

CONCERNING

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

AND

CONCERNING

a determination of Standards Committee

BETWEEN

UW

Applicant

AND

NG

Respondent

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

Introduction

[1] Ms UW has applied for a review of the determination by the Standards Committee to take no further action in respect of her complaints about the advice provided by Mr NG to her mother and step-father (Mr and Mrs AB) in relation to the sale of their home in [Town].

Background

[2] On 28 November 2011 a letter was received in Mr NG's office from a lawyer in [Town] addressed to Mr NG's partner (Mr TR). The letter enclosed an Agreement for Sale and Purchase signed by the purchaser for the property owned by Mr and Mrs AB in [Town]. The lawyer for the purchaser had been advised that Mr TR acted for Mr and Mrs AB and that the terms of the sale had been agreed.

[3] Mr TR had previously acted for Mr AB's daughter, Ms OL, and it was agreed that Mr NG would act for the ABs.¹

[4] A handwritten note on the letter received from the purchaser's solicitor, records that the Agreement was collected by Ms OL from Mr NG's office on 30 November to take to Mr and Mrs AB.

[5] The next event that occurred involving Mr NG, was that Mr and Mrs AB were brought to his office for the purpose of signing the Agreement. In her letter of complaint Ms UW says:²

On the week ending 3rd of December 2011 my parents was transport to [City] by my two sisters, in the rush to remove them they left behind their medication.

This rush was to get my parents to the law firm of [NG Law Firm] on Monday morning the 5th December 2011 to sign papers regarding the sale of their house in [Town].

They have not previously met the solicitor NG from the firm of [NG Law Firm] this solicitor is also my sisters Solicitor.

It is my belief my parent should have used their own lawyer who they have known for the last thirty years.

(Transcription as set out in letter of complaint).

[6] In his response to the complaint³ Mr NG stated that Mr and Mrs AB were accompanied by Ms OL when they came to his office. He has since acknowledged that he was mistaken, and that the person who brought Mr and Mrs AB to his office was Ms IK, who declared she is the granddaughter of Mr and Mrs AB.⁴ Ms UW has advised that Ms IK is her niece.

[7] It would seem that Ms UW may have only subsequently realised that Mr and Mrs AB had not been taken to Mr NG's office by Ms OL, as she did not dispute Mr NG's statement in his response to the complaint that it was Ms OL who accompanied Mr and Mrs AB when they came to his office. It is important to take note of this fact at this stage, as Mr NG's statement that Mr and Mrs AB were brought to his office by Ms OL only served to reinforce Ms UW's concerns.

[8] Mr NG described the state of Mr and Mrs AB's health in the following terms: "Mrs AB is almost blind, frail and elderly but has all of her mental faculties

¹ The file was initially referred to a legal executive at the firm but Mr NG advised in his response to the complaint that because Mr AB was Maori (as is Mr NG) that it would be preferable for him to act for Mr and Mrs AB.

² Letter UW to NZLS (22 March 2012).

³ Letter NG to NZLS (20 April 2012).

⁴ Declaration by IK (20 June 2012).

whilst Mr AB is elderly but physically capable".⁵ That description has not been disputed by Ms UW.

[9] The price offered for Mr and Mrs AB's property was \$140,000, which was \$30,000 less than the rating valuation. The undisputed evidence is that Mrs AB was keen to sell at that price, whereas Mr AB was undecided, and Ms IK has declared that he "reluctantly signed the papers".⁶

[10] Ms IK has also declared that Mr AB was confused and disorientated and in her complaint, Ms UW states that Mr and Mrs AB had been "rushed" to [City] by her two sisters and in the rush, Mr and Mrs AB's medication had been left behind. Again, it is important to note that Mr NG was unaware of the events prior to Mr and Mrs AB being brought to his office.

[11] Mr NG met with Mr and Mrs AB in the foyer of his office and went through the terms of the offer in some detail.⁷ He says he discussed the reasons for Mr and Mrs AB selling, and that Mrs AB explained:

- (a) she was concerned about the burden placed upon her husband providing care for her on his own; and
- (b) the detrimental impact this burden would have on his health; and
- (c) their daughter Ms OL was prepared to look after them; and
- (d) no other members of the family were prepared to assist them.

