NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2016] NZLCDT 35

LCDT 016/16

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 5** Applicant
AND	**CHO WEON "MATTHEW" YOO** Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms C Rowe

Mr W Smith

Mr I Williams

DATE OF HEARING 30 November 2016

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 30 November 2016

COUNSEL

Ms C Paterson for the Standards Committee

Mr H Laubscher for the Practitioner

ORAL DECISION ON PENALTY

[1] The Tribunal has been considering appropriate penalty and consequential orders following from Mr Yoo's guilty plea to a charge, which has been amended by the Standards Committee to one of negligence. The charge will be appended to this decision as Appendix 1.

[2] It relates to the manner in which Mr Yoo has managed his trust account and there are eight separate areas of default on his part. His non-compliance covered periods of up to three years. Two previous reports to the practitioner had pointed out his failings and areas for improvement.

[3] The practitioner did not accord these matters sufficient priority. And as a sole practitioner, with few or no support staff at various times, his failure to rectify the errors made the whole problem larger. But there was no dishonesty involved in the failures by Mr Yoo, and no losses were suffered by clients.

[4] In addition to that we note by way of general background that the response of the practitioner in rectification and acceptance of responsibility, has led to him setting matters in order and we will refer more specifically to that under the discussion of "mitigation".

[5] We record, as has been said many times, that the purposes of penalty in the disciplinary jurisdiction is to protect the public, to maintain the standards of the legal profession, to maintain the reputation of the profession and the public's confidence in it as a result.

[6] The starting point for assessing proper penalty is to consider the seriousness of the offending. We accept Ms Paterson's submissions, on behalf of the Standards Committee, that the Tribunal has consistently emphasised the purpose and the importance of compliance with trust account regulations and the portions of the legislation which relate to the operation of trust account. That is for obvious reasons

because a lawyer has the privilege of handling and managing money on behalf of the client and with the trust of the client.

[7] Ms Paterson submits that, by analogy to the *Appleby*[1] and *Jones*[2] decisions of the Tribunal, the duration and the extent of the conduct here could reasonably mean that it could be considered as "high-end" negligence. In discussion with Ms Paterson in the course of the hearing, it is probably fair to say that Ms Paterson did not push the "high-end" that hard, and she has fairly characterised the practitioner's manner of conducting his trust account in the past as "disorganised". She accepted when put to her by the Chair that had the trust account been in the sort of total disarray as was found in the *Jones* matter, that it is likely that it would have gone into debit territory or into overdraft at some point, and that has not in this case occurred.

[8] In submissions on behalf of the practitioner, Mr Laubscher urges the Tribunal to maintain a perspective of the extent of the practitioner's failure by comparison with *Appleby* and *Jones,* in that there was not a state of general chaos or neglect, albeit that his client accepts that he did not fully comply with the regulations and that his manner of keeping records although accessible to him, did not make it readily apparent to the inspectorate that the client's monies were safe and protected as is required by the regulations.

[9] However we accept Mr Laubscher's submissions that because no trust monies were ever received in cash that the failure to keep receipts is of lesser culpability and that there was no risk for client funds in this case. Further to that, for example in the area of dormant balances, while this can be a serious default, in this case four of the amounts involved less than 75 cents and the other three were all less than $22.11.

[10] The trust account was never overdrawn, whereas in the *Appleby* matter this did occur and for significant periods of times. The practitioner never used the trust account for private transactions, as occurred in *Jones*, nor did he debit fees without an invoice first having been rendered. There were no false certificates provided to the Law Society as have occurred in previous cases. Thus we considered that the individual infringements were at the low end but there were a number of them and our

[1] *Auckland Standards Committee 4 of the New Zealand Law Society v Appleby* [2014] NZLCDT 34.
[2] *Wellington Standards Committee 2 of the New Zealand Law Society v Jones* [2014] NZLCDT 52

overall assessment of seriousness is that of low level negligence, not very much higher than would have been the case for a finding of unsatisfactory conduct.

[11] Now the aggravating features pointed to by Ms Paterson are the duration and the extent of the failures and secondly that the practitioner knew that he was breaching the acts and regulations because of previous warnings, but did not prioritise the conduct of his practice to rectify the failures.

[12] In terms of mitigating features, we refer to the *Fendall*[3] decision which is cited by Mr Laubscher, where at paragraph [46] His honour Justice Wylie said:

> "As was noted in *Daniels,* matters of good character, reputation, and absence of prior transgressions, count in favour of the practitioner. So does an acknowledgement of error, wrongdoing and expressions of remorse and contrition. Immediate acknowledgement of wrongdoing, apology to a complainant, genuine remorse, contrition and acceptance of responsibility as a proper response to a Law Society inquiry can be seen to be substantial mitigating matters and to justify lenient penalties…".

