NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

Decision No: [2010] NZLCDT 25

LCDT 026/09, 04/09

IN THE MATTER of the Law Practitioners Act 1982

BETWEEN **AUCKLAND DISTRICT LAW SOCIETY**

Applicant

AND **JOHN DORBU**

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms J Gray

Ms C Rowe

Ms M Scholtens QC

Mr W Smith

HEARING at AUCKLAND on 24 August 2010

APPEARANCES

Mr H Keyte QC and Mr M Treleaven for New Zealand Law Society

No appearance by Mr Dorbu

ORAL DECISION RE PENALTY HEARING

OF NEW ZEALAND LAWYERS AND CONVEYANCERS TRIBUNAL

[1] Today is the penalty hearing in respect of the charges brought by the New Zealand Law Society against John Dorbu. Mr Dorbu is not present; he was given notice of this hearing in June of this year and thus we have proceeded in his absence.

[2] The hearing and reasons for the Tribunal's findings are recorded in a 27-page decision released on 8 June of this year. We found 11 of the 12 charges proved. One was dismissed on the basis of duplication rather than lack of substance. We do not propose today to repeat the facts but we do want to refer to the main subject matter with which the proceedings were concerned and to which seven of the 12 charges related – that is the *Barge* proceedings.

[3] Mr Dorbu's involvement in those proceedings is best summarised by reading from the Court of Appeal judgment in that case which we record at paragraph [69] of our June decision and I repeat that now:

> "... Standing back and looking objectively at the available material, the following is revealed. Once Mr Barge had turned down the $30,000 offer from Freeport to walk away from his contract, and Mr Dorbu had become the legal representative both of Freeport and the appellants, a clear pattern emerged:
>
> - The unsustainable denial of the binding nature of the contract, which had been signed by Vivian Chu;
>
> - Mrs Chen, as the major shareholder and prime operator of Freeport, making contact with Shou-Lung Chiao, who was the brother of the first appellant, to raise funds. Mrs Jiao had an active involvement in this arrangement.
>
> - Mrs Chen asserting that there was a problem with the Bank of New Zealand when there was none;
>
> - Freeport entering into a financing arrangement with Shou-Lung Chiao on terms which were significantly less advantageous to

those which existed with the Bank of New Zealand and which there was no evidence could not have continued;

- Documenting a clearly void sale of shares in Freeport from a vendor which owned no shares to a purchaser which had not been created;

- Creating the Harsono Family Trust as the instrumentality for acquiring the property without disclosing the reality of what was happening;

- Endeavours to invoke, albeit unsuccessfully, the provisions of s 92 of the Property Law Act by Mr Dorbu acting as the legal representative of both Freeport and the appellants;

- The creation of paper trails which were inconsistent and economically and commercially unintelligible;

- The mutual orchestrating by Mrs Chen and Mrs Jiao and family members of a funding stream to repay the Bank of New Zealand mortgage which endeavoured to hide the true source of funds;

- Requiring an assignment of the existing Bank of New Zealand mortgage to Shou-Lung Chiao rather than discharging and registering a new mortgage;

- Mr Dorbu orchestrating activity on behalf of all the parties, notwithstanding the clear conflict between their respective positions and interests but which they all accepted and saw no problem with;

- Generally creating an artifice which had no historical or commercial reality and which, in the absence of any challenge or excuse, could only be a dishonest means of subverting Mr Barge's clear rights.

[75] No matter how stringently the onus is expressed, or what level of intention is required, when parties who could challenge the inevitable inferences remain silent, the Court is bound to conclude that this was all intended to ensure that Mr Barge's rights were avoided by means which were dishonest and unsustainable.

[76] The appellants cannot ask an appellate Court to speculate about theoretical possibilities. They chose not to give evidence. The material which is available from them in affidavits filed at pre-trial stages is contradictory, inconsistent and reeks of a deal to jettison Mr Barge's rights. Their determination in this regard knew no bounds. Individually, and collectively, they were prepared to prevaricate and lie.

