

CONCERNING

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

AND

CONCERNING

a determination of the Wellington Standards Committee 2

BETWEEN

MR OJ
Applicant

AND

PT
Respondent

DECISION

Introduction

[1] The Applicant, Mr OJ, seeks a review of a Standards Committee decision to prosecute him in the Lawyers and Conveyancers Disciplinary Tribunal.

[2] The decision followed an own motion investigation by the Standards Committee on the basis of a report by the Inspectorate. The Practitioner had signed off on two transactions in particular under a Power of Attorney for his elderly mother. The Committee's concerns focused on those transactions. One involved a loan from his mother to the Practitioner's family trust, and deeds reducing the debt and the interest rate on that loan. The other involved a deed of disclaimer of an interest, and renunciation of probate, in relation to an estate in which his mother had been appointed as executor and was an equal beneficiary. The Practitioner's disclaimer on behalf of his

mother resulted in the mother's inheritance going to the Practitioner as her only surviving child.

[3] The Standards Committee file showed that the Practitioner provided explanations for all of his actions, including steps he had taken to ensure that the half share of the (mother's) inheritance would go to his deceased sister's children. He also explained to the Committee that his mother had received independent legal advice.

[4] The Standards Committee's investigation included a hearing on the papers, following which the Committee formally determined that the matter be considered by the Disciplinary Tribunal pursuant to Section 152(2)(a) of the Lawyers and Conveyancers Act. The Committee was of the view that the Practitioner's alleged conduct in relation to the administration of his mothers affairs, in particular his exercise of the powers of attorney granted to him by his mother, and the use of the trust account of his law firm, were of sufficient gravity, if proven, to meet the threshold test for misconduct in Section 7 of the Act.

Powers of the LCRO in Respect of Prosecutorial Decisions

[5] The power to review a prosecutorial decision is limited, the grounds having been articulated in a number of LCRO decisions (see LCRO 133/2009).

[6] The grounds notably do not include a review of the evidence relating to the complaint, but may arise where a Standards Committee decision was:-

- (a) Significantly influenced by irrelevant considerations;
- (b) exercised for collateral purposes unrelated to the objectives of the statute in question (and therefore an abuse of process);
- (c) exercised in a discriminatory manner; or
- (d) exercised capriciously, in bad faith or with malice.

Practitioner's Review Application

[7] The Standards Committee's concerns related to the Practitioner's compliance with the trust account regulations and the way that he exercised his powers under a Power of Attorney for his mother. The file showed that the Standards Committee had considered the Practitioner's explanations for his conduct but were not persuaded, on

the evidence before it, that the Practitioner had fully answered to the Committee's satisfaction that he had followed proper processes.

[8] For the review the Practitioner provided further explanations for his actions in relation to the loan advance, the reduction of debt, and the further advance, all of which he submitted were wholly transparent. He further explained the background circumstances to the grant of Power of Attorney by his mother to himself, and the overall benefits of the arrangements to his mother and her estate. He did not consider that his mother was a client of the firm in the usual sense of that word, and that the transactions were put through the firm's trust account for the purposes of transparency and convenience.

Considerations

[9] The Practitioner's review application largely sought to challenge the sufficiency of the reasons for a referral to the Tribunal. However, I observe that these are matters that the Practitioner can put before the Tribunal.

[10] I have noted above that the scope of review of prosecutorial decisions is narrow. I have considered all of the Practitioner's review grounds but I cannot find any that fall within the accepted grounds mentioned above or any similar grounds, which would vitiate the Standards Committee decision.

[11] The Committee's power to refer a practitioner to the Tribunal arises pursuant to Section 152(2) if, in the view of the Committee, concerns have arisen in a professional context which, if proven, could lead to a finding of misconduct. It is not my role, on review, to decide whether or not the evidence is sufficient to support a finding of misconduct. It is enough that there is some evidence to support a complaint that is of sufficient gravity to warrant referral to the Disciplinary Tribunal.

[12] If there was no basis to explain such a referral, questions could then arise as to whether the Standards Committee's decision was influenced by irrelevant considerations, made for collateral purposes unrelated to the objectives of the statute in question (and therefore an abuse of process), or whether the Committee had acted in a discriminatory manner and/or in bad faith or with malice. That is not the case here.

[13] I can find no reason to question the basis of the Committee's decision within the narrow parameters available for review. In these circumstances there is no proper ground for intervening with the Committee's decision.

Decision

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

DATED this 27th day of July 2012

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:

OJ as the Applicant
PT Respondent
GU as Counsel for the Applicant
The New Zealand Law Society