

LCRO 182/2010

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

MS CQ

of Hamilton

Applicant

AND

MR XE

of Hamilton

Respondent

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

DECISION

Background

[1] On 1 December 2009, the Applicant lodged a complaint with the Complaints Service of the New Zealand Law Society. She took exception to the Respondent seeking payment of a balance due to him of \$149.00.

[2] In LCRO 79/2009, the Respondent was found guilty of unsatisfactory conduct and orders made against him. In that decision, the LCRO made an order for compensation which was to be provided by way of a deduction from the Respondent's account.

[3] The Respondent therefore prepared a statement of outstanding amounts and after deduction of the amount ordered by the LCRO, and payments made, the balance of \$149.00 was outstanding.

[4] In her complaint the Applicant stated that “to ask for the remaining account is unbelievable. He should have been disciplined and compensation of these costs should have been awarded to me.”

[5] The reference to “these costs” referred to an order by the Family Court against the Applicant by which she was ordered to pay the sum of \$7,808 in costs. It also referred to a sum of \$5,685. Below the two figures the Applicant had noted “Family Court” and “CR”. These costs were awarded prior to a hearing”.

[6] The Standards Committee was uncertain as to what the Applicant was referring to, and sought clarification from her. In this regard, the Complaints Service wrote to the Applicant on 8 April 2010 requesting this information. No response was received and a further request was sent to her on 5 May 2010. On 19 May 2010 the Applicant sought an extension of time as she was awaiting the return of her files.

[7] By 12 July 2010, the Applicant had still not provided the information required and the Complaints Service wrote to her on that date advising that if the requested information was not received by return that the Committee would be dealing with the complaint on the basis of the information to hand.

[8] Nothing was received from the Applicant and the Standards Committee considered the complaint at its next meeting. On 13 August 2010 the Committee issued its decision. That decision was to take no further action in respect of the complaint and the Committee recorded its reasons for this decision as follows:-

This was a follow on from an earlier complaint by the same complainant against the same practitioner in respect of the same proceedings. On this occasion the complaint concerned the repayment of \$8,000 Family Court costs plus \$5,685 fees for the High Court. The Committee treated this as a request for compensation. The complainant was asked on several occasions to give details of those claims and in a manner that could then be quantified by the Standards Committee. The details were never supplied and the Committee resolved to dismiss the complaint for lack of the necessary detail.

[9] Accordingly, the Committee resolved pursuant to section 138(2) of the Lawyers and Conveyancers Act 2006 to take no further action.

The Review

[10] The Applicant requested that this decision be reviewed. With her application for Review, the Applicant provided the details requested by the Standards Committee. It consisted of a Minute from the Family Court dated 6 November 2008 setting out the costs ordered to be paid by her in those proceedings. This sum totalled \$7,808.

[11] The Applicant also provided an account from XR, Barrister of Hamilton, in the sum of \$5,685, headed 'CQ v CS – appeal'. The account is dated 5 August 2009. It can only be assumed that these costs were incurred by the Applicant in attempting to appeal the decision in which the costs order was made.

[12] It is clear that the Standards Committee is correct when it stated that the complaint was “by the same complainant against the same practitioner in respect of the same proceedings”.

[13] The Applicant had applied for a review of the Standards Committee decision in respect of the earlier complaint and the LCRO decision was issued under number 79/2009.

[14] In that decision, the Respondent was found not guilty of any professional breach in respect of the alleged failure to warn of the possibility of an adverse costs order, or the possibility of the application being made by the Applicant to the Family Court being unsuccessful.

[15] The LCRO found, however, that the Respondent's conduct breached the provisions of Rule 3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Client Care Rules). The LCRO found that this breach had occurred by reason of the fact that the Respondent had delayed filing a Notice of Appeal against the Family Court decision, or, conversely, had failed to properly terminate his retainer. The LCRO therefore found that this conduct constituted unsatisfactory conduct by reason of the breach and also by reason of section 12(b) of the Lawyers and Conveyancers Act.

[16] The parties were invited to make submissions as to penalty, and in a further decision issued on 24 September 2009, the LCRO made orders against the Respondent.

[17] It was following that order that the Respondent forwarded his statement to the Applicant.

[18] It follows therefore that the Standards Committee decision is undeniably correct. The complaint relates to matters which have already been the subject of complaint and review by this Office. There is nothing new. The complainant repeats her request that the Respondent be ordered to reimburse her for the Family Court costs and legal fees.

[19] Consequently, I have no hesitation in confirming the determination of the Standards Committee. The Lawyers and Conveyancers Act requires that the principles

of natural justice are to be applied in respect of complaints and reviews by this Office. One of the fundamental principles of the rules of natural justice is that a person shall not be exposed to double jeopardy. That generally refers to a person being exposed to penalties in respect of the same matters in different fora. This complaint is a complaint in the same forum about the same matter, arising out of the same facts, and seeking the same remedy. The Respondent's counsel submits that this is *res judicata*. I agree. There is no merit to the complaint.

Decision

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

Costs

[21] At an early stage during this review process, the Respondent made submissions through his counsel that I should exercise my discretion pursuant to section 205 of the Lawyers and Conveyancers Act to decline to make any further inquiry.

[22] The Applicant however advised that she wished to be heard in support of her application, and the matter proceeded on the basis that there was to be an Applicant-only hearing. The Respondent then indicated that if there was to be a hearing in person that he wished to attend as he was entitled to do. The hearing was scheduled for 11 May 2011.

[23] The Applicant then indicated that for various reasons, including health reasons, she was unable to attend and requested an adjournment. Upon being pressed for more detail as to the reasons for the adjournment, she advised that she was unable to attend for health reasons and personal commitments, as well as the delay and the fact that her support person was unavailable. No evidence of health difficulties was provided.

[24] It was subsequently agreed by the parties that the review would be completed on the papers.

[25] In completing this review, I have found nothing of merit in this complaint. It relates solely to matters which have already been the subject of a complaint. In addition, the Applicant failed to provide the Standards Committee with the details requested by it, despite three requests.

[26] Section 210 of the Lawyers and Conveyancers Act provides that the LCRO may make such order as to payment of costs as the LCRO thinks fit. I have given serious consideration to making an award of costs against the Applicant for pursuing this matter, both with the Standards Committee and with this Office. In addition, in seeking to be heard in person, and then advising that she was unable to attend after the hearing had been scheduled, all added to the cost and inconvenience of a complaint and Review application with no merit. However, in the interests of disposing of this matter I have not done so, given that it would be an unusual step to take on which further submissions would be required. Costs lie where they fall.

DATED this 27th day of May 2011

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:

CQ as the Applicant
XE as the Respondent
Counsel for the Respondent
The Waikato Bay of Plenty Standards Committee 1
The New Zealand Law Society