

**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 4

**BETWEEN**

**JK**

Of Wellington

Applicant

**AND**

**RQ**

Of Auckland

Respondent

**DECISION**

*Introduction*

[1] This is an application for review of a decision of the Auckland Standards Committee 4 which considered a complaint by JK (the Applicant) against his former solicitor RQ (the Practitioner). The Standards Committee decided to take no further action on the complaint and the Applicant seeks a review of that decision.

*Background*

[2] The Practitioner acted for the Applicant from early 2007 until December 2009 defending a relationship property claim brought by his former wife, L.

[3] The Applicant believed that L had concealed assets so they could not be taken into account in the relationship property proceeding. He had analysed L's bank statements and come to the view that the sum of \$200,000.00 was unaccounted for. The information was included in the Applicant's affidavit filed in the Court, but the claim was not accepted by the Judge who had said, "*Evidence of missing money is evidence of nothing.*"

### *Complaints*

[4] The Applicant considered that the Practitioner was responsible for his failure to recover his half share of the alleged missing \$200,000.00. He complained that she gave little in the way of advice, mainly processing and filing his affidavits, and contending that the Practitioner had withheld important information from him. In his second letter to the NZLS he elaborated on his complaints, adding that the Practitioner had failed to inform him about a 'concealed' National Bank account belonging to L that had later been discovered.

[5] He considered that he had not been given proper guidance in preparing his affidavits, noting that only general discovery had been sought. He was critical of the Practitioner for not having informed him that there was informal/general and formal/specific discovery. In his view the Practitioner ought to have sought specific discovery to find out where the missing money had gone. His desired outcome was for the original proceedings to be set aside and a fresh start made with him having a "proper lawyer" acting on his behalf.

[6] In response the Practitioner set out the relevant history of the proceedings, outlining the services she provided to the Applicant including considerable efforts to obtain discovery of the former wife's bank accounts. She stated that the outcome of a settlement conference was that there would be further discovery of L's bank accounts, and that the Applicant's dissatisfaction with L's disclosures meant that informal discovery process continued for some time for both local and overseas bank accounts, including accounts L possibly held jointly with a family member.

[7] The Practitioner informed the Standards Committee that she had received instructions from the Applicant to file an application for specific discovery, and in his supporting affidavit the Applicant had again addressed the issue of missing money and bank accounts. She continued that despite carrying out both informal and formal discovery, (neither having yielded information sought by the Applicant) her client remained dissatisfied, and she had explained that L could be cross-examined in respect of her disclosures.

[8] The Practitioner further explained that in October 2009 the Court has considered that the matter should proceed to a settlement conference. She said she had discussed having a discovery hearing with the Applicant, and had also suggested to him that it would be a more efficient use of time and money if the substantive matter and missing documents were dealt with together.

[9] The Practitioner added that Legal Aid had threatened to withdraw funding because the matter had gone on for so long, and that she had ceased acting for him in early December 2009 when Legal Aid was withdrawn. She said that the Applicant had then moved to Wellington at the end of 2009 and she had recommended that he that he obtain legal representation.

[10] In reply to the Applicant's second letter the Practitioner explained that the National Bank account he mentioned was one that had been opened by L after her separation from the Applicant, and was therefore not relevant to the property division. She had learned of this account (after she had ceased acting for the Applicant) because another section of the firm had acted in the conveyance (and had deposited L's funds into that account); she had no recollection of, and could find no evidence of, a request for this information having been sent to her by the Applicant.

[11] The Practitioner stated that the Applicant obtained further legal representation after he moved to Wellington. She referred to correspondence between L's lawyer and the Applicant's new lawyer concerning the National Bank account, wherein L's lawyer confirmed the account had been opened post-separation and that his client had not withheld any information about bank accounts.

[12] The Practitioner considered that she had taken all reasonable steps to verify the Applicant's suspicions allegations but no evidence was found. Accordingly she did not "believe there is any substance to the allegation that there was a concealed bank account or that any information was withheld from [the Applicant]".

