

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 21

LCDT 004/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 1 OF THE NEW
ZEALAND LAW SOCIETY**
Applicant

AND

LINDSAY BOYD GRIBBEN
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms N McMahon

Prof D Scott

Mr W Smith

DATE OF HEARING 9 July 2020

HELD AT Auckland District Court

DATE OF DECISION 16 July 2020

COUNSEL

Ms K Feltham for the Standards Committee

No Appearance for the Practitioner

REASONS FOR PENALTY AND DECISION ON COSTS

[1] The practitioner, Mr Gribben, admitted four charges of misconduct based on two grounds:

- (a) That his conduct was such as would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and
- (b) That it consisted of a wilful or reckless contravention of the Lawyers and Conveyancers Act 2006 (LCA), and/or regulations or practice rules made under that Act.¹

[2] As well as admitting the charges Mr Gribben, responsibly, accepted that strike-off was the appropriate penalty and consented to his name being struck from the Roll of Barristers and Solicitors. Mr Gribben made brief submissions as to costs in writing but did not appear before the Tribunal.

[3] Because of the practitioner's consent to strike-off this decision will be relatively brief.

[4] The background is an unhappy but simple one. The practitioner has misappropriated funds from four clients over a lengthy period. The total sum misappropriated between September 2009 and November 2018 was \$901,294.16. Some of those funds were repaid with the net misappropriation figure being \$887,933.93. There are four charges because four clients were impacted by the practitioner's dishonesty. The detail of the charges is attached as Appendix I to this decision.

¹ Section 7(1)(a)(i) and s 7(1)(a)(ii) LCA.

[5] The Tribunal of five members unanimously accepted that the consented strike-off order was proper and the least restrictive intervention which could be made in the circumstances of such serious dishonest offending. The misappropriation involved numerous transactions (at least 170 have been traced) and covered a period of some 10 years. The sums stolen by the practitioner, particularly in respect of Charge 1, were very large and demonstrated a complete abrogation of the trust which had been reposed in the practitioner by his clients.

Aggravating Features

[6] Aggravating the offending is the fact that the clients in Charge 1 resided overseas and therefore were completely reliant on the practitioner's honesty in operating accounts for them in New Zealand and acting on major transactions on their behalf. They were badly let down by Mr Gribben and although they have been able to recover some of the funds taken by him, they have incurred significant legal and accounting fees in pursuing the sums outstanding and they consider that they are out of pocket to the extent of at least \$300,000. That is a shocking indictment on the practitioner and brings his entire profession into disrepute.

[7] A lawyer's handling of trust funds is at the very heart of the fiduciary relationship between lawyer and client and the obligations must be treated as sacrosanct. When they are breached in such a gross way there can be no other penalty than removal of the practitioner from the profession entirely. A practitioner who acts in this way can no longer be considered a fit and proper person to be a lawyer.²

[8] Further aggravating features are that two of the other clients (Charges 3 and 4) were elderly clients residing in rest homes. Once again, they were entirely dependant upon the practitioner's honesty in dealing with them and he let them down. According to the evidence, Mr Gribben compounded his misdeeds by blaming one of his elderly clients as "known to be spendthrift" and suffering from a mental disorder. Such appalling treatment of his client is inexcusable.

² Section 244 LCA.

[9] The final client who was the subject of the practitioner's dishonesty was an Estate with charities as beneficiaries. Once again, without an active client to cross check his actions, the practitioner betrayed the trust reposed in him. The practitioner was a senior and experienced practitioner who carried out these appropriations over the course of his time as a partner in two separate firms.

Mitigating Features

[10] Until this conduct began 10 years ago the practitioner had enjoyed a blemish free career, in a disciplinary sense. The only other mitigating conduct on behalf of the practitioner is relevant as to costs. It is that, on apprehension, Mr Gribben quickly admitted his wrongdoing and cooperated with the disciplinary process, admitting the charges as soon as they were filed and consenting to being struck off.

[11] These two mitigating features are not sufficient to reduce overall penalty, given the very serious nature of the offending and the damage to clients (particularly Mr and Mrs A) and to the profession as a whole. We do not consider it necessary to discuss other precedents where dishonesty has been involved, having regard to the practitioner's admission and consent.

