

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2016] NZLCDT 14

LCDT 015/15

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 1**

Applicant

**AND**

**NAMLEE KIM**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Mr S Grieve QC

Mr C Lucas

Mr P Shaw

Mr W Smith

**HEARING** at Specialist Courts and Tribunal Centre, Auckland

**DATE** 24 May 2016

**DATE OF DECISION** 1 June 2016

**COUNSEL**

Mr G Hollister-Jones for the Applicant

Mr P Shamy for the Respondent

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

[1] The respondent has pleaded guilty to a charge of negligence or incompetence in his professional capacity and that negligence or incompetence has been of such a degree that it reflects on his fitness to practice or as to bring his profession into disrepute.

[2] In summary, the particulars which the respondent has accepted in his admission of the charge are:

- (a) From 17 January to 26 July 2014, he represented to the complainant that he was acting as her lawyer on her application to Immigration New Zealand (INZ) for a visitor's visa and/or an application to INZ under s 61 of the Immigration Act 2009.
- (b) Between early February 2014 and 26 July 2014 he represented to the complainant that he had filed the necessary application/s and documentation with INZ and misled her as to the status of her visa/s 61 application.
- (c) On or about 22 July 2014 he requested the complainant to pay into his bank account \$1,730 but failed to provide her with any information about what the money was for.
- (d) On 25 July 2014 he advised the complainant that her visa application had been processed but that she required a sponsor which he offered to be. He requested payment of \$9,000 into his bank account so that he could prove to INZ that he had the necessary funds to be a sponsor.

[3] The respondent was the subject of a charge of misconduct and an alternative charge of unsatisfactory conduct arising from the same particulars.

[4] Having admitted the charge of negligence or incompetence, the applicant sought, and was granted, leave to withdraw those charges.

[5] Counsel reached agreement that the respondent should pay compensation to the complainant totalling \$13,413.00 and should pay \$14,039.00 for the costs of the Law Society.

[6] The applicant submitted that the respondent should be suspended for a period of time. He suggested that the period should be from 9 – 12 months but could have effect from the date that the respondent did not renew his practising certificate from July 2014. He submitted that:

- (a) The consequences of the respondent's incompetence are that the complainant has a bad record with INZ and that she has more of an uphill struggle with the department in regard to future applications.
- (b) While the payment of compensation is significant, a period of suspension was warranted.

[7] Counsel for the respondent submitted that an order suspending the respondent was out of proportion to the offending and should not be made for the following reasons:

- (a) He displayed a lack of experience and understanding of what was involved.
- (b) He mistakenly believed that he was not acting as a lawyer, but thought that all he was doing was assisting a person when a friend asked him to do so.
- (c) There was no trickery or artifice on his part.
- (d) He did the best he could do to remedy the situation of which he was not the sole author.

- (e) He has agreed to pay compensation to the complainant, has apologised and wrote a confession in which he admitted his carelessness.

[8] The Tribunal has decided against making an order suspending the respondent from practice as a barrister and solicitor. It has had regard to the principle of 'the least restrictive outcome' referred to in *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850. It has had regard to the submissions of his counsel and has concluded that the respondent should be censured, ordered to pay compensation to the complainant, pay the applicants costs and refund to the applicant the costs of the Tribunal.

[9] It accordingly makes the following orders:

- (a) The respondent is to pay \$13,413.00 by way of compensation to the complainant, pursuant to s 156(1)(d).
- (b) The respondent is to pay the costs of the Law Society of \$14,039.00.
- (c) The respondent is to refund to the Law Society the costs of the Tribunal which are certified pursuant to s 257 in the sum of \$4,462.
- (d) The respondent is censured.

[10] The Tribunal delivered a censure to the respondent in his presence as follows:

Mr Kim,

You have admitted a charge of incompetence which resulted in serious consequences for the complainant and which you acknowledge reflect on your fitness to practice and thereby bring the profession into disrepute.

The Tribunal has seriously considered whether or not you should be suspended from practice as a barrister and solicitor. We have taken into

account the submissions of your counsel, your apology and your agreement to pay compensation.

Your failure requires that you are censured. The Tribunal formally records this censure.

**DATED** at AUCKLAND this 1<sup>st</sup> day of June 2016

BJ Kendall  
Chairperson