

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2016] NZLCDT 11

LCDT 002/16

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**

Applicant

AND

BRUCE HARVEY REID

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr C Lucas

Mr G McKenzie

Ms C Rowe

Mr W Smith

HEARING at Specialist Courts and Tribunal Centre, Auckland

DATE OF HEARING 7 April 2016

DATE OF DECISION 3 May 2016

COUNSEL

Ms C Paterson with Ms N Copeland for the applicant

Mr D Chesterman for the respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING PENALTY**

[1] The respondent was charged by the applicant with three charges of disgraceful/dishonourable conduct under s 7(1)(a)(1) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] The respondent has accepted that his conduct was disgraceful and dishonourable in respect of charges one and two. He has accepted that his conduct was unsatisfactory in respect of charge three.

[3] The hearing on 7 April 2016 was to record the respondent's admission of the charges and to consider penalty. After the hearing and following deliberation, the Tribunal announced the following orders:

- (a) Strike-off;
- (b) Payment of compensation totalling \$75,000.00 being \$25,000.00 in respect of each charge;
- (c) Enforcement of the compensation order to be delayed for one month;
- (d) Payment of the costs of the New Zealand Law society of \$8,402.48;
- (e) Refund to the Law Society of the Tribunal's costs of hearing to be fixed pursuant to s 257 of the Act.

[4] The Tribunal reserved its reasons to be delivered in writing. This decision now records those reasons.

Charges and background

[5] The respondent has admitted all the underlying facts which are summarised as follows:

- (a) **Charge one** is one of misconduct and relates to the respondent's appropriation for his own personal use of in excess of \$41,000.00 without recording that in his reporting statement to his client.
- (b) **Charge two** is one of misconduct. The practitioner was an executor of an estate. Between April and August 2015, the practitioner, on three occasions, misappropriated funds from the estate totalling \$145,836.01 which he used for his own personal use. He disguised the misappropriations by recording false descriptions in the estate's ledger.
- (c) **Charge three** alleged misconduct. There was an alternative charge of unsatisfactory conduct which the respondent admitted. The charge relates to the practitioner's conduct in June 2014 whereby he obtained a handwritten authority signed by himself and his co-executor authorising "*temporary advances from time to time on the basis that they will be repaid*". The co-executor was not advised to obtain legal advice prior to signing the authority. She was not legally represented at the time of signing the authority. She is a woman of advanced years. Between July 2014 and August 2015, the respondent made 19 advances totalling \$67,000.00 from the estate's trust account to himself without issuing any statements detailing the advances.

[6] The respondent misappropriated a total of \$249,036.01, which he said was used to meet the day to day living expenses of himself and his partner and also to cover personal debts.

Penalties sought by the applicant

[7] The applicant has applied for the following orders:

- (a) An order to strike-off;
- (b) An order to pay compensation totalling \$75,000.00 being \$25,000.00 in respect of each charge;
- (c) Costs of the applicant;
- (d) Refund of the Tribunal costs;

[8] Simply put, the applicant's submission was that the respondent's dishonest conduct was so serious as to undermine the reputation and standards of the legal profession. That conduct further established that he was not a fit and proper person to practise as a lawyer. The submission was that the public interest; the need to protect the public; and the need to maintain professional standards required that the respondent be prohibited from practice.

The respondent's position

[9] Counsel for the respondent accepted the inevitability that strike-off should follow the respondent's guilty plea to these charges. The respondent addressed the Tribunal and apologised to the profession, his former clients, the public and to the Tribunal for his conduct. He emphasised (as he had previously done in writing) that it was his intention to repay in full the monies that he had misappropriated. His expectation was that he would be able to do so by obtaining an advance against his expected inheritance. He asked for a further 21 days to finalise that advance.

[10] There was concern that he would do so having previously indicated that he would do so before the matter came to a hearing before the Tribunal.

[11] The Tribunal has determined that orders for compensation should be made but that enforcement of the order should be delayed for one month.

Decision

[12] The Tribunal unanimously reached the conclusion that strike-off was the only justifiable penalty having regard to the seriousness of the conduct.

[13] It accordingly made the orders detailed in para [3] of this decision, which are:

1. The practitioner is struck off the roll, pursuant to s 242(1)(c);
2. The practitioner is to pay compensation totalling \$75,000.00, being \$25,000.00 in respect of each charge;
3. Enforcement of the compensation order to be delayed for one month;
4. The practitioner is to pay the costs of the New Zealand Law Society in the sum of \$8,402.48;
5. The practitioner is to reimburse to the New Zealand Law Society the s 257 costs of the Tribunal which are certified in the sum of \$1,872.

DATED at AUCKLAND this 3rd day of May 2016

BJ Kendall
Chairperson