[13] We do consider that approach is appropriately applied in this matter. There was, as recorded, no deliberate dishonesty or loss to clients. The practitioner cooperated with the investigation and immediately responded to rectify his failures. He did this by engaging not only competent counsel but also an experienced consultant, formerly a Law Society inspector Mr Tim Maffey, to assist him in the rectification process and followed Mr Maffey's careful advice promptly. Mr Yoo put in a great deal of time, nights and weekends recreating proper records, for example he hand wrote 961 receipts.

[14] Furthermore, he has now engaged an external bureau or company to provide trust accounting services to him so that the failures cannot reoccur. He is remorseful and we accept has suffered some considerable stress and anxiety as a result of the disciplinary charge against him.

[15] This is Mr Yoo's first disciplinary offence in 16 years of practice.

[16] Perhaps we should return to the *Appleby* and *Jones* decisions, which were put by the Standards Committee as comparators. Although Ms Paterson accepted that

[3] *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825.

the seriousness of the offending in those matters was greater than in the present matter, she also pointed to the need for an overall assessment or an "holistic" approach, as she put it, by taking note that in both of those cases there were very significant mitigating features and personal circumstances which were given great weight by the Tribunal which would otherwise have imposed a more serious and significant penalty.

[17] Taking that same holistic approach to Mr Yoo's offending and taking account of his personal circumstances having heard him give evidence today at the Tribunal's request, we propose to make the following orders.

Orders

1. There will be a fine in the sum of $3,500.

2. Mr Yoo is to pay costs of the Standards Committee in the sum of $10,500.

3. The s 257 costs will be ordered against the New Zealand Law Society as is mandatory. Those costs are certified in the sum of $2,021.

4. The practitioner is to reimburse the s 257 costs to the New Zealand Law Society, pursuant to s 249.

5. There will be an order suppressing the name and details of any clients whose matters appear in the proceedings.

DATED at AUCKLAND this 30th day of November 2016

Judge D F Clarkson
Chair

Appendix 1

Charge

Charge 1

Auckland Standards Committee No. 5 of the New Zealand Law Society (**Committee**) charges **Cho Weon "Matthew" Yoo** (**Practitioner**) of Auckland, as follows:

Negligence or incompetence in his professional capacity of such a degree or frequency as to reflect on his fitness to practice or as to bring his profession into disrepute: s 241(c) of the Act, consisting of the following breaches of the Lawyers and Conveyancers Act 2006 (**Act**) and the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (**Regulations**):

Breaches of the Act:

(i) Breach of s 111(1) of the Act (failure to account properly for money received or held on behalf of another person to that person);

(ii) Breach of s 112(1)(a) of the Act (failure to keep trust account records that disclose clearly the position of money in the Practitioner's trust account);

(iii) Breach of s 114 of the Act (failure to ensure that funds earn interest).

Breaches of the Regulations:

(iv) Breach of regulation 11(1) (failure to keep records in respect of trust accounts in a manner as to enable them to be conveniently and properly reviewed by the Inspectorate);

(v) Breach of regulation 11(3) (failure to record required information on client ledger accounts);

(vi) Breach of regulation 12(1) (failure to record every payment, transfer, and balance of trust money in a trust account ledger with a separate ledger account for each client, and failure to ensure ledger accounts do not contain money of more than one client);

(vii) Breach of regulation 12(3) (failure to issue trust account receipts for money received into the trust account);

(viii) Breach of regulation 12(7) (failure to provide to clients for whom trust money was held statements of account in the required time periods);

(ix) Breach of regulation 13(3) (failure to include required information on trust receipts);

(x) Breach of regulation 14 (failure to ensure a trust bank account is reconciled with the trust ledger as at the end of every month).

The particulars of the charge are as follows:

Introduction

1 The Practitioner is a barrister and solicitor of the High Court of New Zealand who was, at all relevant times, registered to practise as a sole practitioner.

2 The Practitioner maintained a trust bank account at ASB, Nelson, while operating the law firm Veritas Law in Takapuna, Auckland.

3 The Practitioner's trust account was reviewed by the NZLS Inspectorate in 2005, 2008 and 2011. Reports were prepared following each review. In each of the reports prepared by the Inspectorate, the Practitioner was notified of breaches of the Act and Regulations that had been identified by the inspector and instructed to remedy shortcomings in his trust accounting practices.

