "unsatisfactory conduct" in relation to a lawyer, as meaning – "conduct consisting of a contravention of this Act or of any regulations or practice rules made under this Act that apply to the lawyer …".

[92] By retaining the sum of $5,000 without authority, the Applicant is in breach of Section 110(1)(b) of the Act, and consequently such conduct constitutes unsatisfactory conduct in terms of section 12(c).

[93] The Standards Committee has made a finding of unsatisfactory conduct against the Applicant and that finding is confirmed in relation to the unauthorised retention of the sum of $5,000 on account of future costs. The Standards Committee finding, however, is modified to the extent that this conduct is unsatisfactory conduct pursuant to section 12(c) of the Act and not section 12(a) of the Act as recorded by the Committee.

The Respondent's Costs

[94] The Applicant has asserted his right to charge for his attendances in relation to the complaint. This was on the basis as set out in his letter of 21 May 2010 to the NZLS, that a full explanation had previously been given to the Respondent, both

directly and through Mr D, and that her complaint had been pursued with no attempt to clarify the disputed factual allegations.

[95] Section 132 of the Act gives any person a right to complain about the conduct of a solicitor.

[96] Regardless of the outcome of the complaint, a practitioner does not have any right to charge a client for attendances in relation to that – there is clearly no retainer from the client to do so, and it is completely illogical and perverse for a practitioner to assert otherwise.

[97] Consequently, any proposal to charge the Respondent and VC for the practitioner's attendances in regard to the complaint is without foundation, and any deduction of such an amount from the funds held by the Applicant, would constitute a breach of section 110(1)(b).

[98] The Applicant advises that he has not rendered any account in respect of the complaint.

[99] I note that an account dated 30 October 2009 for $1,540 plus GST, was rendered in respect of attendances relating to the dispute between the Respondent and VC. Given that the Applicant was at that stage acting as a stakeholder, there should have been little or minimal attendances on his behalf in connection with this. The attendances that I have noted during the period covered by that account relate to the further correspondence and attendances in obtaining details of the amounts claimed and insofar as they relate to these matters and the dispute in respect thereof, I consider that the Applicant had no instructions in relation to the dispute from either the Respondent or VC.

[100] That account will have been debited to the trust account ledger, and presumably deducted from the sum of $5,000 retained. Given that an order has already been made by the Standards Committee and confirmed by me that this amount should be returned to the Respondent and VC, this will result in the account of 30 October being unpaid. For the sake of clarity, the Standards Committee order to cancel all fees charged by WM after the date of settlement will be confirmed.

The costs order

[101] The third order made by the Standards Committee was that the Applicant pay costs of $750 to the New Zealand Law Society pursuant to Section 156(1)(n) of the Act. The result of this review is, that the finding of unsatisfactory conduct in respect of the

main issue, has been reversed. However, the finding of unsatisfactory conduct in respect of the retention of funds on account of future costs, remains.

[102] In the circumstances, it is appropriate that an order for costs should be made, but for a modest amount.

[103] The order for costs is modified to the extent of replacing the order made with an order for payment of $300.

[104] There will be no order for costs in connection with this review, in accordance with the LCRO Costs Guidelines.

Rates

[105] The Applicant continues to hold the sum of $5,423.00 on account of past rates and repairs which VC has paid.

[106] The Applicant's understanding is that this amount should be paid to VC.

[107] The Standard Committee notes that the Respondent appears to have accepted that these funds should be disbursed, and on the basis of that decision, it seems to me that should be done to ensure that there are no matters left outstanding as a result of the complaint in this review.

Interest on funds retained

[108] At the hearing on 27 January, I requested the Applicant to provide me with details of all funds held by him. The Applicant has since complied with that request, and I note that interest has accrued on the funds held.

[109] In accordance with the usual procedure adopted with regard to the accrual of interest, any interest accrued to date or subsequently should, in the absence of an order by the Court, be paid in proportion to the sums paid.

Publication

[110] Having given consideration to the factors set out in its decision, the Committee resolved to publish the facts of the matter in Law Talk without reference to the name of the lawyer or any of the parties involved.

[111] Given that I have reversed the Standards Committee's decision on the substantive complaint made by the Respondent, the order for publication is now inappropriate. That order will therefore be reversed.

Decision

Pursuant to Section 211(1)(a) of the Lawyers and Conveyancers Act 2006 the following decisions and orders are made

(1) The finding of unsatisfactory conduct pursuant to section 12(a) of the Act is reversed in respect of the Respondent's conduct in relation to the sale of the property.

(2) The finding of unsatisfactory conduct on the part of the Applicant in relation to the retention of funds for payment of future costs is modified to be unsatisfactory conduct as defined in section 12(c) of the Act.

(3) The order to release the sum of $5,000 retained on account of future costs to the parties in accordance with their respective shares in the property is confirmed.

(4) The order that the Applicant cancel all fees charged by WM after the date of settlement pursuant to Section 156(1)(f) of the Act is confirmed.

(5) The costs payable by the Applicant to the New Zealand Law Society pursuant to Section 156(1)(N) of the Act is reduced to $300.

(6) The order of the Standards Committee as to publication is reversed.

DATED this 7th day of February 2011

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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 AJ as the Applicant
Ms ZQ as the Respondent
The Auckland Standards Committee 2
The New Zealand Law Society