Costs

[12] The Standards Committee costs are modest and are estimated to be \$5,613.25. We consider that the order made against the practitioner ought to be for 75 per cent of those costs to recognise not only his cooperation but also his financial circumstances.

[13] Mr Gribben is currently bankrupt and is now unemployed, according to the information he has provided to the Tribunal in writing.

[14] We have also been advised by counsel for the Standards Committee that criminal charges have now been laid against Mr Gribben. If he is convicted, he is likely to face a custodial sentence and accordingly he is unlikely to be able to meet any order for costs in the short term.

[15] However, we consider that there should still be a contribution to the costs of this prosecution including the s 257 costs, which the Tribunal is obliged to impose. It should not fall to the profession as a whole to carry the burden of investigation and prosecution.

Orders

1. By consent there is an order striking Mr Gribben's name from the Roll of Barristers and Solicitors (s 242(1)(c)).
2. There will be an order granting to the Standards Committee, 75 per cent of the costs sought of \$5,613.25 (namely \$4,209.94).
3. The New Zealand Law Society are to pay the Tribunal's s 257 costs which are certified in the sum of \$1,817.00.
4. The practitioner is to reimburse the New Zealand Law Society 75 per cent of the Tribunal s 257 costs (namely \$1,362.75).
5. There will be an order permanently suppressing the names of the clients of the practitioner.

DATED at AUCKLAND this 16th day of July 2020

Judge D F Clarkson
Chair

Charge 1: AA and BA and CDE Limited

1. That the practitioner, whilst acting for AA and BA and/or their company, CDE Limited, committed a disciplinary offence under s 241 of the Lawyers and Conveyancers Act 2006 (“the Act”), as particularised below, which constituted:
 - (a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:
 - (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or
 - (ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act.

The particulars of the charge are that (fact and matters relied upon):

- 1.1. At all material times the practitioner held a practising certificate as a barrister and solicitor issued under the Act.
- 1.2. At all material times, the practitioner was a partner in the firm FGH until 31 March 2016, at which time this practice merged with IJK Limited.
- 1.3. At all material times the practitioner was the trust account supervisor for FGH within the meaning of reg 16(1)(b) of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (“the Trust Regulations”).
- 1.4. At all material times the practitioner acted as solicitor for AA and BA and CDE Limited.
- 1.5. Mr and Mrs A, who reside in the United Kingdom, were substantial clients of the practitioner. They have been involved in the establishment of a subdivision in [X town] and a lodge in the CCC.
- 1.6. CDE Limited is the company used primarily for the [X town] subdivision.
- 1.7. The practitioner had authority to operate the HSBC bank account of CDE Limited.
- 1.8. The practitioner debited funds totalling \$812,165.89 held in the trust account of FGH on behalf of CDE Limited, AA and BA as follows:

- Between 29 September 2009 and 6 December 2013: 28 transactions from CDE Limited – “Administration of Affairs”, totalling \$69,255.29;
- Between 25 February 2010 and 22 December 2010: 8 transactions from CDE Limited – “Showhome – R Street”, totalling \$43,582.25;
- On or about 24 February 2015: 1 transaction from CDE Limited – “LMN”, totalling \$4,600.00;
- Between 17 November 2010 and 9 December 2014: 42 transactions from “BA – Miscellaneous Affairs”, totalling \$249,702.66;
- Between 8 April 2009 and 6 December 2013: 24 transactions from “AA – Horses – File No.3”, totalling \$86,713.94;
- Between 26 October 2010 and 22 December 2010: 3 transactions from “AA – Lodge”, totalling \$4,747.50;
- Between 21 November 2010 and 20 February 2015: 3 transactions from “AA – DD”, totalling \$4,950.00;
- Between 31 March 2011 and 6 March 2015: 49 transactions from “AA – Personal Affairs”, totalling \$344,770.50;
- On or about 19 December 2011: 1 transaction from “AA – Transfer of Section to EE”, totalling \$3,000.00;
- On or about 16 September 2010: 1 transaction from “AA – FF”, totalling \$843.75.