4 On 22 September 2015, Jason Lamont of the New Zealand Law Society Inspectorate (**Inspector**) conducted a general review of the trust accounts of the Practitioner's firm.

5 The Inspector then produced a report. In the report the Inspector identified a number of deficiencies in the Practitioner's trust accounting records and practices. In broad terms these related to inadequate or non-existent receipting practices; failures to reconcile his trust bank accounts with his trust account ledgers; long-dormant balances that had not been dealt with; a lack of journal transfer entries; and funds held in the trust account in the name of a former employee that in fact related to multiple clients.

6 The Inspector identified as significant issues the matters set out below.

Receipts and receipting

7 The Practitioner's processes for receipting money entering his trust account did not comply with the Regulations.

8 From 10 July 2012 to the time of the review the Practitioner had not completed any trust account receipt to receipt money entering his trust account.

9 Although the Practitioner used information from his online banking as a measure for receipting money entering into his trust account, this was insufficient to comply with the Regulations.

10 The Practitioner therefore did not accurately record trust money received in his practice's trust account receipt records. This is a breach of regulation 12(3).

11 In addition, some receipts the Practitioner prepared prior to 10 July 2012 lacked all of the information required by regulation 13(3). Four examples of this can be seen in the following trust account receipts:

(a) Receipt AD10327453 dated 29 June 2012.

(b) Receipt AD10327454 dated 2 July 2012.

(c) Receipt AD10327461 dated 10 July 2012.

(d) Receipt AD10327462 dated 10 July 2012.

Reconciliations

12 The Practitioner had not completed reconciliations between his trust ledger and interest bearing deposit account (IBD) in breach of regulation 14 during the target period of the review (being the end of August 2015).

13 At the time of the review the Practitioner had not been maintaining IBD ledger accounts that disclosed clearly the position of clients' money in his trust account, in breach of s 112 of the Act.

14 The Practitioner did not report to clients about the money held on IBD. The Practitioner was also unable to confirm what commission he had earned up until the time of the review.

15 The Practitioner therefore did not account properly for the money held on behalf of clients in breach of s 111 of the Act.

Dormant balances

16 The Practitioner's trust account had seven dormant balances, being accounts in the names of J Y, G, S, J K, M K, K C, and Y J. These balances had been dormant since at least 30 April 2011.

17 The Practitioner did not provide statements to these clients about their trust money, transactions, and the balance of the clients' accounts in respect of transactions in breach of regulation 12(7).

18 The lack of reporting is also a failure to account properly for money held on behalf of clients. This is in breach of s 111 of the Act.

Journals and ledgers

19 The Practitioner did not complete separate records for journal transfers within his trust account.

20 The Practitioner maintained a "Journal Listing" but this only showed payments from the trust account to the general practice account.

21 The Practitioner stated that he did not complete separate records for transfers within the trust account. The Practitioner stated that "on a number of occasions" he combined ledgers of two clients into single ledgers. The Practitioner stated he would do this when acting for both parties in conveyancing matters where the two parties were relatives of each other.

22 The Practitioner has not recorded every payment, transfer, and balance of trust money in a trust account ledger with a separate ledger account for each client. In addition ledger accounts contained money of more than one client. This is in breach of regulation 12(1).

23 The Inspector noted that a number of the Practitioner's client ledgers did not reflect dates of transactions.

24 Dates of transactions could only be ascertained by a comparison with cashbook reports exported from ASB.

25 The Inspector was therefore unable to immediately ascertain the date range of the transactions and could not review individual client ledgers accurately.

26 On the client ledgers the Inspector reviewed the Practitioner did not record dates or the source references of transactions.

27 The Practitioner's entries in the client ledger accounts were not dated or include references that identified their sources. This is in breach of regulation 11(3).

Funds in the name of J L

28 On 22 September 2015 there was a balance on the Practitioner's client balance listing in the sum of $15,680.04. The balance was in the name of J L.

29 The Practitioner advised the Inspector that J L (**Mr L**) was formerly employed by the Practitioner as a legal executive and had ceased working for the Practitioner circa 2013".

30 The Practitioner stated that the balance for this listing related to clients Mr L had been dealing with while employed by the Practitioner.

31 The Practitioner was unable to provide any correspondence to show he had communicated with any clients relating to the "Mr L" funds since Mr L left the practice.

32 This conduct is in contravention of Regulation 12(7) and is a breach of s 111 of the Act.

Inspector's conclusion

33 The outcome of the Inspector's review was that there had been significant areas of non-compliance with the Act or relevant Regulations or Rules with respect to the Practitioner's maintenance of his trust account.