Ms OL also informed [Mr NG] the ABs had received medical advice that it was "in [their] best interests to leave their home and be placed in care".⁸

[12] The Agreement was signed after Mr NG had added an "as is where is" term, as he understood the property was not in a good state of repair and there were many car wrecks and various engine parts on the property.

[13] The sale proceeded to completion and was settled on 19 December 2011.

⁵ Above n 3, at [4].

⁶ Above n 4, at [13].

⁷ At the review hearing Mr NG explained the reason for this was that because of Mrs AB's frailty it had been difficult for her to get into the foyer and he did not want to cause her further difficulties by then moving to an office. He advised that the meeting had been conducted out of the hearing of any other clients.

⁸ Above n 3, at [6].

Ms UW's complaints and the Standards Committee determination

[14] Ms UW's complaint is dated 22 March 2012. The Standards Committee summarised Ms UW's allegations in the following way:

- a. That Mr NG was incompetent in dealing with her parents' issues.
- b. That her parents were rushed from [Town] to [City] by two sisters to attend the offices of [NG Law Firm] on 5 December 2011, to sign papers for the sale of their home in [Town].
- c. That there is a conflict of interest, in that [NG Law Firm] were also solicitors for Ms UW's sister, Ms OL. A conflict of interest is said to arise, in that:
 - i. It was Ms OL who briefed [NG Law Firm] regarding the sale of her parents' house.
 - ii. This was done for Ms OL to gain a financial interest or possible financial benefit when the parents' house was sold.
- d. That Mr NG failed to protect the interests of his elderly clients, being a breach of the client care rules.
- e. That Mr AB had limited understanding of English, and was not financially savvy.
- f. That Mr NG failed to protect the interests of his clients, by not giving proper advice, and not ensuring they understood the process to negotiate a fair market price for their home, being their only asset.
- g. That Mr AB was reluctant to sell at the price recorded in the contract, whereby Mr NG should have insisted that Mr AB seek independent advice on the matter, as they could have received significantly more for the sale of the home.
- h. That Mr NG was incompetent in that he did not request a rates notice, and did not research the property market in [Town]; nor did he obtain a report from Quotable Value New Zealand, or a registered valuer.
- i. That Mr NG seeks to justify the poor service and advice given, claiming the home was in a poor condition justifying the price received, which Ms UW says was not the case.

[15] As noted, the Standards Committee reviewed Mr NG's file. It also (correctly) noted that the content of the file was privileged as Mr and Mrs AB were not the complainants and were Mr NG's clients.

[16] Having traversed Ms UW's complaints and Mr NG's responses, the Committee recorded its conclusions:

Having had the opportunity to consider the entire file of [NG Law Firm], there is nothing to support the allegations made by Ms UW. The file is tidy, complete, has the relevant searches (with dates noted on them), rates assessments/GV assessments, correspondence, and other issues that support what is said by Mr NG.

[17] The Committee “decided to take no further action pursuant to s 138(2) of the Act on the basis there was no evidence that the practitioner had done anything wrong”.⁹

Review

[18] A review hearing took place in [City] on 13 October 2015. Ms UW attended from [Country] by telephone and Mr NG attended in person. Prior to the hearing, I had requested, received and reviewed Mr NG’s file. The file has been established in the name of Mr and Mrs AB.

[19] In a letter dated 14 November 2012 I had advised the parties, (primarily Ms UW) that I would find it helpful if Mr and Mrs AB could attend the review hearing as well as Ms IK. Prior to the hearing Ms UW advised that her mother had passed away and Mr AB would be unable to attend because of ill-health. There was no indication from Ms UW that they would have attended, had this hearing been able to have been scheduled earlier, and I note that this Office was not advised of the circumstances until an inquiry was made whether they were going to attend the scheduled hearing.

[20] Towards the end of the hearing Ms UW advised that Ms IK was unable to attend the review hearing because of other family related proceedings being conducted elsewhere. Although Ms UW did not elaborate to any degree what the nature of those proceedings were, I confirmed to the parties that court proceedings elsewhere were of no relevance to my consideration of this review.