1.9. The practitioner used the debited funds for private transactions without the clients’ knowledge or consent.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

1.10. Misappropriated the trust account funds by using them for private transactions and/or failed to maintain adequate trust account records of those transactions, in contravention of any or all of s 110 of the Act and Regulations 7, 8, 11, 12 and 17 of the Lawyers and Conveyancers (Trust Account) Regulations 2008 and Rules 3 and 11 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Charge 2: Estate of GG

2. That the practitioner, whilst acting for the estate of GG, committed a disciplinary offence under s 241 of the Lawyers and Conveyancers Act 2006 (“the Act”), as particularised below, which constituted:
- (a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:
 - (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or
 - (ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act.

The particulars of the charge are that (fact and matters relied upon):

- 2.1. Paragraphs 1.1-1.3 above are repeated.
- 2.2. At all material times the practitioner acted as solicitor for the estate of GG.
- 2.3. The practitioner debited funds totalling \$1,650, held in the trust account of FGH on behalf of the estate of GG, as follows:
 - 16 August 2010: \$900.00 to “HH” with narration “Dog kennel for J”; and
 - 13 December 2010: \$750.00 to “HH” with narration “Invoice 397920 – ref ava31.”

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

- 2.4. Misappropriated the trust account funds by using them for private transactions and/or failed to maintain adequate trust account records of those transactions, in contravention of any or all of s 110 of the Act and Regulations 7, 8, 11, 12 and 17 of the Lawyers and Conveyancers (Trust Account) Regulations 2008 and Rules 3 and 11 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Charge 3: KK

3. That the practitioner, whilst acting for KK, committed a disciplinary offence under s 241 of the Lawyers and Conveyancers Act 2006 (“the Act”), as particularised below, which constituted:

- (a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:
- (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or
 - (ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act.

The particulars of the charge are that (fact and matters relied upon):

- 3.1. Paragraphs 1.1-1.3 above are repeated.
- 3.2. At all material times the practitioner acted as solicitor for KK. Miss K is an elderly client and resident in a [Y town] rest home. Mr LL, a former partner of FGH, was her attorney.
- 3.3. The practitioner debited funds totalling \$79,978.27, held in the trust account of IJK on behalf of KK as follows:
 - Since December 2016 eight transactions totalling \$74,978.27 were made to “MNO”, an account operated in the name of MNO Limited, one of the companies which the practitioner controls. No documentation to support the payments were held on file;
 - On 15 March 2017 a payment of \$5,000.00 was made to “MM” with the narration “[account number] Loan advance.” The file contained no documentation in respect of this payment.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

- 3.4. Misappropriated the trust account funds by using them for private transactions and/or failed to maintain adequate trust account records of those transactions, in contravention of any or all of s 110 of the Act and Regulations 7, 8, 11, 12 and 17 of the Lawyers and Conveyancers (Trust Account) Regulations 2008 and Rules 3 and 11 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

Charge 4: NN

4. That the practitioner, whilst acting for NN, committed a disciplinary offence under s 241 of the Lawyers and Conveyancers Act 2006 (“the Act”), as particularised below, which constituted:

- (a) Misconduct pursuant to s 241(a) of the Act in that it was conduct that:
- (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act; and/or
 - (ii) consisted of a wilful or reckless contravention of the Act and/or practice rules or regulations made under the Act: s 7(1)(a)(ii) of the Act.

The particulars of the charge are that (fact and matters relied upon):

- 4.1. Paragraphs 1.1-1.3 above are repeated.
- 4.2. At all material times the practitioner acted as solicitor for NN during the sale of her property at M Street, [Z town].
- 4.3. The proceeds of sale were placed on call deposit within IJK’s Westpac trust scheme, with part later being placed on deposit at Wairarapa Building Society.
- 4.4. The practitioner debited funds totalling \$7,500 held in the trust account of IJK on behalf of NN as follows:
 - 10 October 2018: \$4,500.00 paid to “PQR Ltd” with the narration “reimbursement for outstanding fees paid”; and
 - 20 November 2018: \$3,000.00 paid to “PQR Ltd” with the narration “Fees due 112325”.

Therefore the practitioner committed the disciplinary charge referred to above, as follows:

- 4.5. Misappropriated the trust account funds by using them for private transactions and/or failed to maintain adequate trust account records of those transactions, in contravention of any or all of s 110 of the Act and Regulations 7, 8, 11, 12 and 17 of the Lawyers and Conveyancers (Trust Account) Regulations 2008 and Rules 3 and 11 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.