

LCRO 151/2010

CONCERNING

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

AND

CONCERNING

a determination of the Waikato Bay of Plenty Standards Committee 1

BETWEEN

DF
of Auckland
Applicant

AND

WW
Of [North Island]
Respondent

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

DECISION

[1] The Standards Committee considered two complaints made by Ms DF (the Applicant) against law practitioner, WW (the Practitioner). The complaints concerned two bills of costs that had been sent by the Practitioner to the Applicant's mother, Mrs J. Both of these accounts were below the statutory threshold of \$2,000. By regulation 29 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 a Standards Committee has no jurisdiction to consider complaints about bills where fees are below \$2,000 unless "special circumstances" exist. The Standards Committee did not believe there were any special circumstances for exercising the discretion in this case, and therefore declined jurisdiction.

[2] The Applicant sought a review of the Standards Committee's decision on the grounds that the Standards Committee had not considered all points relating to the complaint concerning the fees for the conveyance, in particular that the Practitioner had

no authority to act in the sale of the property and had not proven that she was formally retained in relation to that matter.

[3] It was not apparent whether the Applicant also sought to review the part of the Standards Committee decision concerning fees charged for the powers of attorney. However, for the sake of completeness, I have also conducted a review of the Standards Committee's decision on that matter.

[4] The review application focused on conduct issues and I understood that this was intended to demonstrate that there were "special circumstances" arising from the conduct that justified the Committee's further consideration of the complaint.

[5] The conduct aspects of the complaint were two-fold. The first alleged that the Practitioner had no authority to have acted in the conveyance and had in fact not done the conveyance but had nevertheless charged a fee. The second alleged excessive fees charged by the Practitioner for preparation of Powers of Attorney for Mrs J.

[6] The parties consented to this review being conducted on the papers pursuant to section 206 of the Lawyers and Conveyancers Act 2006.

Considerations

Complaint concerning fees for Powers of Attorney

[7] The complaint is that the fees charged by the Practitioner for preparing Powers of Attorney for her mother were excessive.

[8] The evidence shows that Mrs J had consulted the Practitioner in November 2008 to cancel a Power of Attorney that she had previously made in favour of the Applicant who is her daughter. The Practitioner informed the Standards Committee that there had been considerable discussion surrounding this and eventually Mrs J decided that the Practitioner should prepare two new Powers of Attorney, personal care in favour of her son, and property in favour of her three children jointly. At a second meeting to finalise the matter, the documents were signed, Mrs J at that time was accompanied by two of her children, which did not include the Applicant.

[9] The Practitioner explained that the document had to be signed by the Applicant and was forwarded to her with a request to return it signed. A month later the documents had not been returned. Meanwhile Mrs J had been in hospital for a short stay, was unhappy with the Applicant's actions during that time and instructed the Practitioner to redraw the property Power of Attorney to exclude the Applicant.

[10] The Practitioner then prepared a new Power of Attorney (property), but before this was signed the original document was returned fully signed by the Applicant. It appears that Mrs J then reconsidered her later instruction to the Practitioner and decided that after all she would stay with the original property Power of Attorney.

[11] In the circumstances the Practitioner's fee included charges for all attendances of the Powers of Attorney, the fee amounting to \$1,648.80. The Applicant considered this was excessive. She informed the Standards Committee that her mother suffered from dementia and often had a change of mind. She alleged that the Practitioner had taken advantage of this for her own gain, and had failed to seek a competency assessment.

[12] The fact that the sum fell below \$2,000 means that the Standards Committee had no jurisdiction to consider the complaint unless special circumstances existed. The Committee did not see that there were any special circumstances and declined jurisdiction.

[13] Special circumstances could arise if there was evidence of improper professional practice on the part of the Practitioner. I note that Mrs J attended the Practitioner accompanied by two of her children. There is no evidence of the Practitioner having prepared the replacement Power of Attorney without the instruction of Mrs J, and I accept that she was requested to do so by Mrs J about a month after the original had been done. That Mrs J decided to stay with the original document after all is indicative of her ability at that time to have reconsidered the circumstances.