#### *Standards Committee decision*

[13] The Standards Committee set out the background, referring to all the material before it, including all letters and submissions from the parties. The Committee decided that in essence there was "nothing to substantiate" the complaint against the Practitioner.

#### *Application for Review*

[14] The Applicant explained that his review application was because of the errors, omissions and excuses in the Standards Committee decision, and evidence that the Practitioner did not pay due attention to his case. He said he was financially ruined and wanted compensation.

[15] Both parties consented pursuant to section 206(2)(b) of the Lawyers and Conveyancers Act 2006 (the Act) to this matter being dealt with on the basis of the

material before me which includes the various letters and submissions from the parties which are on the NZLS and LCRO files.

[16] The role of the Legal Complaints Review Officer (LCRO) is set out in section 203 of the Act. It is to review the determination of the Standards Committee and all or any aspects of any enquiry or investigation carried out on behalf of the Standards Committee. In this particular case the Standards Committee concluded in effect that the Practitioner had not breached her professional obligations to the Applicant and accordingly it was not appropriate to take any further action.

### *Considerations*

[17] I have independently considered all of the information on the Standards Committee file and that provided for the review. I accept that the identification of the issues by the Standards Committee from his two letters of complaint leaves something to be desired. Despite this, the very detailed setting out of the parties' positions and their evidence/submissions contained in the Standards Committee's Notice of Determination satisfies me that the Committee's consideration of all aspects of the complaint was thorough.

[18] The task of the Standards Committee (and this office on review) is whether disciplinary issues arise for the Practitioner in relation to the complaints made by the Applicant. He believed (and continues to believe) that his former wife removed a significant sum of money from the relationship property equation.

[19] The evidence on the file shows that the Practitioner was cognisant of the Applicant's suspicions and considerable, but ultimately unsuccessful, efforts went into trying to find evidence to support that belief. The Applicant was not able to prove, to the necessary standard, the existence of concealed bank accounts and assets hidden and/or overseas.

[20] The National Bank account came to light when settlement monies were deposited into L's account. It appears that the Practitioner was unaware of this account at the time. The Applicant accepts that this account was opened after the parties had separated, but speculated about the possible existence of other similar (or related) accounts that ought to have been disclosed by L.

[21] There is nothing to indicate that the Practitioner knew of this post-separation account when she was representing the Applicant and certainly nothing to show that she withheld significant information from him.

[22] I also note that at the time the Applicant became aware of L's National Bank account, the relationship property proceeding had not yet concluded and he had instructed other counsel. By that time the Practitioner was no longer acting for the Applicant, and it is difficult to see what further responsibilities she had towards him. Any ongoing concerns ought to have been explored with his new lawyer.

[23] I make no conclusions about whether or not the Applicant's former wife diverted money as he believes is the case. That is not a matter that can be determined by the disciplinary process. The focus of the disciplinary process is to consider whether the professional conduct of the lawyer complained of fell below an acceptable standard such that a disciplinary finding should be made.

[24] The acceptable standard is measured by what is "reasonable" with reference to all of the circumstances, but does not require a lawyer to go to extreme or unusual measures to verify the beliefs of a client which appear, by normal methods of enquiry, to be unsupportable.

[25] Having considered all of the evidence and the information on the file, I see no basis for criticising the Practitioner's professional service to the Applicant. The evidence shows that she was fully alert to her client's concerns and suspicions, and that she took all reasonable steps to seek information sought by the Applicant to support his beliefs. That none of these steps uncovered any evidence to support his suspicions is not indicative of any shortcoming in the professional services provided by the Practitioner. I have found no reason to take a different view to that taken by the Standards Committee and accordingly the application for review is declined.

### **Decision**

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

**DATED** this 19<sup>th</sup> day of March 2012

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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:

Mr JK as the Applicant  
Ms RQ as the Respondent  
Auckland Standards Committee 4  
The New Zealand Law Society  
Secretary of Justice (redacted)