

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 2

LCDT 010/16

BETWEEN

**SOUTHLAND STANDARDS
COMMITTEE**

Applicant

AND

WARREN RICHARD MCFIE

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Ms A Callinan

Ms F Freeman

Mr G McKenzie

Ms C Rowe

HEARING at Specialist Courts and Tribunal Centre, Auckland

DATE 23 February 2017

DATE OF DECISION 3 March 2017

COUNSEL

Mr P Collins for the Applicant

Mr A Gilchrist for the Respondent

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

[1] Ms H was a person under a disability and was living in a rest home. The respondent had been her lawyer for more than 20 years. He was responsible for the administration of Ms H's personal affairs and controlled the bank account of the family trust of which Ms H was a beneficiary. The respondent was a trustee of that trust.

[2] Between January 2013 and August 2015 the respondent misappropriated funds from the trust account and from the controlled bank account of Ms H. The total sum misappropriated was \$237,014.24.

[3] Concerns about the respondent first came to attention when the manager of Ms H's rest home complained to the Complaints Service about the respondent's persistent failure to pay rest home fees (as he had previously done regularly), and that he failed to respond to the manager's enquiries.

[4] The New Zealand Law Society Inspectorate carried out an investigation as a result of which it established net losses to the respondent's clients totalling \$237,014.24.

[5] The respondent was additionally found to have charged fees which were grossly excessive. The assertion was that there was overcharging totalling \$42,147 which concerned a total of 30 invoices charged to the trust and to Ms H personally.

[6] The respondent faced two charges of misconduct under s 7(1)(a)(i) and (iv) of the Lawyers and Conveyancers Act 2006. The first charge related to the theft of the money of his clients. The second charge related to the overcharging of his clients.

[7] The respondent immediately admitted the charges and has readily and fully cooperated with the Law Society at all times during the investigation and the progress of the charges to a hearing before the Tribunal.

[8] He sold his house and from the proceeds repaid the monies he stole and also paid the New Zealand Law Society ("Law Society") \$80,887.76 for the expenses of its investigation. He has paid the Law Society \$40,000 to hold pending an order of this Tribunal concerning overcharging to be applied by way of reimbursement.

[9] He voluntarily surrendered his practising certificate to the Standards Committee on the same day of the intervention which occurred on 20 August 2015.

[10] The respondent now has National Superannuation as his sole source of income. His counsel advised the Tribunal that he has no job, no home and no savings.

[11] The respondent responsibly accepted that he should be struck off. All matters that might have invited a lesser penalty in other circumstances do not assist the respondent when the amount of money taken; the period of time over which the thefts occurred; and the vulnerability of an elderly client are taken into account.

[12] The respondent has consented to orders striking his name from the roll; reducing the fees charged to his clients to \$7,302.50; and making a refund of \$42,147 to his clients.

[13] The Law Society has sought an order under s 249 that the respondent pay its costs of the proceedings amounting to \$10,700. The Tribunal has a discretion in the matter of costs. It has taken into account that the respondent is now living in greatly reduced circumstances. He has paid the monies stolen and overcharged in full and has paid the costs of the investigation in full. The Tribunal has determined that the respondent should pay \$5,350 towards the costs of the Law Society.

Orders – By consent

1. An order striking the practitioner Mr McFie, off the roll, pursuant to s 242(1)(c).

2. An order reducing the fees charged by Mr McFie to his clients Ms H and the SJH Family Trust in the sum of \$49,449.50 including GST and disbursements, to \$7,302.50.
3. A refund is to be made in the sum of \$42,147.00 pursuant to s 156(1)(e) and s 156(1)(g).
4. Mr McFie will refund the Tribunal costs payable by the Law Society in the first instance, under s 257. These costs are certified in the sum of \$1,123.00.
5. An order that the names of the complainant and any clients referred to in these proceedings are suppressed.

After argument

6. An order pursuant to s 249 that Mr McFie pay the sum of \$5,350.00 towards the costs of the Law Society.

DATED at AUCKLAND this 3rd day of March 2017

BJ Kendall
Chairperson