

LCRO 190/2010

CONCERNING

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

AND

CONCERNING

a determination of the Canterbury/Westland Standards Committee

BETWEEN

ET

Applicant

AND

VL

on behalf of **ABT**

Respondent

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

DECISION

Background

[1] On 13 December 2006 the Applicant provided three solicitors' certificates to the Respondent, in which he undertook to register mortgages following receipt of advances to be secured by those mortgages.

[2] Despite numerous communications by telephone, fax and letters, the Applicant failed to comply with his undertakings and complete registration of the mortgages.

[3] On 31 March 2010, the Respondent lodged a complaint with the Complaints Service of the New Zealand Law Society.

[4] After he had received notice of the complaint, the Applicant completed registration and informed the Respondent by letter dated 15 April 2010.

[5] In its decision dated 19 August 2010, the Standards Committee found that the conduct of the Applicant constituted unsatisfactory conduct, imposed a fine of \$4,000, and ordered the Applicant to pay costs of \$1,000.

[6] On 23 September 2010, the Applicant lodged an application for review of this decision submitting that neither the finding of unsatisfactory conduct nor the penalties imposed were appropriate.

[7] Subsequently, on 28 February 2011, the Applicant advised that he wished "to abandon his appeal against the finding of unsatisfactory conduct".

[8] The matter has proceeded by way of a hearing on the papers which includes the Standards Committee's file and the correspondence between this Office and the parties following receipt of the review application.

Review

[9] The conduct complained of extended from the time the funds were advanced on 14 December 2006, until registration was completed sometime between 9 and 15 April 2010 – a period in excess of three years.

[10] Although the Applicant purports to withdraw an "appeal" in respect of the finding of unsatisfactory conduct, it must be noted that a review is not an appeal. Once an application for review is acknowledged, it is the duty of this Office to complete a review of the decision (section 199 Lawyers and Conveyancers Act 2006.) Consequently, whether or not the Applicant wishes to withdraw his challenge to the finding, both the finding of unsatisfactory conduct and the penalties imposed are subject to review.

[11] Having said that, I endorse all of the statements made by the Standards Committee in its decision. Undertakings form the basis on which a multitude of transactions between lawyers and other parties are effected, and if the duty of compliance with those undertakings is in any way diminished, that will be to the detriment of the legal profession and the numerous parties who rely on those undertakings.

[12] A breach of an undertaking must almost automatically demand consideration by a Standards Committee as to whether charges should be laid before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal. In this regard, the aggravating feature is that the failure to comply with the undertaking continued for a period in excess of three years, and it was fortunate that the Respondent did not suffer serious loss.

[13] The submissions made in support of the Applicant described the Applicant as developing a mental block about the matters when he realised that the time for automatic registrations of paper dealings had passed. However, as a senior practitioner, the Applicant must have numerous persons to whom he can turn for help, not the least of which would be to contact the Help Desk at LINZ. He cannot say that the matter was overlooked, as he was reminded on at least 15 occasions by the Respondent that the matter was outstanding.

[14] The factors in favour of the Applicant are that he has not previously been the subject of an adverse disciplinary finding, the undertakings were finally performed, and no loss was incurred.

[15] In all of the circumstances, I consider that the finding of the Standards Committee was appropriate.

The fine

[16] At paragraph [15] of its decision the Standards Committee noted that its finding was one of unsatisfactory conduct in the form of conduct unbecoming.

[17] The breach of the undertakings was an ongoing breach during which the Lawyers and Conveyancers Act 2006 took effect (on 1 August 2008).

[18] The Committee imposed a fine of \$4,000 in respect of the conduct both before and after the commencement date of the Act. It did not provide any detail as to how this amount was divided between conduct prior to 1 August 2008 and after that date.

[19] The Applicant submits that the fine was at the high end of the scale and that an appropriate fine would have been \$1,500.

[20] He states that the maximum that could have been imposed by way of a fine prior to the commencement of the Lawyers and Conveyancers Act was \$2,000. That was the maximum fine that a District Disciplinary Tribunal could have imposed under the Law Practitioners Act.

[21] The Standards Committee found that the conduct of the Applicant constituted unsatisfactory conduct in the form of conduct unbecoming, a charge which could have been brought before the New Zealand Law Practitioners Disciplinary Tribunal under section 112 of the Law Practitioners Act. The maximum fine that Tribunal could have imposed was \$5,000 (section 112(2)(d)).

[22] In addition, the Applicant seems to overlook the fact that the fine is in respect of the continuing breach after the commencement date of the Lawyers and Conveyancers Act. The maximum fine that a Standards Committee can impose is \$15,000 (section 156(1)(i) Lawyers and Conveyancers Act).

[23] Consequently, the fine imposed by the Standards Committee is not at the high end as submitted by the Applicant and I consider that the amount of the fine is entirely appropriate.

[24] The Applicant also points to the contribution he has made to the community which enhances the community's view of the legal profession, and submits that he is entitled to credit for that.

[25] This is a difficult proposition. Whether or not a lawyer's actions in the wider community enhances the profession is a subjective matter. In addition, whether that should be considered to operate as a "credit" against penalties for professional shortcomings is a proposition which would need to be fully argued. I suspect that only limited cognizance of a practitioner's contribution to society would be taken, as the fine is imposed in respect of the specific conduct complained of.

[26] In any event, I am more than satisfied that the fine imposed is not at the high end of the level which could have been imposed and is appropriate in all of the circumstances.

Decision

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

DATED this 4th day of July 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:

ET as the Applicant
VL as the Respondent
The Canterbury-Westland Standards Committee
The New Zealand Law Society