> [77] The conclusion reached by Priestley J was the only one available on the evidence and the challenge to the finding of an unlawful means conspiracy is also without merit."

[4] We record that it is important that matters of this sort are drawn to the attention of those responsible for professional standards by Judges and fellow practitioners. It is a vital part of maintaining high professional standards and protecting the public.

[5] The findings of the Tribunal in relation to each charge and as to credibility of Mr Dorbu generally are helpfully summarised by Mr Keyte in paragraph [3] of his submissions and again I propose to read from those:

- "In relation to charge one –

  His declaration is, sadly, indicative of Mr Dorbu's misunderstanding of his obligations as a legal practitioner, which misunderstanding and indeed belligerent refusal to accept wrong doing, recurred throughout the hearing in his evidence and conduct of his defence.

  We refer to Mr Dorbu putting a proposition to the Tribunal about the power of attorney and point out that he puts that to the Tribunal when the power of attorney which he had in fact seen contradicts those assertions and this document was one of the core pieces of evidence in the *Barge* litigation. It demonstrates Mr Dorbu's inability to see or accept any interpretation which differs from his own.

  ... the totality of the evidence clearly points to the intention of wrong doing.

  We further say having regards to component elements relevant to this charge and the findings we have made about Mr Dorbu's involvement in this transaction the Tribunal finds charge one proved and there can be no doubt that this constitutes professional misconduct.

  If, as Mr Dorbu urged upon the Tribunal, he knew nothing of an y conspiracy, then while the substance of the charge is not proved, Mr Dorbu's actions in combination displayed such extraordinary naivety and lack of judgment, competence and professionalism as to amount by themselves to serious professional misconduct. However the Tribunal does not accept, as a matter of evidence that Mr Dorbu did not know he was facilitating the unlawful means conspiracy which would have a consequence of injuring Mr Barge."

- In relation to charge two:

  "We found that the acts listed, which Mr Dorbu accepted that he had undertaken went well beyond filling out of pre-drawn forms and constituted acting as a conveyancer without an appropriate practising certificate

... and again found misconduct to have been proved."

- We found that in relation to charge three"

  "Where there was such obvious and serious conflicts between clients there clearly had been established professional misconduct"

- In relation to charge four we said:

  "There can be no doubt that Mr Dorbu knew that these particular documents existed and were relevant to, and covered by, the Orders for Discovery, while failing to make discovery."

  "We found that the Tribunal is satisfied that Mr Dorbu failed to honour his duty to the Court. Indeed his own evidence indicated that he did not recognise nor understand his duties to the Court and obligations as counsel. As in respect of a number of the other charges and indeed his own defence of the charges before this Tribunal, Mr Dorbu displayed an alarming lack of understanding of the role of counsel, and a perverse attitude to the primacy of his client's best interest."

- In relation to the charge of communicating directly with another practitioner's clients we found:

  "That there cannot be a more blatant breach of rule 6.02 and we found that proved and found it constituted misconduct."

- In relation to charge six we found:

  "Clearly this is a particularly insulting attack on fellow practitioners and once again we find the breach of the rule proved to the relevant standard."

- We found in relation to charge seven:

  "That Mr Dorbu well knew the address for service given by Mr Barge was the offices of Castle Brown, thus he has misled the Court in that respect in paragraph 3 of his affidavit."

- In respect of charge eight:

  "We consider that this behaviour constituted an unjustified and unjustifiable attack on Mr G's reputation and that is the reputation of a fellow practitioner, thus that charge was established."

- In relation to the remaining charges:

  "For Mr Dorbu to suggest that the complaint was not being treated as one made on behalf of Priestley J is pure sophistry and does not fit comfortably with the obligation of an officer of the Court to fully and freely provide the unvarnished truth to the Court."

- We found as follows:

> "It is somewhat ironic that having been warned to be scrupulously accurate and honest to the Court that Mr Dorbu would then go on to characterise this finding of the Complaints Committee as a dismissal.
>
> We find that to be a serious breach of the Rules and that the earlier complaint by Chambers J confirmed to us that it was not the first time Mr Dorbu's integrity in communications with the Court had been called into question."