[14] The Applicant has provided no evidence of impropriety by the Practitioner. The Practitioner was properly entitled to charge professional fees for these attendances.

[15] Having independently considered the matter, I agree with the Standards Committee that there were no special circumstances arising from the above that overcame the jurisdictional barrier.

Complaint concerning fees in relation to conveyance

[16] The complaint was that the Practitioner had charged fees for a conveyance that had been done by another lawyer, and for work that she had not been authorised to do. The Applicant stated that a letter of engagement had never been signed or returned to the Practitioner which was evidence that the Practitioner had never been authorised.

[17] In reply to the complaint the Practitioner informed the Standards Committee of the following: Six months after the above events, in June 2009, she became aware that decisions were being made about Mrs J entering a rest home. In July 2009 the

Practitioner received auction conditions concerning the sale of Mrs J's home which she was asked to approve. She contacted Mrs J's son who advised that his mother was in a rest home, and there was some discussion concerning the auction conditions. The Practitioner informed the Standards Committee that they had a long discussion about the conservatory that had been added to the property.

[18] The Practitioner said she immediately forwarded a Letter of Engagement to Mrs J's son and also (by email) a copy of the flats plan seeking his confirmation about whether the conservatory had been permitted and was on the title. As the son was not sure the Practitioner made enquiries and clarified with Council that the conservatory was permitted but that it was not included in the Certificate of Title.

[19] The Practitioner then had some difficulty contacting the son but she received an email from the Applicant. Through email exchanges with the Applicant the Practitioner discussed the conservatory issue. The Practitioner also notified the real estate agent about the need for a special clause in the auction documents concerning this.

[20] The estate agent informed the Practitioner that he had learned from the Applicant that Mrs J no longer had legal capacity and the Practitioner advised him of the Enduring Powers of Attorney and how he should proceed.

[21] The Practitioner stated that during the time that she had had contact with Mrs J's son and the Applicant, there was no indication from either of them that her firm was not acting in the sale.

[22] The Practitioner informed the Committee that about a month later she received a call from another solicitor who said he was acting in the sale and he queried the situation regarding the conservatory, advice which the Practitioner gave him. At that point the Practitioner rendered a bill for costs of work done to date, this being a fee of \$560.

[23] The Practitioner added that some time after this she received a letter from Mrs J querying the instructions to act for her and she forwarded a copy of the previous letter and terms of engagement. The Practitioner said she heard nothing more until 2010 when the Applicant rang to advise about the complaint.

[24] The essence of the complaint is that the Practitioner did not have any authority in relation to the services provided and should not have charged a fee. It is not disputed that the Letter of Engagement had been sent but not yet returned at the time that the Practitioner undertook the services. The Regulations require a Letter of Engagement

to be sent. There is no specific statutory requirement that it be signed and returned, although it is not an uncommon practice for lawyers to ask for the document to be signed. I do not accept that it is a necessary requirement, or the only way in which a lawyer's authority to act might be demonstrated.

[25] The Practitioner claimed her authority for doing the work arose from requests made to her for certain services by person's authorised to have given instructions. The evidence shows that the Practitioner was sent a copy of the auction documents, presumably by the real estate agent, who in turn could only have been directed to the Practitioner by a family member. It is material to note that the Practitioner had contact thereafter with not only Mrs J's son but also the Applicant herself in relation to the house sale. Their communications with the Practitioner make it clear that they were aware of the enquiries that had been, and were being, undertaken by the Practitioner and it was not suggested by either of them that she should not provide these legal services.

[26] In my view this gave rise to authority on the part of the Practitioner to act, and she was then entitled to charge for those services. Any other outcome would result in an individual who has sought and benefitted from professional services to then decline liability for fees on the basis that the Letter of Engagement had not been returned.

[27] I can see no disciplinary issues arising in this matter. The Standards Committee decision will stand.

Decision

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

DATED this 23rd day of June 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:

Ms DF as the Applicant
Ms WW as the Respondent
The Waikato Bay of Plenty Standards Committee 1
The New Zealand Law Society