[21] I also indicated towards the end of the hearing that I could see no reason to disagree with the determination of the Standards Committee to take no further action. I inquired of Ms UW whether she wished me to proceed to issue a written decision or accepted the determination. I indicated to Ms UW that no decision was required or requested from her at the hearing and that she could advise this Office of her decision after she had time to reflect.

⁹ Standards Committee determination (1 June 2012) at [21].

[22] In answer to a subsequent email to this Office I advised Ms UW there was no time limit imposed on her to respond and that I would otherwise proceed to complete my decision unless she advised that she wished to withdraw her application. As at the date of this decision Ms UW has not communicated any decision to this Office.

[23] It is extremely relevant to this matter that Ms UW was not Mr NG's client. As noted above, I wanted to hear directly from Mr and Mrs AB, but that has not been possible. I note that Mr NG has said that "it is also significant that the complainant has not spoken to the ABs who expressed embarrassment and shock to learn that a complaint had been lodged with the Law Society against the writer".¹⁰ Ms UW's response to this was that "the only reason the ABs are embarrassed is that they have now realised when Ms OL was acting for them, Ms OL should have received a better offer for the house".¹¹ Ms UW's response does not reject the substance of Mr NG's comment.

[24] Mr NG's response that the complaint is not supported by the ABs is also supported by the content of an extensive file note on Mr NG's file dated 13 December 2011 which cannot be produced because it records a privileged communication between (it would seem) Mr AB¹² and Mr NG. The content of this file note is extremely important and I have no reason at all to consider that it does not truly represent the content of the telephone conversation.

[25] Having read the file note, I am left in absolutely no doubt that Mr AB confirmed the decision to sell the property for the reasons described by Mr NG (in turn recording Mrs AB's advice) and did not in any way express dissatisfaction with Mr NG's advice.

[26] Ms UW has expressed the view that Mr NG should have properly investigated the property market in [Town] and advised them against selling at less than the rating valuation. She has also stated that he should have referred Mr and Mrs AB for independent advice, holding to the belief that he was acting at the direction of her sister, Ms OL. She considers that Ms OL "stood to gain an

¹⁰ Above n 3, at [12].

¹¹ Letter UW to NZLS (18 May 2012). There is no explanation of the reference to Ms OL's "acting" for Mr and Mrs AB.

¹² The file note records the caller referring to "his wife".

indirect financial interest in this matter and there is a likelihood of her receiving a financial benefit when the house was sold".¹³

[27] The suggestion that Mr NG should have investigated the property market in [Town] and advised Mr and Mrs AB against accepting the price offered is not accepted. It is not a lawyer's role to offer advice on the state of the property market. Lawyers are charged with ensuring clients understand the content of documents they sign, and that decisions are freely made. For reasons set out subsequently, I consider Mr NG fulfilled these obligations.

[28] In part 7 of the complaint form lodged with the Lawyers Complaints Service, Ms UW noted (in response to the reference to compensation) - "may at a later stage". An award of compensation has not been pursued by Ms UW to any significant degree, but it is important to note that even if there were a finding against Mr NG, there would be no grounds to order payment of compensation as there is no evidence that an offer at a higher figure would have been forthcoming. There would also be no basis for an award of compensation to Ms UW – any compensation would be payable to Mr and Mrs AB.

[29] Ms UW's complaint would appear to be largely based on a perceived conflict of interest, on the grounds that Mr NG had previously acted for Ms OL and was acting at her direction. In the first instance, Mr NG had not previously acted for Ms OL. In any event, merely because a lawyer has acted for another member of a family, does not mean that he or she would then act against the interests of another member of the family at the direction of the original client. It is not uncommon for lawyers to act for several members of the same family and often in circumstances where the instructions of the client may be for the benefit, or to the detriment, of other members of the family. That does not ipso facto, create a conflict of interest as alleged by Ms UW.

Conclusion

[30] Having considered all the material provided to the Standards Committee and this Office, and Mr NG's file, and having heard from Ms UW and Mr NG at the hearing, I have no hesitation in reaching the same conclusion as the Standards Committee, namely that no further action in respect of Ms UW's complaint is warranted.

¹³ Above n 2 at [1].

Decision

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

DATED this 27th day of October 2015

O W J 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:

Ms UW as the Applicant
Mr NG as the Respondent
Mr TR as a Related Person under s 213
The Standards Committee
New Zealand Law Society