- In relation to the final two charges laid under the new Act in relation to remarks made concerning Priestley J we had this to say:

  "The intemperate remarks made about His Honour were utterly outrageous. As an officer of the Court, Mr Dorbu is expected to demonstrate absolute courtesy and respect towards members of the judiciary both in and out of Court. He completely failed to do so.

- In relation to his credibility having had produced to u s his declaration to the Queensland Law Society where he referred to proceedings which had referred to the past tense and not disclosed to them that the disciplinary proceedings were ongoing we had this to say:

  "The use of the past tense in this manner, and failure to disclose that the disciplinary proceedings, the subject of this decision, were unresolved once again demonstrates how Mr Dorbu's lack of appreciation of the need for scrupulous honesty in dealings with the Court and his profession, or worse demonstrates flagrant dishonesty."

[6] Given these findings it will be apparent that we do not find Mr Dorbu to be a fit and proper person to be a barrister or solicitor. Again this was well summarised by Mr Keyte in his submissions to the Tribunal to day in referring to Mr Dorbu as follows:

> "He does not understand his obligations to the Court and to other practitioners; he is dishonest; he does not abide by the rules of conduct of barristers; and he has been found to have knowingly participated in an unlawful conspiracy to injure Mr Barge.

[7] The orders we make are therefore as the unanimous decision of the Tribunal of five members as follows:

(1) There will be an order striking Mr Dorbu's name from the Roll of Barristers and Solicitors pursuant to s.112(2) of the Law Practitioners Act, and s.244(2)(a) of the Lawyers and Conveyancers Act.

(2) Costs are sought by the Society.

(a) The practitioner's situation is unknown because he has not appeared today and nor has he complied with a request for a direction to file submissions in relation to penalty. We are advised by Mr Keyte who has provided a copy of a judgment adjudicating Mr Dorbu bankrupt in June of this year. We have been provided with authority today by the Society that there is jurisdiction notwithstanding Mr Dorbu's bankruptcy to make an order for costs against him. The amount claimed by the Society is $72.616.75. This was an extremely complex matter. It occupied 11 days of hearing, 2000 pages of evidence was filed by the Society in advance of the hearing, and a further 631 pages of evidence was recorded in the course of the hearing. It was protracted in large part because of Mr Dorbu's litigious and unrealistic approach. We consider a small discount should be made for the dismissed charge and therefore make an order pursuant to s.112(g)(2) of the Law Practitioners Act and s.249(3) of the Lawyers and Conveyancers Act, that $70,000 be paid by the practitioner towards the cost of the Law Society investigating and progressing these charges.

(b) An order pursuant to s.257 is mandatory in relation to the two charges laid under the Lawyers and Conveyancers Act. The Law Society estimates that approximately only 2.7 percent of their costs would relate to those charges. It is the Tribunal's estimate that approximately four percent of the Tribunals' costs could be allocated or represents charges 11 and 12. Thus we make an order against the Society that four percent of the costs of the Tribunal are to be paid by the Society, the amount to be quantified by the Chair in due course.

(c) Pursuant to s.249(1) there will be an order that Mr Dorbu is to reimburse the Society with the amount that is ordered under s.257, that is in respect of the costs of the Tribunal.

(3) As to suppression; as we indicated the names of the parties in the main litigation were published in respect of that litigation then there is no need therefore for those names to be protected. We simply make an order suppressing Mr G's identity in relation to charges eight and nine, pursuant to s.111 of the Law Practitioners Act.

(4) There is a recommendation by the Tribunal pursuant to s.134 of the Law Practitioners Act that the New Zealand Law Society publish Mr Dorbu's name pursuant to s.135 of the Law Practitioners Act.

Addendum to Decision

In relation to paragraphs 2(b) and 2(c) the costs of the Tribunal are fixed at $68,000; 4% per that figure is $2720. This quantifies the above orders against the Law Society and Mr Dorbu respectively.

DATED at AUCKLAND this 10th day of September 2010

Judge D F Clarkson
Chairperson